



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 16-01882
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

10/26/2017

---

**Decision**

---

FOREMAN, LeRoy F., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 21, 2015. On August 19, 2016, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order (Exec. 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.<sup>1</sup>

---

<sup>1</sup> Security Executive Agent Directive 4 (SEAD 4), was issued on December 10, 2016, revising the 2006 adjudicative guidelines. The SEAD 4 guidelines apply to all adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on September 12, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on October 26, 2016. On November 8, 2016, a complete copy of the file of relevant material (FORM), consisting of Items 1 through 6, 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 November 25, 2016, and submitted additional evidence, which was admitted without objection as Applicant's Exhibit (AX) A. The case was assigned to me on October 1, 2017.

The FORM included Item 4, a summary of an enhanced subject interview (ESI) conducted on March 26, 2015. The ESI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the ESI summary; make any corrections, additions, deletions or updates; or object to consideration of the ESI on the ground that it was not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the ESI summary, nor did she object to it. I conclude that she waived any objections to the ESI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

### **Findings of Fact<sup>2</sup>**

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a and 1.c. She denied the allegation in SOR ¶ 1.b on the ground that it was the same debt as alleged in SOR ¶ 1.a. Her admissions are incorporated in my findings of fact.

Applicant is a 55-year-old contract investigator employed by a defense contractor since March 2015, and she requires a security clearance for this employment. She served on active duty in the U.S. Army from April 1981 to June 1990 and received an honorable discharge. She held a top secret clearance while on active duty. (Item 4 at 10.) She received an associate's degree in December 1989.

Until recently, Applicant was also self-employed as a corporate officer and owner of a family business that she and her husband established in December 1990. The debts alleged in the SOR are related to the now-defunct family business.

During the economic downturn in 2008 and 2009, Applicant was unable to arrange financing to continue the operations of the family business. She obtained a mortgage loan for about \$225,000 in 2009, using the family's personal residence as collateral, to pay off several high-interest commercial loans. The monthly \$2,000 payments on the mortgage loan are current. She also used credit cards in an effort to keep the company running. When she submitted her SCA in May 2015, she disclosed seven delinquent credit-card accounts totaling about \$126,061. She settled three accounts in April 2010, one in July

---

<sup>2</sup> Applicant's personal information is extracted from her security clearance application (Item 3) unless otherwise indicated by a parenthetical citation to the record.

2011, one in April 2012, one in July 2012, and one in April 2014. (Item 3 at 41-46.) All the accounts were related to the failed family business, and they are now closed. (Item 5.)

Applicant's credit report from June 2015 reflected a judgment for \$18,608 entered against her in February 2011 and a collection account for \$15,300 for the same creditor. The judgment is alleged in SOR ¶ 1.a and the collection account is alleged in SOR ¶ 1.b. Documents submitted by Applicant in her response to the FORM reflect that the judgment and the collection account involved the same credit-card account. (AX A, Attachments 1 and 2.)

Applicant's attorney was involved in negotiating a settlement of the judgment when he became ill, and the creditor's attorney would not negotiate without Applicant's attorney present. In 2013, Applicant's attorney passed away. In April 2015, the creditor's attorney contacted Applicant about a settlement, and negotiations followed. (Item 3 at 39.) In her response to the FORM, Applicant stated that she received an oral offer to settle the debt in December 2016, but she was unable to accept the offer because she did not have sufficient cash available. She stated that she expected to be able to settle the debt within three months from the date of her response. (AX A.)

During the ESI in March 2016, Applicant disclosed that the federal and state income tax returns for 2014 and 2015 had not been filed for the family business because of their accountant's heavy workload, delays in providing necessary documentation to the accountant, and complications in completing the returns due to sale of all the company's assets in 2014. Applicant knew that the company owed no federal income taxes because the business losses from previous years were being carried forward, but that she believed that she owed "a few thousand dollars" in state sales taxes. (Item 4 at 12.) In her response to the FORM, she submitted documentary evidence that the federal returns for both years were filed electronically and accepted on December 23, 2016. The documents reflect that the company owed no federal income taxes. (AX A, Attachment 4.) As of the date of her response to the FORM, she had not yet filed the state tax returns.

The president and chief executive officer of a local credit union with whom Applicant has done business submitted a letter attesting to Applicant's reliability. The letter states that, between 1999 and 2016, Applicant obtained 19 loans from the credit union, some secured by company assets and some based on her signature alone, and all were paid as agreed. The letters states that, notwithstanding the delinquent credit-card account alleged in the SOR, the credit union continues to give Applicant credit without concerns about whether she will pay the amounts due. (Attachment to SOR answer.)

### **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 § 2.

Eligibility for a security clearance 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 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.” 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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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.

## Analysis

### Guideline F, Financial Considerations

The security 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. 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. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 evidence reflects that the judgement alleged in SOR ¶ 1.a and the collection account alleged in SOR ¶ 1.b involve the same credit-card account. 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 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.b in Applicant's favor.

Applicant's admissions and the documentary evidence in the FORM establish the allegations in SOR ¶¶ 1.a and 1.c and are sufficient to raise the following disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and AG ¶ 19(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"). 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, 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): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. The debts alleged in the SOR are business debts and not the product of excessive personal spending. The debts were caused by an economic downturn in 2008 and 2009, which was a condition beyond Applicant's control. She has acted responsibly by remaining in contact with creditors and resolving all the business debts except for the one debt alleged in SOR ¶ 1.a and the debt for state sales taxes.

AG ¶ 20(d) is established. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has systematically paid or settled almost all the debts related to the failed business. She has remained in contact with the creditor for the one remaining debt alleged in SOR ¶ 1.a and is actively working to resolve it. She is working with her accountant to resolve the state tax issues.

AG ¶ 20(g) is established for the past-due federal income tax returns, but not for the state taxes. However, based on her track record, I am confident that she will resolve the state tax issues as soon as possible.<sup>3</sup>

## **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

---

<sup>3</sup> Administrative judges do not have authority to grant conditional clearances. ISCR Case No. 01-24328, 2003 WL 21979745 at \*2 (App. Bd. May 23, 2003). However, applicants do not have a vested right to a security clearance. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Thus, violation of a promise made in a security context to pay legitimate debts may result in reconsideration of the decision to grant a security clearance.

security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d).<sup>4</sup>

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's military service, during which she held a security clearance for many years, apparently without incident. I have considered her systematic approach to resolving all the debts from the failed family business. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 mitigated the security concerns raised by her delinquent business debts.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.c:

For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman  
Administrative Judge

---

<sup>4</sup> The factors are: (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.