



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-07518
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

12/22/2017

---

**Decision**

---

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances largely beyond her control, but mitigated the Guideline F (Financial Considerations) concern by acting responsibly. Her omission of derogatory financial information on her security clearance application was unintentional. The Guideline E (Personal Conduct) concern is mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on February 19, 2015. On April 20, 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 (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 DOD on September 1, 2006.

Applicant submitted her Answer to the SOR through counsel on July 7, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to

proceed on October 6, 2016, and the case was assigned to me on January 24, 2017. On May 5, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 25, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted into evidence without objection. Applicant testified and Applicant's Exhibits (AX) A through O were admitted without objection. I left the record open until June 15, 2017, to allow applicant to submit additional documentary evidence. She submitted AX P through X, which were admitted without objection. DOHA received the transcript (Tr.) on June 5, 2017.

This case was adjudicated 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**

Applicant is a 27-year-old service desk specialist currently employed by a defense contractor since November 2015. She has completed several college courses. She is the single parent of two children, ages nine and six. She is currently engaged to be married. She has held a clearance since about 2011. (GX 1; GX 2.)

Under Guideline F, the SOR alleges 14 delinquent debts totaling approximately \$23,301. In her Answer, Applicant admits 10 of the debts, denies the other 4, and explains the status of each debt. Under Guideline E, the SOR alleges that Applicant intentionally falsified her e-QIP by failing to list her delinquent accounts as required. Applicant denies these allegations. Her admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from November 2011, March 2015, and September 2016. (GX 4; GX 5; GX 6.)

Applicant submitted her first e-QIP in October 2011, and listed three delinquent debts, all of which appear on the SOR. (SOR ¶¶ 1.c, 1g, and 1.j.) When filling out the information on her 2015 e-QIP, Applicant remained aware of the delinquent accounts that she listed on her 2011 e-QIP, but did not know about the additional delinquent accounts on her 2015 CBR. Applicant testified that based on a discussion with the facility security officer (FSO), she believed that the derogatory financial information listed on her 2011 would auto-populate on her 2015 e-QIP. She had limited time when filling out the e-QIP, and did not carefully review each page before submitting it. She did not intentionally omit the delinquent account information of which she was aware from her 2015 e-QIP. (GX 3; Tr. 33; Tr. 51-56.)

At 18 years old, Applicant became a single parent in 2008, during her senior year of high school. She struggled financially, trying to support herself and her baby on low paying jobs. She encountered greater financial difficulties in 2010, when she was the victim of identity theft. She gave birth to her second child in 2011, and shortly thereafter was hired for her first defense contractor job. However, due to the identity theft, Applicant did not receive her 2011 income tax refunds for approximately six months after filing.

Applicant depended on the refund, and resorted to taking out loans in order to meet her living expenses for herself and children. (Tr. 57.) Her employer was not awarded another contract, and Applicant was unemployed from November 2014 until February 2015, which had an additional negative impact on her finances. (GX 1; AX B.)

Applicant has paid in full SOR ¶¶ 1.a, 1.f, and 1.j through 1.n, and settled in full SOR ¶ 1.g. (AX D; AX G; AX L - P; AX T.) These accounts total \$9,249. Applicant enrolled in an online university in 2008, and incurred the \$2,725 student-loan account alleged in SOR ¶ 1.c. She paid the account in full in September 2016. (AX G; Tr. 21-25.) Applicant re-enrolled in college in 2011, and completed one semester. She became pregnant with her second son, and withdrew from her courses prior to the start of the second semester. However, she was charged for her enrollment. She disputed the \$2,010 collection debt alleged in SOR ¶ 1.h with the university, and it no longer appears on her CBRs. (GX 5; GX 6; AX C; Tr. 44-45.) Applicant is paying \$55 a month on the \$3,828 and \$1,982 student-loan accounts alleged in SOR ¶¶ 1.b and 1.d. (AX Q; AX S.)

Applicant contacted the student-loan creditor for the \$1,736 student-loan debt alleged in SOR ¶ 1.e, but was the creditor unable to identify the account. She disputed this debt by letter and requested additional information about the account in January 2017, but has not received any response from the creditor. (Tr. 26-27; AX W.) Applicant disputed \$1,496 collection account alleged in SOR ¶ 1.i. She does not recognize the account, but thinks it may be the result of the 2010 identity theft. The 2015 CBR shows the debt as disputed, and it no longer appears on the recent CBRs. (Tr. 29-30; GX 5; GX 6; AX C.)

Applicant has been working overseas since about July 2015, largely due to her intent to resolve her delinquent accounts and gain financial stability. Applicant has not incurred any recent delinquent debt, and lives within her means. She and her fiancé cohabitate, and he contributes to the household finances. She has a checking account, savings account, and contributes to her 401(k). (Tr. 18-19; Tr. 60-61; Tr. 34-35.) She has completed multiple information technology certifications to improve her professional credentials. She is currently enrolled in college courses. (Tr. 24; AX F; AX H.) She accepts responsibility for her past financial issues, and will repay the debts for which she remains responsible. (Tr. 26-27.) Applicant's coworker for more than two years recommends Applicant for clearance, and views her as, "highly professional and trustworthy." Another coworker of more than six years states that applicant properly handles sensitive unclassified information, and follows rules and regulations. (AX A.) She was candid, sincere, and credible while testifying.

### **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 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.

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 testimony, corroborated by 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").

However, a person can mitigate concerns about his ability to handle and safeguard classified information raised by his or her financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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

AG ¶ 20(d): individual initiated and is adhering to 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 began experiencing financial difficulties as a young, single parent employed in low-paying jobs. She was the victim of identity theft and also experienced a period of unemployment. While she could again be unemployed, she now has gained work experience, as well as applicable certifications, and continues to pursue a higher education. She acted responsibly and in good faith by repaying in full, settling or entering a repayment plans with 11 of the 14 SOR creditors, for debts totaling \$11,190. She lives within her means and has not incurred any recent delinquent debt.

“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).

The circumstances which led to Applicant’s 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. Overall, she has addressed her debts in a responsible manner, and will continue to do so. 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

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 explained that, based on a conversation with her FSO, she thought the delinquent accounts she listed on her 2011 e-QIP would auto-populate into her 2015 e-QIP. Because she had limited time to complete the form, she did not carefully review the form before submitting it. I found her explanation to be credible and consistent with the record evidence, and her demeanor to be honest, forthcoming, and candid. There is no record evidence that her omission was intentional. The personal conduct concern is resolved 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant is a single parent, who has worked diligently to improve her professional skills in order to increase her earning potential. She has made extensive progress on implementing her plan to resolve her delinquent debts. She is well-regarded by her coworkers, and has held a security clearance since 2011.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her delinquent debts and personal conduct. 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.n: For Applicant

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

Subparagraphs 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