



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-02502
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

09/02/2016

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on February 28, 2011. On September 22, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Exec. Or. 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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. The AG are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on October 22, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on February 1, 2016. On February 2, 2016, a complete copy of the file of relevant

material (FORM), consisting of 13 items, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on February 8, 2016, and she submitted an undated statement, which was marked as FORM Item 14 and included in the record, without objection by Department Counsel. The case was assigned to me on August 11, 2016.

### **Findings of Fact<sup>1</sup>**

In her answer to the SOR, Applicant admitted all the allegations. Her admissions are incorporated in my findings of fact.

Applicant is a 43-year-old software configuration management analyst employed by a defense contractor. She has held a security clearance since September 2001. She worked for a defense contractor as a configuration management librarian from February 2002 to November 2007 and voluntarily left to explore opportunities for advancement. She worked as a configuration management analyst for another defense contractor from November 2007 to July 2009. She felt financially secure enough to enjoy Caribbean cruises in December 2004, January 2006, and November 2007. (FORM Item 3 at 32-33.)

Applicant was laid off in July 2009. She was employed almost immediately by another defense contractor in July 2009, but was laid off after three days when her employer lost its contract. She was offered a job in February 2010 but declined because the pay was less than half of her previous pay and required a 90-minute commute. She was hired as a program analyst in May 2010 but left by mutual agreement after three months because she did not have the training and experience required for the job. She was hired for her current job in August 2010.

Applicant married in May 1993 and divorced in September 1999. She has a 20-year-old daughter. Her ex-husband was obligated to pay child support but did not comply. She attended various educational institutions and received a bachelor's degree in business management in December 2006. She has been receiving treatment and medication for attention deficit disorder since June 2007. She is monitored regularly by her doctor, and her condition is under control.

Applicant filed a petition for Chapter 7 bankruptcy in July 1996 and received a discharge in December 1996. She resorted to bankruptcy to resolve debts that were accumulated while she was pregnant and not employed outside the home. (FORM Items 8 and 9.) Her daughter was born in January 1996 and suffered from medical problems for about a year. In October 1998, Applicant was denied clearance for unescorted access to sensitive facilities by another government agency because of her financial record. (FORM Item 10.)

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<sup>1</sup> Applicant's personal information is extracted from her security clearance application (FORM Item 3) unless otherwise indicated by a parenthetical citation to the record.

In 2003, Applicant paid a \$150 fine for uttering a \$30 bad check to a grocery store. She had moved, did not receive a notice from the grocery store, and learned about the bad check when she was contacted by county court. (FORM Item 12 at 3.)

The SOR alleges five delinquent debts. The evidence concerning those debts is summarized below.

**SOR ¶ 1.a, mortgage loan past due for \$18,022, with a balance of \$115,792.** Applicant purchased a home in 2006. When she was laid off in July 2009, she notified the lender, who agreed to allow her to pay only the escrow payments for taxes and insurance. She was employed from May to July 2010 and was hired for her current job in August 2010. On a date not reflected in the record, she refinanced the home and lowered her payments from \$1,200 to \$950 per month. In March 2011, she told a security investigator that she was current on her payments. (FORM Item 12 at 3.) However, her February 2013 credit bureau report (CBR) reflected that her payments were past due 120 days or more and that the last payment was made in November 2011. In her answer to the SOR, Applicant stated that the mortgage on her home was foreclosed. This debt is still reflected on her February 2016 CBR, which does not reflect a foreclosure. The CBR also reflects a second mortgage on the same property that is past due \$596, with a balance of \$1,122. (FORM Item 4 at 10.) Applicant no longer lives in the home. The debt is not resolved.

**SOR ¶ 1.b, college tuition debt charged off for about \$1,801.** In her answer to the SOR and response to the FORM, Applicant stated that she was making payments on this debt, but she submitted no documentation of payments. Her February 2016 CBR reflects the past-due amount alleged in the SOR and no payments after December 2009. (FORM Item 4 at 2.)

**SOR ¶ 1.c, medical bill for \$360.** In her response to the FORM, Applicant stated that she had contacted her insurance company and had resubmitted the bill for payment. Her February 2016 CBR reflects that the bill has been delinquent since December 2012 and has not been paid. (FORM Item 4 at 2.)

**SOR ¶ 1.d, utility bill for \$182.** Applicant's February 2016 CBR reflects that this debt had been delinquent since April 2012 and was paid in October 2015. (FORM Item 4 at 9.)

**SOR ¶ 1.e, medical bill for \$169.** Applicant's February 2016 CBR reflected that this debt had been delinquent since October 2009 and was unpaid. (FORM Item 4 at 2.) In her response to the FORM, Applicant stated that this debt was paid. She provided a telephone number and confirmation number, but no documentation of payment.

When Applicant was interviewed by a security investigator in February 2013, her net monthly income was about \$4,085, and her expenses, including payments on two student loans, were about \$3,787, leaving a net remainder of about \$298. (FORM Item 13 at 4-5.) The record does not reflect her current income and expenses. However, her

February 2016 CBR reflects that her monthly car payments are current, her payments on 20 separate student loans are current, and that 8 student loans have been paid. (FORM Item 4 at 3-11.) Her CBR also reflects an unpaid telecommunication bill for \$368 that became delinquent in April 2015, which is not alleged in the SOR. (FORM Item 4 at 2.)

## **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 § 2.

Eligibility for a security clearance is predicated upon the applicant 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.” 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's admissions and her CBRs 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").<sup>2</sup> The following mitigating conditions under this guideline are potentially applicable:

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<sup>2</sup> Applicant's 1996 bankruptcy, \$30 bad check in 2004, delinquent telecommunications bill, and the delinquent second mortgage on her former home were not alleged in the SOR and may not be an independent basis for denying Applicant's application to continue her security clearance. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the conduct not alleged in the SOR for these limited purposes.

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;

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's intermittent unemployment and underemployment between July 2009 and August 2010 were largely beyond her control. She initially acted responsibly regarding her home mortgage by staying in contact with the lender, negotiating reduced payments, and successfully refinancing her loan. However, she has not persuasively explained how and why she transitioned from being current on her mortgage loan payments at the time of her security interview in March 2011 to being delinquent more than 120 days in November 2011. She has not addressed the college tuition debt from 2009, even though she has been employed continuously since August 2010. The medical bill in SOR ¶ 1.c has been delinquent since December 2012, and the medical bill in SOR ¶ 1.e has been delinquent since October 2009.

AG ¶ 20(c) is not established. Except for any counseling required by the bankruptcy court in 1996, she has not sought or received financial counseling; and the mortgage loan in SOR ¶ 1.a, the tuition debt in SOR ¶ 1.b, and the medical bills in SOR ¶¶ 1.c and 1.e are not resolved.

AG ¶ 20(d) is not established. This mitigating condition requires a showing of good faith. 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). Evidence of past irresponsibility is not mitigated

by payment of debts only under pressure of qualifying for a security clearance. Applicant paid the utility bill in SOR ¶ 1.c in October 2015, after she received the SOR. In her response to the FORM, she stated that she had resubmitted the medical bill in SOR ¶ 1.c to her insurance company and paid the medical bill in SOR 1.e. Separate from the fact that Applicant has not documented the payment of the two medical bills, her belated attention to the delinquent utility bill and medical bills indicates that any action to resolve them has been motivated by concern for her security clearance rather than a sense of duty or obligation.

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR.

### **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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has held a security clearance and worked for defense contractors for more than 14 years. She has raised her daughter without child support from her ex-husband. She has repaid many of the debts incurred in obtaining her college degree. On the other hand, she has not persuasively explained why she has not attempted to resolve her delinquent mortgage loan, especially since the lender has been sympathetic to her needs in the past. She has not persuasively explained why she has neglected her tuition debt and the medical debt in SOR ¶ 1.e for almost seven years. Because she requested a determination on the record without a hearing, I have had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

“Once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 09-01652 at 3 (App. Bd. Aug 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome that presumption.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her delinquent debts. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a-1.e:

Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge