



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| [REDACTED]                       | ) | ISCR Case No. 15-03448 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

04/10/2017

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Despite several events and 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 June 5, 2014. On November 9, 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 March 14, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 6, 2016, and

the case was assigned to me on June 24, 2016. On August 23, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 13, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, but did not submit any exhibits at the hearing. I kept the record open until September 27, 2016, to enable her to submit documentary evidence, which she did not do. DOHA received the transcript (Tr.) on September 21, 2016.

### **Findings of Fact**

Applicant is a 30-year-old quality engineer employed by a defense contractor since July 2012. This is her first application for a security clearance. She received a bachelor's degree in December 2009, and a master's degree in May 2011. She is single and has no children. (GX 1.)

The SOR alleges 34 delinquent debts totaling \$73,125. In her Answer, Applicant admitted each of the debts. Her admissions are incorporated in my findings of fact. Applicant's delinquent debts are comprised of: 20 medical collections accounts that range from \$11 to \$3,737 and total \$11,319; 10 student loan accounts totaling \$60,995; 3 cable accounts totaling \$587; and a department store credit account of \$224. The debts are reflected in Applicant's credit bureau reports (CBRs) from October 2015 and June 2014. (GX 3; GX 2.)

In about 2010, Applicant had a medical emergency for which she still requires periodic treatment. In 2011, she was injured in a car accident. During both of these incidents, she did not have medical insurance. (Tr. 35-36.) Applicant testified that the delinquent medical accounts arose primarily from these two events, but might also include several debts due to high co-payments. (Tr. 29-30.) She also stated that she has paid some medical accounts, but could not identify any of the SOR medical debts as paid. (Tr. 39-40.) Applicant was unemployed from January 2012 through June 2012, during which time she received unemployment benefits. (GX 1.) She stated that this period of unemployment contributed to her financial delinquencies. (Tr. 22.)

Applicant testified that she paid the \$154 cable debt (SOR ¶ 1.c) and the \$214 cable debt (SOR ¶ 1.f). She based these assertions on the fact that she currently has cable services through the same company, and would not be able to if the debts remained unpaid. (Tr. 37-38.) She stated that she paid the \$224 department store credit account (SOR ¶ 1.n), and that she is no longer receiving bills. (Tr. 27.) She has not paid the \$219 cable debt (SOR 1.d), which she incurred in college. (Tr. 38.)

Applicant had a payment arrangement with the creditor of the student loans for SOR ¶ 1.h, 1.i, and j, which total \$27,079, but has not made a payment since 2014. (Tr. 28; Tr. 30-31.) She testified that she consolidated all her Federal student loans and the payments are currently deferred. (Tr. 32-33.) She is uncertain of when she will be required to start paying them or what her monthly payments will be. She is considering applying for a loan forgiveness program once the deferment period ends. The program would

require her to make a specific number of consecutive monthly payments based on the total loan amount and her income, then a portion of the total amount would be forgiven. (Tr. 53.)

Applicant's private student loans, which she thinks total less than \$10,000, are not eligible for deferment. (Tr. 33.) She testified that she has been making a monthly payment of \$100 on one of the private loans for about a year, but could not identify which of the loans in the SOR it is. (Tr. 34.)

Applicant was unable to identify which of the delinquent student loans alleged in the SOR were Federal loans that were consolidated and deferred, which were private loans, and which, if any was the loan on which she is making \$100 monthly payments. (Tr. 27-34.) While the delinquent student loans alleged in the SOR total \$60,995, Applicant listed 21 delinquent student loans on her June 2014 e-QIP, which totaled \$90,061. Applicant testified that she does not know how much money she borrowed. (Tr. 31.)

Applicant did not know about many of her debts until she reviewed her CBR during her 2014 background investigation. She testified that she now reviews her credit report, stating, "I pull it now, because I'm trying to work on it. I'm trying to hopefully get to a point where I can buy a house. So right now that's like one of my main focuses." (Tr. 30.)

Applicant testified that she contacted a credit service to assist her in cleaning up her credit. For a monthly fee, the credit service will review her CBR and work with a credit reporting agency to have any paid accounts or inaccuracies removed. The credit service will also recommend a monthly budget. However, Applicant has not yet engaged the credit service because she was concerned that pulling her CBR before the hearing could have a negative impact on DOHA's process. (Tr. 25-26.)

For about a year, Applicant has used an online feature available through her bank to track her monthly transactions. The bank then generates a monthly budget, which Applicant tries not to exceed. She also keeps a spreadsheet of her bills. (Tr. 26.)

In summarizing the SOR debts, Applicant stated:

Like I said, the bulk of my stuff is -- as far as I know is student loans and medical. A lot of this stuff was sold off to other, what's it called businesses that take care of the accounts, and some of the stuff is paid off since 2014 that's showing up on here that I responded to. And, of course, the student loans aren't all paid off because I do have a big debt with student loans. But some of this stuff has been paid off and doesn't apply anymore and it just needs to come off my report. But basically, the medical -- I still do have medical bills that I'm still paying. Mostly, I guess it comes from the co-pay that may come after the process is done, they'll bill me or something. (Tr. 29.)

Applicant earns about \$74,000 a year. (Tr. 43.) She lives paycheck to paycheck, and at the time of her hearing, her checking account balance was \$0. She has been unable to resolve her delinquent debts because her monthly bills are too high. (Tr. 47-50.) However, in 2013 she purchased a new car for about \$32,000, with monthly payments of \$458. (Tr. 27.) Applicant stated:

So I have -- let's see. I have my rent. So on top of my base rent, plus utilities is added in, that's \$1,301. Then I have my car note that's monthly. On top of my car note I have my car insurance. On top of my car insurance I have my basic electricity and cable. I have even cut off my cable to ensure that I pay my other bills. Outside of that I have basic gas, basic eating arrangements and then personal care items. That alone surpasses the amount of what I make each month. (Tr. 50.)

Applicant did not provide any documentation supporting her assertions that several of the SOR debts are paid, that she is making \$100 monthly payments on one of her private student loans, that her Federal loans are currently deferred, or that she has a budget.

### **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).

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 under this guideline 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;

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.

Some of Applicant's financial difficulties may have been the result of circumstances largely beyond her control, such as the 2010 and 2011 medical emergencies and the 2012 period of unemployment. However, there is no indication that she acted responsibly under the circumstances. She has been aware that her student loans were delinquent since at least June 2014, and that the Government was concerned about these delinquencies. Yet, she has not taken any measurable steps to address these or any of her other debts, nor does she have a viable plan for doing so. She lacks an overall understanding of her current financial status, and does not exhibit any obligation to resolving her debts. Additionally, there is no documentary evidence that she has paid a single SOR debt. However, even if she did pay the three SOR debts totaling \$592 as she stated she had, clearly she has not established a sufficient track record of debt resolution to constitute a good-faith effort to repay her creditors. Her efforts to maintain a budget and her intent to hire a credit service to review her CBR, and potentially dispute some of the listed debts, does not equal having received credit counseling. There is no indication that her finances are under control. None of the mitigating conditions apply.

## **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 and have considered the factors in AG ¶ 2(a). 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.hh:

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