



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02022

**Appearances**

For Government: Julie R. Mendez, Esq., Deputy Chief Department Counsel  
For Applicant: *Pro se*

07/09/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant settled and paid all of the delinquent debts listed on her statement of reasons (SOR). Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 1, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On July 21, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR 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 Security Executive Agent Directive 4, establishing 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. (Hearing Exhibit (HE) 2) The SOR set forth security concerns arising under Guideline F (financial considerations).

On August 29, 2017, Applicant responded to the SOR, and she requested a hearing. (HE 3) On September 26, 2017, Department Counsel was ready to proceed. On February 16, 2018, the case was assigned to me. On February 28, 2018, the Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 23, 2018. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered two exhibits; Applicant offered one exhibit; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 17-19; GE 1-2; Applicant Exhibit (AE) A). On April 4, 2018, DOHA received the hearing transcript. One exhibit was provided after the hearing, and it was admitted without objection. (AE B) The record closed on April 23, 2018. (Tr. 58, 61)

### **Findings of Fact<sup>1</sup>**

In Applicant's SOR response, she admitted all of the SOR allegations. Her admissions are accepted as findings of fact.

Applicant is a 37-year-old substitute teacher who is seeking a security clearance to enable her to be employed in an information-technology specialty. (Tr. 4, 7) She has an employment offer contingent on her obtaining a security clearance. (Tr. 13, 42) In 1999, she graduated from high school, and in 2004, she graduated from college with a bachelor of science degree in electrical engineering. (Tr. 5) She is currently in a dual master's degree program relating to information technology. (Tr. 5, 54) She has not served in the military. (Tr. 6)

In 2004, she married, and in 2015, she divorced. (Tr. 6) She has two children from her first marriage who are ages 8 and 12. (Tr. 6-7) She receives \$800 monthly for child support from her former husband. (Tr. 34) In 2017, she married, and she has three step children from her current marriage who are ages 12, 21, and 23. (Tr. 6-7)

Applicant's husband is a program manager with a specialty in information technology who is employed by a government contractor. (Tr. 23) He currently holds a DOD security clearance. (Tr. 23) His annual salary is about \$180,000. (Tr. 24)

### **Financial Considerations**

Applicant fell behind on her student loans because she was underemployed and due to her divorce. (Tr. 30, 32) For several years, her annual income was about \$10,000. (Tr. 39) She was unemployed for nine months in 2014. (Tr. 40)

The SOR alleges five charged-off delinquent student-loan debts totaling \$89,330 owed to the same creditor in the following amounts: \$27,148; \$17,148; \$16,993; \$16,517; and \$11,524. She maintained contact with the student-loan creditors and made payments when she was able to do so. (Tr. 30-33) She did not seek an additional deferment in her student loans due to her attendance in a master's degree program. (Tr. 54) On March 22, 2018, the creditor for the five student loans offered to settle the \$93,086 debt for \$26,000 if paid by April 25, 2018. (AE A) On April 5, 2018, the creditor wrote that the original

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<sup>1</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

balance due for the five debts is \$93,086; the debt was settled for less than the full amount; and the balance owed is zero. (AE B) The creditor's correspondence noted the substantial savings may be reported to the Internal Revenue Service as income. (AE B)

Applicant does not use credit cards, and she is paying her other debts through a consolidation loan. (Tr. 35) Her monthly payment on her consolidation loan is \$449. (Tr. 36) Her tax returns are filed. (Tr. 54) Applicant's May 10, 2017 credit report's only delinquent accounts are the five delinquent student-loan accounts listed in the SOR. (GE 2) Most of her accounts in her credit report indicate paid, transferred, or paid as agreed. (GE 2)

## **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 [or her] 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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; and “(c) a history of

not meeting financial obligations.” 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) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

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

(a) the behavior happened so long ago,<sup>2</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; 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.

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<sup>2</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)).

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 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).

The SOR alleges five charged-off delinquent student-loan debts totaling \$89,330 owed to the same creditor. Applicant's financial problems were caused by underemployment, unemployment, and divorce. These are circumstances beyond her control.

Applicant stayed in contact with the creditor, and she made some payments. She showed due diligence and good faith after her hearing by contacting the creditor and settling her five delinquent student-loan debts. All of Applicant's other accounts are current or paid. There are clear indications that her financial problem is resolved, and her finances are under control. Future financial problems are unlikely to occur. AG ¶¶ 20(a), 20(b), and 20(d) are established, and 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 37-year-old substitute teacher who is seeking a security clearance to enable her to be employed in an information-technology specialty. In 2004, she graduated from college with a bachelor of science degree in electrical engineering. She is currently in a dual master’s degree program relating to information technology.

The SOR alleges five charged-off delinquent student-loan debts totaling about \$89,330 owed to the same creditor. Applicant’s financial problems were caused by circumstances beyond her control. She settled and paid all of her delinquent debts. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his [or her] outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a track record of paying her debts.

Applicant no longer has any delinquent debts. Her actions show financial responsibility and judgment and favorably resolve questions about Applicant’s reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. Future financial problems are unlikely to occur.

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 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: FOR APPLICANT

Subparagraphs 1.a through 1.e: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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.

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Mark Harvey  
Administrative Judge