



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-03092
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

02/03/2017

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Despite experiencing circumstances largely beyond her control that contributed to her financial issues, Applicant failed to mitigate the 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 (e-QIP) on December 31, 2012. On November 25, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Ex. 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.

Applicant answered the SOR on January 10, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written

case on February 24, 2016. A complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 5, was sent to Applicant on March 1, 2016. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on March 17, 2016, and did not respond.<sup>1</sup> The case was assigned to me on November 4, 2016.

### **Findings of Fact**

The SOR alleges that Applicant owes 15 delinquent debts totaling approximately \$18,203, that she has had 8 accounts charged off for unspecified amounts, and that she failed to file and pay her Federal and state taxes for 2011 and 2012. In her Answer, Applicant admitted the debts alleged in SOR ¶¶ 1.d, and 1.f, which total \$2,936, and stated that she entered repayment plans that were to begin on January 15, 2016. She admitted the \$169 delinquent medical bill alleged in SOR ¶ 1.m and stated that she would pay it on January 15, 2016. She admitted the state tax debt alleged in SOR ¶ 1.x and stated that payments are being deducted from her bank account. She also admitted the charged-off accounts with unspecified balances alleged in SOR ¶¶ 1.p through 1.v. She denied the debts alleged in SOR ¶¶ 1.e, 1.g, 1.i through 1.l, 1.n, 1.o, 1.w, 1.y and 1.z. She neither admitted nor denied the debt alleged in SOR ¶ 1.c, which I deem a denial. She denied SOR ¶¶ 1.a and 1.b, and provided copies of her 2011 and 2012 Federal and state tax returns which she filed in 2013. Applicant's admissions in her Answer are incorporated in my findings of fact.

Applicant is a 61-year-old administrative assistant employed by a defense contractor since December 2012. She received a bachelor's degree in June 2012. She served on active duty in the U.S. Navy from October 1986 to October 2006. She married in 1989 and divorced in 1994. She remarried in 1995, separated in 2012, and has since divorced. (GX 2; GX 1.)

The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) from March 2015 and January 2013. (GX 4; GX 5.) She listed her unfiled 2011 taxes and a delinquent account on her e-QIP, and discussed many of the accounts during her personal subject interview (PSI) on February 4, 2013. (GX 2; GX 3.)

The debts alleged in SOR ¶¶ 1.d, 1.f and 1.h, totaling \$2,936, are owed to a collection agency for consumer credit accounts. Applicant stated in her Answer that she contacted the collection agency and made payment arrangements that encompassed all the accounts she owed to it, to begin in January 2015. She further stated that the seven charged-off debts with no specified balances alleged in SOR ¶¶ 1.p through 1.v are owed to the same collection agency and are duplicates of the accounts she agreed to repay. Clearly, the seven charged-off accounts cannot be entirely duplicated by the

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<sup>1</sup> The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated March 1, 2016, and Applicant's receipt is dated March 17, 2016. The DOHA transmittal letter informed Applicant that she had 30 days after receiving it to submit information. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit 1.

three collection accounts. However, the 2015 CBR shows that SOR ¶¶ 1.d and 1.u are the same debt; 1.f and 1.q are the same debt; and, 1.h and 1.s are the same debt. The 2015 CBR also shows that the debts alleged in SOR ¶¶ 1.q, 1.s, and 1.u have been transferred or sold and the CBR reflects \$0 past-due balances on these accounts. Because the duplicate accounts have \$0 balances, the determination that they are duplicates does not reduce the total amount of Applicant's delinquent debt. Applicant did not provide any documentary evidence in support her stated repayment arrangements.

The debts alleged in SOR ¶¶ 1.g and 1.i through 1.o are for medical accounts totaling \$2,350. Applicant stated that she admitted and would pay the \$169 debt alleged in SOR ¶ 1.m on January 15, 2016. She denied the remaining debts, stating that she did not recognize them. There is no record evidence to support payment of the one debt or her denials.

Applicant denies owing the two judgments alleged in SOR ¶¶ 1.y and 1.z, that total \$6,021, stating that she does not recognize the names of the two collection-agency creditors. These debts are unresolved.

Applicant claims that her 2012 separation and subsequent divorce was unexpected and contentious and was the catalyst of her financial difficulties. Immediately prior to the separation, Applicant's husband stopped paying their mortgage-loan payments, and they ultimately lost the house in foreclosure. Applicant was suddenly forced to move from the home she had resided in for 16 years. Her husband also refused to cooperate in filing their 2011 and 2012 Federal and state tax returns which resulted in the late filings alleged in SOR ¶¶ 1.a and 1.b. However, Applicant's explanations and documentation establish that these returns were filed in 2013 and are no longer a concern.

Applicant was unemployed from October 2009 until approximately February 2013, during which time she lived off her military retirement and until 2012, also her husband's income. She used her military benefits to obtain her bachelor's degree while unemployed. Applicant stated in her PSI in February 2013 that she was "in the process of contacting creditors to establish payment plans and pay off the debts." (GX 1; GX 3.)

### **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.q, 1.s, and 1.u are duplicate debts of SOR ¶¶ 1.f, 1.h, and 1.d. Therefore, I have not considered the debts alleged in SOR ¶¶ 1.q, 1.s, and 1.u 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").

Some of Applicant's financial difficulties may have been the result of circumstances largely beyond her control, such as her divorce and her period of unemployment. However, there is no indication that she acted responsibly under the circumstances. While eight of the delinquent debts totaling \$2,350 are for unpaid medical bills, there is no evidence that they originated from a medical emergency, and she denies that all but one of the accounts is hers. She stated in February 2013 that she was in the process of contacting her creditors to make payment arrangements. There is no indication that she did so. She then stated in her January 2016 Answer that she had made arrangements to begin paying three consumer debts totaling \$2,936, that she intended to pay a \$169 medical debt, and that she was currently paying a \$350 tax debt. She did not provide any evidence to support her assertions of repayment plans or her denials of liability for the debts, and she failed to respond to the March 2016 FORM. AG ¶ 20(b) does not apply. None of the other mitigating conditions apply to her

outstanding debts alleged in SOR ¶¶ 1.c through 1.z. SOR allegations 1.a and 1.b are mitigated.

### **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 I have also considered the following:

Applicant is to be commended for her military service and her pursuit of higher education. She experienced a period of unemployment and a difficult and financially destabilizing divorce. However, she has been steadily employed since February 2013 but has not taken documented steps to resolve her financial issues. Her failure to make any significant payments on her debts indicates that she does not have her finances under control. Her conduct is not consistent with that of individuals entrusted with access to classified information.

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 grant her eligibility for access to classified information.

### **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): AGAINST APPLICANT

Subparagraphs 1.a – 1.b, 1.q, 1.s, 1.u: For Applicant

Subparagraphs 1.c – 1.p, 1.r, 1.t, 1.v – 1.z: Against Applicant

### **Conclusion**

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

Stephanie C. Hess  
Administrative Judge