



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-03805
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro Se*

11/16/2016

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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 April 22, 2013. On December 8, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guidelines 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 the DOD on September 1, 2006.

Applicant answered the SOR on December 23, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 7, 2016, and the case was assigned to me on May 18, 2016. On July 6, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 27, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant objected to GX 5, which I later admitted. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until August 11, 2016, to enable her to submit additional documentary evidence. She timely submitted AX G through J, which I have admitted without objection. She also offered additional testimony concerning the status of several SOR debts in the e-mail, which I have admitted as AX K. DOHA received the transcript (Tr.) on August 5, 2016.

### **Findings of Fact**

The SOR alleges 24 delinquent debts totaling approximately \$28,902. The delinquent debts include student loans, a car loan, and multiple medical bills. In her Answer, Applicant admitted 9 of the allegations and denied the remaining 13 allegations. She also stated that SOR ¶¶ 1.b and 1.s are the same debt, 1.j and 1.k are the same debt, and 1.l and 1.w are the same debt. She submitted detailed explanations of the status of each SOR debt, as well as documentation relating to the status of many of the debts. The SOR also alleges that Applicant intentionally falsified her e-QIP by failing to disclose her delinquent debts as required. She denies these two allegations. Her admissions are incorporated in my findings of fact.

Applicant is a 33-year-old general clerk employed by her current defense-contractor employer since April 2013. (GX 1.) She received a bachelor's degree in 2007. (Tr. 40.) She is married and has three children, one of whom has special needs. (Answer.)

Applicant took out four Federal student loans between 2006 and 2007 (SOR ¶¶ 1.m – 1.p). She also took out two loans from her university (SOR ¶¶ 1.i and 1.j). Following graduation in 2007, there was a grace period before repayment of the loans commenced. During the grace period, Applicant needed a vehicle for use at her job and purchased a vehicle from a local dealer with a very high interest rate loan. She soon realized that the payments were more than she could afford, and the vehicle was voluntarily repossessed. Applicant admits this \$6,519 debt (SOR ¶ 1.h). She has contacted the creditor, however, at the advice of her financial counselor, she will not take steps to resolve this debt until she resolves her other delinquent debts. (Tr. 56-58)

In 2008, still during the grace period, Applicant relocated for a better job opportunity, got married, and became pregnant with her second child. Applicant lived with her mother-in-law, while her husband remained in their previous city for work. This situation created additional expenses for Applicant. On a trip to visit Applicant, her husband had an accident in which his vehicle was totaled, creating additional financial strain on Applicant. The company Applicant's husband worked for shut down, and he

was out of work from April through June 2008. He worked sporadically until 2009, when he gained full-time employment. Applicant had complications with her pregnancy and amassed medical debt. Due to her regular and unanticipated financial obligations and her husband's unemployment and underemployment, Applicant was unable to make the student loan payments when they became due, and the loans were ultimately defaulted. (Tr. 40-45.) The loans were later sold by the original creditor and placed in collection. (GX 4.) In 2010, Applicant and her family incurred moving expenses twice, once because of a house fire that destroyed many of Applicant's belongings and records, including the original promissory notes and other information related to her student loans. (Answer; Tr. 45.)

In 2010, despite the additional expenses incurred that year, and without the student-loan-related records, Applicant located the creditor for her four Federal loans and entered a loan rehabilitation program. She paid eight of the required nine monthly payments. Prior to sending her final payment, she contacted the creditor and was informed that her loans were considered rehabilitated, they had been sold to a new creditor, and she was not required to make the next payment until she was contacted by the new creditor. Once contacted by the new creditor in 2011, she was informed that due to her failure to make the final payment to the prior creditor, she would need to rehabilitate the loans through another nine-month payment process. (Answer; Tr. 45.)

Also in 2010, one of Applicant's children was injured and required emergency medical transport and treatment. Her child's medical bills were supposed to be covered by state Medicaid, however, several charges associated with the child's treatment were billed to Applicant. She never received any bills and the debts alleged in SOR ¶¶ 1.c through 1.g, totaling \$2,123, went to collection. (Answer.) Applicant resubmitted the state Medicaid payment information to the original creditor and she stated in her post-hearing e-mail that these debts are now resolved. She also resubmitted the payment information concerning the \$90 debt alleged in SOR 1.v, but has not received confirmation of its resolution. (AX C; Tr. 60-62.) Applicant attempted to identify the \$32 medical debt incurred in 2007 without success (SOR ¶ 1.x). She does not recognize the debt and it does not appear on her recent credit bureau reports (CBR). (GX 2; Answer.)

In 2013, Applicant relocated to another state for employment with her current employer. The moving-related expenses were significant, and Applicant took out a car-title loan in order to move her family, which she timely repaid. (Tr. 36; AX F.) Applicant did not yet have housing and used the wireless internet in the parking lot of a merchant to complete her e-QIP. She did not have a copy of her CBR or any idea what was on it. She was aware that she owed her student loans, but did not think she was required to report them since \$5,874 had recently been withheld from her tax refund to offset her student-loan debt. She was unaware of many of the delinquent medical accounts. During her personal subject interview (PSI) in May 2013, Applicant first saw her CBR and became aware of the magnitude of her delinquent debts. (Tr. 70; Answer.)

And 2013 came and I had the interview with the investigator. And he presented me that credit report. And I looked at it and had saw all these

different entries for student loans . . . and it had these different balances and amounts listed. I was very confused about what actually needed to be paid . . . his was 2013. And at this point my credit was such a major goal for me. I wanted to make sure that everything was being taken care of. Credit wasn't something that I thought about when I was younger. I paid everything in cash. I thought I was doing wonderful because I'm paying all my bills on time, but it's not going to be reflected on your credit because I don't have any credit. And these things from the past are still there and they need to be addressed. And so when I saw this credit report, I realized that there was a lot that I have to take care of. (Tr. 45-46.)

In reviewing her CBR during her PSI, Applicant found that there were duplicate entries for her four Federal loans and that the balances of the loans were inaccurate. Unsure of which creditor owned her loans and what she actually owed, she contacted the university and the two creditors listed on her CBR, and also consulted the student loan database. She discovered that the four Federal loans had been sold multiple times, but she was finally able to find the current creditor. In about October 2013 she entered another loan rehabilitation program which she successfully completed in July 2014. (AX B; Tr. 44-46.) Following the rehabilitation program, the creditor sold the loans and Applicant began making timely monthly payments to the current creditor. Her loans have been in good standing since October 2014 and are currently in deferment status. (GX 2; AX B; Tr. 53.) Her 2007 tax refund of \$5,974 was also applied to payment of the loans in 2013. (AX F; Tr. 70.) The student loan debts alleged in SOR ¶¶ 1.m through 1.p are current.

Applicant ascertained that the two loans through the university remain owed to the university. She admits owing the student loans alleged in SOR ¶¶ 1.i and 1.j, totaling \$3,250, and that they remain unresolved. However, she denies the student loan identified in SOR ¶ 1.j, claiming it is a duplicate of 1.k. She provided documentation and testimony that supports this denial. (AX B; Answer; Tr. 48.)

In January 2013, Applicant was uninsured and sustained an injury which required surgery and resulted in significant medical costs. Applicant was unable to afford these additional unanticipated expenses, and many of the debts became delinquent. However, Applicant paid the \$2,397 debt alleged in SOR ¶ 1.a and several other medical bills associated with this event. The debts alleged in SOR ¶¶ 1.q and 1.s through 1.u, totaling \$2,057 are unresolved, but she will pay the remaining debts as her budget permits. (Answer; AX C; Tr. 60-62; AX H-J.)

The \$821 judgment alleged in SOR ¶ 1.l is comprised in part of the \$546 credit-card debt alleged in SOR ¶ 1.r and the \$75 overdraft debt alleged in SOR ¶ 1.w. Therefore, SOR ¶¶ 1.r and 1.w are duplicate debts. (Answer.) SOR ¶ 1.l is unresolved.

In December 2013, Applicant met with a financial counselor at her credit union who made recommendations on how Applicant should address her delinquent debts and better manage her money. She has not incurred any delinquent debt since January

2013. She now maintains a written budget, pays her current obligations, including unanticipated expenses first, and then pays down her remaining delinquent debts as money permits. She has established an emergency savings fund and continues to take steps to reduce her monthly living expenses. She continues to meet regularly with her financial counselor. (GX 2; Tr. 33-35; Tr. 51-53; Answer.)

Applicant's husband is employed at a difficult to reach off-road site that driving to routinely causes substantial damage to his vehicle. Applicant incurred over \$5,000 in vehicle maintenance and repair costs in 2015 and is current on payment of these expenses. (AX F; AX G; Tr. 36-37.) Additionally, Applicant incurred the costs of moving in early 2015 in order to be closer to her special needs child's school. The child requires frequent medical care, and underwent major surgery in late 2015 and again in early 2016. Although Applicant has maintained medical insurance since 2013, she has incurred medical debts as a result of the child's care. However, she has arranged payment plans and has not incurred any delinquent debt as a result of these recent medical and other expenses. (Tr. 32; Tr. 51-53.)

The SOR alleges that Applicant intentionally falsified her e-QIP by failing to disclose her delinquent debts. She believed she answered the financial questions on the e-QIP truthfully. She also did not fully understand that her loans were in "default" status, nor was she aware of the delinquent status of her medical debts. (GX 5; Tr. 70; Answer.) When queried, she candidly discussed her financial status, including her delinquent debts, with the investigator. (GX 5; Tr. 66.)

Applicant's program manager considers her to be honest and loyal and states that she has a positive work ethic and a high level of integrity. Her 2015 annual employee performance appraisal rates her performance level as "Exceeds Expectations" and she has received awards from her employer. (AX A; AX B.)

### **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.b and 1.s are the same debt; 1.j and 1.k are the same debt; and 1.r and 1.w are the same debt as 1.l. Therefore, I have not considered the debts alleged in SOR ¶¶ 1.s, 1.k, 1.r, or 1.w when evaluating Applicant's financial status, and the total alleged SOR debt is \$27,185. 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 at 3 (App. Bd. Sep. 21, 2005) (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;

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.

Applicant incurred delinquent debt due to unexpected medical expenses for herself and her special needs child, her husband's unemployment and underemployment and other unanticipated events that were largely beyond her control. She acted responsibly and in good faith upon understanding that her debts had become delinquent. She entered a rehabilitation program for four of her six student loans in 2010 and again in 2013, and has been in good standing with those loans since 2014. Applicant has paid or is resolving \$13,864 of delinquent debt which is over 50% of the alleged \$27,185. She has contacted or attempted to contact other creditors to resolve additional debts. "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 accepted responsibility for her delinquent debts. In 2013, she adopted a proactive attitude and began taking decisive actions to resolve her debts. She established a monthly budget and an emergency fund and is participating in a financial counseling program. She has not incurred any delinquent debt since January 2013. She lives within her means, despite the extensive medical expenses and vehicle repair costs that she inevitably incurs. She has entered and maintained payment plans for recent medical and vehicle repair expenses and regularly consults with her financial counselor. She successfully disputed several medical debts and the duplicate student loan and judgment debts, and provided supporting documentation. The circumstances that 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(e) 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 explanations 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 those guidelines, but I have also considered the following:

Applicant has made extensive progress on implementing her plan to resolve her delinquent debts. She has paid over 50% of the SOR debts and has not incurred any additional delinquent debts in over three years. She is a dedicated employee who has

received commendations from her employer and a positive performance evaluation. 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.x: For Applicant

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

Subparagraph 2.a and 2.b: For Applicant

### **Conclusion**

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

Stephanie C. Hess  
Administrative Judge