



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



In the matter of: )  
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 ) ISCR Case No. 15-05691  
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Applicant for Security Clearance )

**Appearances**

For Government: Charles C. Hale, Esq., Department Counsel  
For Applicant: *Pro se*

12/05/2017

**Remand Decision**

CERVI, Gregg A., Administrative Judge

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

**Procedural Rulings**

This is a security clearance case in which the Defense Office of Hearings and Appeals (DOHA) Appeal Board remanded the case to me on December 4, 2017, to consider post-hearing evidence. My initial decision in this case concluded that Applicant had a history of financial problems and a number of debts that were largely unresolved, and that she did not provide evidence of an improving financial status. I then concluded she did not present sufficient evidence to rebut, extenuate, mitigate, or explain her financial delinquencies and decided the case against her. Applicant appealed that decision to the Appeal Board.

The Appeal Board noted in its remand decision, that Applicant claimed to have timely submitted post-hearing documentation to Department Counsel in accordance with my direction at the hearing, however that information was not included in the record at the time of my decision of September 13, 2017. As a result of the remand, Department

Counsel forwarded Applicant's exhibits (AE) A-M to me on December 6, 2017 (Record Ex. 1). AE A-M are admitted without objection. After consideration of her post-hearing evidence, I conclude that Applicant has sufficiently mitigated the Guideline F concerns raised in the SOR.

### **Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 8, 2015. On April 20, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F.<sup>1</sup> Applicant responded to the SOR, submitted documentary evidence, and requested a hearing before an administrative judge. The DOHA issued a notice of hearing on December 13, 2016, and the hearing was convened on January 31, 2017. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Department Counsel moved to amend the SOR to include allegation ¶ 1.w, failure to file and pay 2015 Federal income taxes when due. The SOR was amended without objection. The record was held open to permit Applicant time to submit documentary evidence in mitigation. She requested an enlargement of time to April 10, 2017, which was granted. As stated above, post-hearing information was timely submitted and will be considered in this remand decision.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor, employed since 2013. She received a bachelor's degree in 2010 and honorably served in the U.S. Army from 1987 to 2010, when she retired as a master sergeant. She was married in 1993 and divorced in 2003. She remarried in 2010 and is now a widow. Applicant has two adult children.

The SOR alleged Applicant twice filed Chapter 13 bankruptcy. The first case was filed with her first husband in 1999, and dismissed in 2000 while she was on active duty. She was unable to clearly articulate why the case was dismissed, but she relied on her husband to manage the family's finances.

She reported that her second husband was a retired military veteran who suffered from post-traumatic stress disorder. She stated that he was abusive, a substance abuser, and financially irresponsible. They began to experience financial difficulty in 2010, and Applicant's financial problems have continued to the present. She received financial counseling in 2010 through the Army. The second bankruptcy was filed in 2012, and dismissed in 2013. The last case was filed to prevent Applicant from losing her home to foreclosure, but she was unsuccessful. Her spouse died in 2014.

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<sup>1</sup> The DOD CAF acted under Executive Order (Exec. 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.

The SOR also alleged 19 delinquent accounts<sup>2</sup> that have been placed for collections or have been charged off. In her answer to the SOR, Applicant admitted SOR ¶¶ 1.a-1.c, 1.e-1.i, 1.p-1.r, and 1.u-1.v. She was unsure about SOR ¶¶ 1.d, 1.c, 1.k-1.m, and 1.t. She denied SOR ¶¶ 1.j, and 1.m-1.n. Applicant stated in her Answer that she arranged to pay or make installment payments on debts listed in SOR ¶¶ 1.c-1.i, and 1.p-1.r. She provided some documentary evidence of payment arrangements, but no evidence of payments or compliance with payment plans. The debt listed in SOR ¶ 1.s (husband's repossessed vehicle), has been satisfied. Applicant claimed in her answer and testimony to have disputed a mortgage deficiency, medical debts, and consumer debts.

SOR allegation ¶ 1.w, failure to file and pay 2015 Federal income taxes when due, was added at the hearing to conform the SOR to the evidence. Applicant admitted the allegation, and confirmed that she did not file her 2015 tax return or pay taxes owed. She expressed concern that her tax preparer's draft return showed that she owed more than she expected. She contacted the IRS, and discussed filing her 2015 return with her 2016 return, and to request a payment plan at that time to repay overdue taxes.

Applicant submitted post-hearing documentation of resolution of a large number of debts, and information about her budget, credit counseling, and life-events that significantly impacted her financial status. Applicant provided documentation to show that she resolved debts in SOR ¶¶ 1.c, 1.h, 1.n, 1.s, 1.u, 1.v, and 1.w through payments, each resulting in zero balances, a payment plan for her Federal taxes, and a disputed account.

Applicant showed debts listed in SOR ¶¶ 1.d-1.l, and 1.n, are charged-off accounts that she asserted are paid. SOR ¶¶ p-r, and t, are also charged-off accounts or medical accounts. Once an account is charged off, it is difficult to resurrect and resolve as it is dated, no longer in collection by the original creditor, and has typically been internally resolved in the creditor's records. Applicant disputed the small medical debts as she has always carried military medical insurance and is unaware of any further unpaid medical claims. Applicant disputed SOR ¶ 1.v, and the creditor has not provided a timely response. She provided evidence that her 2015 Federal taxes are being resolved since she entered into a payment arrangement with the IRS to have automatic monthly deductions from her bank account, beginning the month following her post-hearing submission. Applicant has filed two Chapter 13 bankruptcies that were dismissed, most recently in 2013, while she was married in an abusive and manipulative relationship. She has since adequately addressed her debts since her last dismissed bankruptcy filing and the passing of her husband in 2014.

Applicant expressed her dedication to the soldiers she serves in her job and to a non-profit group aiding veterans in abusive relationships. She was forthcoming in her testimony and fully discussed her debts and what she has done to address them. In her post-hearing submission, she stated that she worked with a military service credit counselor to prepare a budget. She submitted a financial statement showing monthly

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<sup>2</sup> The SOR lettering skipped ¶ 1.o.

income of \$8,456 through her job, military retirement, and VA disability compensation. After payment of her debts and monthly expenses, she has a net remainder of \$1,228 that she is depositing into her savings account. She has been working with a consumer credit service and counseling agency to address her debts. She highlighted the anxiety she has felt through this process because of past trauma and abuse. She acknowledged her responsibility for the debts, poor decisions she has made in the past, and highlighted her military and civilian service to the country.

## **Law and Policies**

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. My ultimate decision would be the same under either set of adjudicative guidelines.

“[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.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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 ¶ 1(d).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income

tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had a history of financial problems, including two failed Chapter 13 bankruptcies. She had unfiled and unpaid Federal taxes, and other unresolved delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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;

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial condition resulted from conditions beyond her control, including an abusive relationship, her husband's financial irresponsibility, and eventual untimely death. Since Applicant's husband passed away in 2014, she has successfully regained control of her finances and has acted responsibly with regard to her delinquent debts.

Applicant submitted post-hearing documentation showing resolution of a majority of her debts, and information about her budget, credit counseling, and life-events that

significantly impacted her financial status. Applicant provided documentation to show that she resolved a substantial portion of her debts through payments resulting in a zero balance, a payment plan for her Federal taxes, and disputed accounts. Other debts are inaccessible because of their charged-off status. She provided evidence that her 2015 Federal taxes are being resolved since she entered into a payment arrangement with the IRS to have automatic monthly deductions from her bank account.

Applicant has adequately addressed her debts since her last dismissed bankruptcy filing and the passing of her husband. She has worked with a military service credit counselor to prepare a budget and shows a positive cash-flow with a substantial cushion for savings. She is also working with a consumer credit service and counseling agency to address her debts. She highlighted the anxiety she has felt through this process because of past trauma and abuse. She acknowledged her responsibility for her past debts and resolved to continue her efforts to maintain a positive financial future. AG ¶ 20(a), (b), (c), (d), (e), and (g) apply.

### **Whole-Person Concept**

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's marital history, military service, and service to veterans. There is sufficient evidence to determine that Applicant's financial issues are resolved or will be resolved within a reasonable period. I find that she acted responsibly under the circumstances, and given her continued employment since 2013 and other sources of income, she is likely to have continued success in maintaining a positive financial status going forward. She sought financial counseling and assistance with resolving debts, and she has a budget. Her current financial status no longer casts doubts on her reliability, trustworthiness, and good

judgment with regard to future financial decision-making.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a - 1.w:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Gregg A. Cervi  
Administrative Judge