



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-01227  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

03/26/2018  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

CERVI, Gregg A., Administrative Judge

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) dated March 28, 2016. On May 5, 2017, 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> She answered the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on July 7, 2017.

---

<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 June 8, 2017.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 12, 2017. She submitted documents in response, marked as Applicant Exhibit (AE) A. The Government's exhibits included in the FORM (Items 1 to 5) and AE A are admitted into evidence. The case was assigned to me on November 29, 2017.

### **Findings of Fact**

Applicant is a 44-year-old janitor employed by a defense contractor since December 2015. She was previously unemployed from August 2014 until June 2015 after being terminated from a job for attendance and conduct issues. She received a bachelor's degree in 2005. Applicant was married in 2015, and this is her first application for a security clearance.

The SOR alleges Applicant has seven delinquent student loan debts totaling over \$37,000; eight delinquent medical debts totaling over \$1,800; and two credit card debts totaling \$1,475. Applicant admitted the allegations with explanations.

Applicant notes that her financial issues were exacerbated when she lost her job in 2014, and that her loss of income and underemployment resulted in financial delinquencies. Applicant contacted her student loan lender and arranged to make monthly payments beginning in June 2017, for a debt totaling \$73,110. She showed documents showing one payment in August 2017, but no other evidence of consistent payments according to the plan.

Applicant provided evidence of a store credit account alleged in SOR ¶ 1.h that is currently up to date. She also provided evidence showing another bank credit card account similar to SOR ¶ 1.g is on a monthly payment plan, and two payments have been made in June and August 2017, but I am unable to verify that the account numbers match. Applicant has not yet addressed her medical debts.

### **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. The revised AG apply to this case.

"[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**

### **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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the disqualifying conditions.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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; and
- (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.

Although Applicant's delinquent debts may have resulted from a period of unemployment and underemployment, a circumstance beyond her control, the SOR debts remain currently delinquent and she has not shown sufficient evidence of consistent payments to resolve them. Applicant negotiated payment plans in two related debts, but has not shown sufficient evidence of consistent payments according to the plans. Finally, Applicant did not present evidence of financial counseling, or of her current financial status and ability to manage her finances. There is insufficient record evidence of progress toward resolution of her debts or that her financial situation is under control. I am unable to determine that her financial problems are unlikely to recur. These issues raise questions about Applicant's judgment, willingness to comply with rules and regulations, and overall financial responsibility. No mitigating condition is fully applicable.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. Applicant's delinquencies remain an ongoing concern. She has not shown sufficient evidence of consistent effort toward resolving her debts. I have insufficient record evidence to evaluate the current status of the SOR debts, and whether her current financial situation is under control.

### **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–1.g, and 1.i-1.q:	Against Applicant
Subparagraph 1.h:	For Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

---

Gregg A. Cervi  
Administrative Judge