



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-05964
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

10/24/2017

**Decision**

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Due to circumstances largely beyond her control, Applicant experienced financial difficulties, but mitigated the concern by acting responsibly under the circumstances. She did not intentionally falsified her security clearance application. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on November 10, 2014. On June 14, 2016, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guidelines E AND F. The DOD acted under Executive Order (E.O.) 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 DOD on September 1, 2006.

Applicant answered the SOR June 30, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case

on August 23, 2016. On August 23, 2016, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 5, 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 August 29, 2016, and did not respond.<sup>1</sup> The case was assigned to me on July 3, 2017.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be decided based on the amended AG effective June 8, 2017. The outcome of this case would have been the same if decided based on the former AG.

### **Findings of Fact**

Under Guideline F, the SOR alleges two debts totaling approximately \$11,907. Applicant admits each of these debts. Under Guideline E, the SOR alleges that Applicant intentionally falsified her e-QIP by failing to list these two delinquent accounts as required. Applicant denies intentionally falsifying her e-QIP. She states that she entered the information as required on her e-QIP, it was somehow deleted, and that she reentered the information. She also states that she disclosed the debts to her facility security officer (FSO), and discussed the debts with the background investigator during her personal subject interview. The delinquent debts are reflected in Applicant's credit bureau report (CBR) dated November 2014. (GX 4.) Her admissions in her Answer are incorporated in my findings of fact.

Applicant is a 31-year-old information technology technician currently employed by a defense contractor since September 2014. She previously worked for the same employer from January 2013 until May 2013, when she left the employment because her husband was deploying and she did not have childcare. She served honorably in the U.S. Army from May 2006 until July 2010, when she was discharged while pregnant with her third child. She married her first husband in April 2006, they separated in about August 2008, and they divorced in June 2010. She married her current husband in September 2010. She has four children ages 12, 9, 7, and 5. She previously held a security clearance while in the U.S. Army. (GX 3.)

Applicant was unemployed from June 2004 until May 2006, from July 2010 until January 2013, and from May 2013 until September 2014. She was deployed with the Army in a war zone from December 2008 until January 2010. Her husband was stationed in another country from September 2010 until September 2012, and Applicant and her children resided with him. Applicant's fourth child was born during this deployment.

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<sup>1</sup> The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated August 23, 2016, and Applicant's receipt is dated August 29, 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.

In December 2007, Applicant took out a vehicle loan. In June 2008, she defaulted on the loan, and voluntarily surrendered the vehicle. The loan was sold to a collection agency with a balance due of \$11,765. (SOR ¶ 1.a.)(GX 4.) The \$142 debt alleged in SOR ¶ 1.b is for a delinquent natural gas bill from May 2010. These accounts do not appear on the April 2016 CBR. She is current on all of her ongoing financial obligations. (GX 5.)

## **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 or sensitive information. . . . An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable 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 two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability 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.

Applicant has not incurred any significant delinquent debt since the voluntary surrender of her vehicle in June 2008, when Applicant was 21 years old. She has not incurred any delinquent debt since 2010. Applicant and her first husband separated in August 2008, and divorced in July 2010, when Applicant was in her early 20s, had two small children, and was pregnant with her third. Despite sustained periods of unemployment, she only incurred two delinquent debts. While the two SOR debts remain unpaid, Applicant acted responsibly by not incurring any additional delinquent debts. The two SOR debts no longer appear on her credit report, and are unlikely to be sources of vulnerability to coercion or exploitation. She is current on all of her ongoing financial obligations. The age of her debts and her established pattern of overall successfully managing her finances are indicative of a person who is reliable, trustworthy, and exercises good judgment. AG ¶¶ 20(a) and 20(b) apply.

### **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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

Conditions that could raise a security concern and may be disqualifying include:

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 national security 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).

Applicant stated that she did not intentionally falsify her e-QIP, and that when she entered the information about her delinquent accounts, the information was somehow deleted, and she then reentered it. She also stated that she disclosed the debts to her FSO, and discussed them with the background investigator. I found her explanation to be credible. While the Government has proven an omission of material facts, there is no record evidence that it was intentional. Therefore, I resolve this allegation in Applicant's favor.

### **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 served honorably in the military for nearly four years, including deploying in a war zone, and held a security clearance during part of her service. She has not incurred any delinquent debt since 2010, and clearly lives within her means. I am confident that Applicant will continue her efforts to maintain financial stability.

After weighing the disqualifying and mitigating conditions under Guidelines E and F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her inaccurate e-QIP and her delinquent debts. Accordingly, I conclude she has 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): FOR APPLICANT

Subparagraphs 1.a – 1.b: For Applicant

Paragraph 2, Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: 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