



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-01300
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: Michael Eisenstein, Esq.

09/12/2016

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**Decision**

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HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant incurred delinquent debts, however her finances are now under control. Her failure to disclose these debts as required was unintentional. She has mitigated the Guidelines F and E concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on November 25, 2013. On September 14, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F and E. The DOD acted under Executive Order (Ex. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on November 10, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 23, 2015, and the case was assigned to me on February 25, 2016. Counsel for Applicant entered his appearance on or about January 27, 2016. On March 22, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant through counsel that the hearing was scheduled for April 21, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until May 2, 2016, to enable her to submit additional documentary evidence. She timely submitted AX D through G, which I have admitted without objection. DOHA received the transcript (Tr.) on April 29, 2016.

### **Findings of Fact**

The SOR alleges 25 delinquent debts totaling approximately \$13,522. The delinquent debts include student loans, taxes, and multiple medical bills. In her Answer, Applicant admitted 20 of the allegations, but qualified that she has paid or is making payments on each of the admitted debts. She denied five of the allegations, explaining that she had paid one of the debts in full in April 2014, that she was unable to obtain any information about two of the debts, and that two debts were duplicates, the original of which was also paid in full in April 2014. Her admissions in her Answer are incorporated in my findings of fact.

Applicant is a 44-year-old principal systems engineer employed by her current defense-contractor employer since June 2006. She has held a security clearance since 2005. (Tr. 29.) She received a bachelor's degree in 2002 or 2003, and a master's degree in 2005 from the same university. (Tr. 21.) She is a single-parent with a 20-year-old daughter who is on active duty in the U.S. Air Force, and a six-year-old daughter who resides with Applicant. (GX 2; Tr. 21-22.) She receives about \$1,000 monthly in child support. (Tr. 29.)

Applicant initially fell behind on her financial obligations due to a combination of unanticipated expenses that included medical expenses due to a high risk pregnancy, and sporadic rent payments on the rental property she owns. (Tr. 27-28.)

Applicant took out student loans in about 2003. The loans have been sold, consolidated and placed in forbearance numerous times. (Tr. 43-44.) The \$1,431 alleged in SOR ¶ 1.a is for a student loan that was 120 days or more past due. Applicant was making automated payments to the lender, and then in approximately 2013, the lender sold about half of the loan to another lender. The new lender did not receive automated payments, and Applicant did not realize that new loan became delinquent. Applicant did not receive any documentation about the change in lender or the subsequent delinquency. The lack of correspondence could be due to switching to a post office box after her mailbox was vandalized. (Tr. 44.) Applicant has since consolidated the loans, and repayment was scheduled to begin in May 2016. (Tr. 43-44.) She has factored the approximately \$400 monthly payment into her budget. (Tr. 77-

78.) The past-due \$178 credit-card debt alleged in SOR ¶ 1.b was paid in full in April 2014. (AX C.)

The \$6,286 debt alleged in SOR ¶ 1.d is for a 2014 state tax lien for unpaid taxes from 2010. Applicant was not aware that the state had filed a lien against her. She knew she had initially owed taxes for 2010, but thought the debt had been satisfied through a lump-sum payment of about \$1,500, and the subsequent withholding of her refunds. (Tr. 48.) After learning of the tax lien, she contacted the state treasury in October 2015, and was approved for a tax amnesty program. She provided bank account information for an immediate ten percent payment, and for monthly automated payments of approximately \$380. (Tr. 48-53; AX C.) She continues to make timely monthly payments, and the debt will be satisfied by December 2016. (Tr. 53; AX D.)

The debts alleged in SOR ¶¶ 1.e and 1.f are duplicate debts for the same loan. Applicant took a payroll loan from her employer in June 2011, and the payments were automatically deducted from her paycheck. When her employer switched the pay frequency from once a month to bi-weekly, Applicant did not realize that the deductions had stopped, and the loan became delinquent. Upon realizing this, she paid the delinquency, and the loan was paid off in April 2014. (Tr. 53-56; AX C.)

Applicant contacted the collection agency for the \$264 medical debt alleged in SOR ¶ 1.g. She does not recognize the debt, and has not yet received the documentation she requested from the collection agency. (Tr. 56-57.) She intends to resolve this debt. (Answer.)

The \$312 debt alleged in SOR ¶ 1.h is for public library fines. Applicant believes the debt was incurred for failure to return audio books, but is not certain. She paid this debt in October 2015. (AX C.)

The remaining 17 debts alleged in SOR ¶¶ 1.i through 1.y are medical debts incurred by Applicant in 2008-2009 for prenatal care. She had medical insurance coverage, and paid copays at each visit, but was also billed additional charges. She never received any bills, likely due in part to vandalizing of her mailbox, and the switch to a post office box. (Tr. 44.) She thinks the charges are erroneous and should have been paid by her insurer. Upon learning of the debts, she contacted the hospital and, initially, disputed the debts. She soon determined that it was easier to pay them in full, and did so in October 2015. (Tr. 57-59; AX C.)

Applicant accepts responsibility for incurring delinquent debt, which was due in part to her lack of attentiveness to her financial obligations. (Tr. 33; Tr. 65.) She now maintains a computer-based monthly budget that sends her reminders of the upcoming due date of each bill, the amount due, the creditor's address, and the account information. (Tr. 76.) In September 2015, she entered a credit-counseling program provided by her employer. (Tr. 71-73; AX F.) She obtains an annual credit report to monitor her accounts, and her credit score increased by 27 points in April 2016. (Tr. 72; AX G.) She lives within her means and is not delinquent on any of her current financial

obligations. She has about \$60,000 available for withdrawal in her employee savings plan. (AX E.) The director of programs at her job states that in his more than ten years of supervising her, Applicant “has continuously displayed nothing but the highest ethical and moral commitment” to the mission, and that she is dedicated, loyal, and trustworthy. (AX A.)

The SOR alleges that Applicant intentionally falsified her e-QIP by failing to disclose her delinquent debts. However, at the time she completed the e-QIP, Applicant thought that her debts were current, or, in the case of her student loan, in forbearance. She did not obtain a credit bureau report prior to completing the e-QIP. Even though she knew that she had previously been late on paying her student loans and her 2010 taxes, she did not focus on the seven-year timeframe of the questions. She stated that she did not intend to be misleading or dishonest in her responses to the e-QIP, and, as this was a reinvestigation, she is fully aware that “the government can find out pretty much everything about you. So it wouldn’t make sense for me to try to hide anything or be deceitful.” (Tr. 63-64; Tr. 36.) She further testified that during her personal subject interview in April 2014, the investigator “clarified” for her that she was required to disclose delinquencies she incurred in the seven years prior to completing the e-QIP. She candidly discussed her financial status, including her delinquent debts, with the investigator. (Tr. 63; GX 2.) She acknowledges that she should have disclosed the financial delinquencies. (Tr. 65.)

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns

about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence establishes that SOR ¶¶ 1.e and 1.f are the same debt. Therefore, I have not considered the debt alleged in SOR ¶ 1.f when evaluating Applicant's financial status. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

Applicant's admissions, corroborated by the record evidence establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant incurred debt due to unexpected medical expenses for herself and her mother, and due to other unanticipated events that were largely beyond her control. While she admits she was not as attentive to her debts as she should have been, she acted responsibly and in good faith upon learning that her debts had become delinquent. She consolidated her student loans and entered a repayment program. She paid off her 17 medical debts due to the same hospital, entered a repayment plan for her tax debt, paid off her payroll loan and her library debt, and contacted the collection agencies for the two remaining unresolved medical debts that total \$376. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-

02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has established a monthly budget and is participating in a financial counseling program. She has not incurred any recent delinquent, and currently lives within her means. The circumstances which led to her indebtedness are unlikely to recur, and do not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) through 20(d) apply. Applicant has addressed and is repaying her debts in a responsible manner. Although her financial record is not perfect, she has implemented a reasonable plan to resolve her financial issues within her means.

### **Guideline E (Personal Conduct)**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition in this case is AG ¶ 16(a) ("deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.")

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

I found Applicant's explanation of her omissions on her e-QIP to be credible and consistent with the record evidence, and her demeanor to be honest, forthcoming, and candid. Therefore, I conclude that she did not intentionally falsify her e-QIP.

## **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant has held a clearance since 2005. She completed her master's degree while working full time and being a single parent. She was cooperative and candid with the investigator and during the hearing. She has taken proactive steps to increase her effectiveness in managing her finances.

## **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.y: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant



## **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge