



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03228

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

09/27/2018

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**Decision**

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HARVEY, Mark, Administrative Judge:

Applicant provided insufficient evidence that she was unable to make greater progress addressing two delinquent student loans. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 25, 2015, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) generated the statement of reasons (SOR). The SOR was dated December 5, 2015.<sup>1</sup> The SOR was issued to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). (GE 1) The SOR set forth security concerns arising under Guideline F.

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<sup>1</sup> It appears from the content of the SOR and the date of Applicant's SOR response that the SOR was actually issued in December 2016.

On January 21, 2017, Applicant provided a response to the SOR, and she requested a hearing. (HE 3) On March 19, 2017, Department Counsel was ready to proceed. On October 19, 2017, the case was assigned to me. The case was delayed because Applicant was deployed to a combat zone. On February 23, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 9, 2018. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits; Applicant offered one exhibit; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 18-20; GE 1-5; Applicant Exhibit (AE) A) On July 13, 2018, DOHA received the hearing transcript. Applicant provided two exhibits after her hearing, which were admitted without objection. (AE B) The record closed on September 17, 2018. (Tr. 15-16, 44)

Security Executive Agent Directive 4, established in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>2</sup>

### **Findings of Fact<sup>3</sup>**

In Applicant's SOR response, she admitted she incurred or had some responsibility for the debts in SOR ¶¶ 1.c and 1.d. (HE 3) She also provided mitigating information. (HE 3) Her admissions are accepted as findings of fact.

Applicant is a 66-year-old project manager, and a government contractor has employed her as a procurement advisor in a combat zone for three years. (Tr. 6, 8) In 1969, she graduated from high school. (Tr. 6) In 1994, she received a bachelor's degree in business administration. (Tr. 7) She married in 1969 and divorced in 1972. (Tr. 10) Her four living children are ages 34, 37, 39, and 46. (Tr. 10) One of her children passed away. (Tr. 10) Applicant was a federal civilian employee for 29 years. (Tr. 21)

### **Financial Considerations**

From 2006 to 2014, Applicant's annual salary was about \$135,000 because she worked in a combat zone. (Tr. 21) In January 2014, Applicant retired from her federal employment; she was unemployed for about 15 months; and then she obtained employment with a DOD contractor. (Tr. 8) When she left federal government employment, she was a GS-11 contracting officer. (Tr. 8-9) Applicant said at her hearing that she lacked access to important financial documentation because she was waiting for boxes of documents to arrive at her current overseas location, and she requested 60 days after her hearing to obtain and provide documents. (Tr. 15) I set a suspense of September 17, 2018, for her to provide documents, and advised her she could have additional time if she

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<sup>2</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/SEAD4\\_20170608.pdf](http://ogc.osd.mil/doha/SEAD4_20170608.pdf).

<sup>3</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

requested it. (Tr. 15) Applicant's current annual salary from the DOD contractor is about \$135,000. (Tr. 34) She receives \$24,000 annually for her federal-employee retirement, and she recently began receiving \$2,000 monthly from the Social Security Administration. (Tr. 35) She has not received financial counseling. (Tr. 35)

The status of the SOR allegations is as follows:

SOR ¶ 1.a alleges Applicant failed to file her federal income tax returns for tax years 2013 and 2014 as required by law. She did not timely file those two tax returns because of errors on her income statement (W-2 forms). (Tr. 27, 37) She asked the Defense Finance and Accounting Service (DFAS) to audit her account. (Tr. 37) Applicant believed that she had 180 days after returning from an overseas combat zone to file her federal income tax returns. (Tr. 26) She was back in the United States from November 2013 until 2015, and she acknowledged her 2013 federal income tax return was not timely filed. (Tr. 39) In January 2017, she filed her state and federal income tax returns for tax year 2013, and in August 2017, she filed her state and federal income tax returns for tax year 2014. (AE B) In August 2017, she paid the IRS \$12,701, and her taxes are paid. (AE B) She said her federal income tax returns for 2015, 2016, and 2017 were timely filed. (Tr. 27)

SOR ¶ 1.b alleges Applicant owes a medical debt for \$135. (Tr. 28) Applicant said she did not receive the medical treatment, and the creditor did not properly complete the bill. (Tr. 28) She said she disputed the debt, and it was removed from her credit report. (Tr. 28)

SOR ¶¶ 1.c and 1.d allege two student loans placed for collection for \$9,038 and \$9,368. The collection agent for both loans is designated as CA. Applicant said she cosigned for her former son-in-law's (J) student loans around 2008, and the debts have been delinquent about 10 years. (Tr. 17-18, 29, 32) She said her daughter made payments on the two student loans for about two years before her daughter lost her employment. (GE 2) During Applicant's August 15, 2016 Office of Personnel Management personal subject interview, Applicant said she refused to pay these debts on principle because J told her daughter that J would not pay his student loans to cause Applicant difficulties. (Tr. 29-30; GE 2) Applicant had the funds to pay the delinquent student loans. (Tr. 36) Applicant recommended that the creditor garnish J's salary. (Tr. 30) In a written statement dated the day of her hearing, J said he took "full responsibility" for the two student loans, and J was "more than willing to make any payment arrangements to clear [Applicant]." (AE A) J said he provided his contact information to Applicant (his home address but not his place of employment was indicated on his statement) to enable J "to be an active participant in paying the debt." (AE A)

Applicant has a generally good credit report with a solid record of financial responsibility, except for the debts in SOR ¶¶ 1.c and 1.d. (GE 4; GE 5) Applicant said that around October 2017, she contacted a credit repair company (CRC) about having someone negotiate with the student-loan creditor to reduce the amount of the debt. (Tr. 31, 33) On July 9, 2018, at her hearing, she said she would pay the debts in SOR ¶¶ 1.c and 1.d. (Tr. 37)

On September 17, 2018, CRC wrote:

This letter is to certify that our client [Applicant has retained CRC] to negotiate and dispute these inaccuracies and are in the process of doing so. Collection and Credit reporting agencies, have the tendency of reporting many mistakes and sometimes not updating accounts correctly. Our goal is to have the bureaus investigate accounts in question that are negatively impacting [Applicant's] credit report for maximum possible accuracy. [CRC listed the accounts in SOR ¶¶ 1.c and 1.d as accounts being addressed.] We will continue to work on this file until we reach an agreement. In the meanwhile, we have good faith in [Applicant's] goodwill and good credit standing. If you have any questions, please do not hesitate to call our office.

Email from CRC (AE E)

On September 16, 2018, Applicant said in an email:

I had been in contact with [J] through my daughter a couple of years ago when this issue with my security clearance came up and [J] had said he would contract [CA] and see about making payments. I said I would pay it off, but [J] said not to [do] that it was his responsibility. I said I would help [J] and to let me know when [J] had it arranged.

I came to Afghanistan in April of 2015, and once I was contacted to do the interview, I reached out to [J] again. He assured my daughter that he would take care of it. When it was getting closer to my hearing and had not heard anything back from [J], he said they were not working with him and he was frustrated.

I was running out of time and should have just done it myself to start with. I assure you I will pay it as soon as [CRC] lets me know what they have negotiated on my behalf. [J's] death was a shock but that left it on me to fix.<sup>[4]</sup> I have paid [CRC] a substantial sum to represent me or I would contact [CA] myself to just put it all behind me. . . .

I hope you will consider letting me keep my security clearance. I made a mistake and learned a valuable lesson. I have been a loyal hard working person in war zones and contributed immeasurably to rebuilding both Iraq and Afghanistan. My taxes are all up to date. I really need my job. I am helping my sister, mother and others financially and it would be very detrimental to lose my job.

Email from Applicant (AE D)

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<sup>4</sup> Applicant provided a copy of J's Certificate of Death. (AE C)

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 “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, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes four disqualifying conditions that could raise a security concern and may be disqualifying 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.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f) requiring additional inquiry about the possible applicability of mitigating conditions.

Six financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,<sup>5</sup> 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The

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<sup>5</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant presented some mitigating evidence. She served in Afghanistan or Iraq for several years. She was unemployed from October 2013 to May 2014. J passed away without paying J’s student loans. These are circumstances largely beyond her control. SOR ¶ 1.a is mitigated because: (1) she delayed filing her tax returns because she believed DFAS provided incorrect income information; (2) she was deployed overseas in a combat zone; (3) her tax returns have been filed; and (4) her taxes have been paid. She is credited with mitigating the medical debt in SOR ¶ 1.b because she disputed it, and it was removed from her credit report. She does not receive full mitigating credit under AG ¶ 20(b) because she did not act responsibly under the circumstances with respect to the debts in SOR ¶¶ 1.c and 1.d. Creditors rely on cosigners to pay debts if the primary debtor is unable or unwilling to do so. She was legally responsible as a cosigner to pay J’s student loans. Applicant had the funds to pay J’s student loans, and she did not prove that she was unable to make greater progress resolving J’s delinquent student loans. She did not receive financial counseling.

There is insufficient assurance that the SOR debts in ¶¶ 1.c and 1.d are being resolved. Under all the circumstances, Applicant failed to establish that financial considerations security concerns are mitigated.

### **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 the 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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.



Applicant is a 66-year-old project manager, and a government contractor has employed her as a procurement advisor in a combat zone for three years. In 1994, she received a bachelor's degree in business administration. Applicant was a federal civilian employee for 29 years. From 2006 to 2014, Applicant's annual salary was about \$135,000 because she worked in a combat zone. In January 2014, Applicant retired from her federal employment; she was unemployed for about 15 months; and then she obtained employment with a DOD contractor. Applicant's current annual salary from the DOD contractor is about \$135,000. She receives \$24,000 annually for her federal retirement, and she recently began receiving \$2,000 monthly from the Social Security Administration. She has not received financial counseling.

Applicant is credited for her service in Iraq and Afghanistan. Service in a combat zone on behalf of the United States merits significant weight in a national security determination. She mitigated SOR ¶¶ 1.a and 1.b. Applicant has a generally good credit report with a solid record of financial responsibility, except for the debts in SOR ¶¶ 1.c and 1.d.

Applicant did not establish she had insufficient income to make greater progress resolving her two student loans. She has a substantial income, and she acknowledged that she had the funds to pay the two student loans. Her actions show a lack of financial responsibility and judgment and raise unmitigated questions about her reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of her past-due debts, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated.

### **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:

AGAINST APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

Subparagraphs 1.c and 1.d:

Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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MARK HARVEY  
Administrative Judge