



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 17-02047
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

08/16/2018

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**Decision**

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FOREMAN, LeRoy F., 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 on September 17, 2015. On December 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on February 1, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 5,

2018, and the case was assigned to me on April 12, 2018. On April 24, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 24, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I held the record open until June 15, 2018, to enable her to submit documentary evidence. She timely submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. DOHA received the transcript (Tr.) on June 7, 2018.

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

In Applicant's answer to the SOR, she admitted all the allegations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 40-year-old machinist employed by a defense contractor since October 2000. She served in the U.S. Navy Reserve (USNR) from January 2003 to February 2005 and received a general discharge under honorable conditions for non-participation in USNR during her pregnancy and the birth of her first child. She received a security clearance in October 2003.

Applicant has never married, but she lived with a cohabitant from May 2013 until recently. She has two children, ages thirteen and four, who live with her. She did not receive child support from the father of her older child for eight years. She now receives \$264 every two weeks. (Tr. 18, 46.) Her former cohabitant is the father of her younger child. He is unemployed and she has not sought child support from him

Applicant filed a Chapter 7 bankruptcy petition in June 2000 and received a discharge in October 2000. (GX 3.) She filed another Chapter 7 bankruptcy petition in December 2010 and received a discharge in March 2011. The 2010 bankruptcy petition listed assets of \$13,431 and liabilities of \$42,969. The unsecured debts included multiple medical bills, delinquent credit cards, and several payday loans, unpaid state taxes, and delinquent student loans. (GX 4; GX 5.) Her bankruptcies are alleged in SOR ¶¶ 1.m and 1.n.

Applicant completed a nine-month course at a business school and received a diploma in August 2000. She attended college courses from February to April 2007 and from February to July 2015. She has certificates as a massage therapist and a medical assistant. (GX 2 at 2; Tr. 24.) She incurred the four delinquent loans alleged in SOR ¶¶ 1.a-1.d for \$7,102; \$5,145; \$2,784; and \$2,307. These delinquent loans are reflected in a credit report from March 2017 (GX 9.) Applicant testified that her pay is being garnished for a "dollar and something" every week, and five dollars from her checking account to repay the student loans. (Tr. 28.) She applied for an income-driven

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

repayment plan for these loans on May 23, 2018, the day before the hearing. (AX A.) She provided no further information by the date the record closed. The delinquent student loans are not resolved.

The SOR alleges six delinquent medical bills for \$709 (SOR ¶ 1.e); \$483 (SOR ¶ 1.h); \$189 (SOR ¶ 1.j); \$152 (SOR ¶ 1.k); \$50 (SOR ¶ 1.l); and \$476 (SOR ¶ 1.p). These debts are reflected in the credit report from March 2017 (GX 9), except for the debt alleged in SOR ¶ 1.p, which is reflected in the credit report from October 2015 (GX 8). Applicant testified that she suffers from fibromyalgia and a bulging disc in her spine, and she surmised that the medical debts are copayments. She has not taken any action to resolve them. (Tr. 33.) She did not provide any medical evidence of her illness, but she was visibly uncomfortable during the hearing. She testified that her ailments have caused her to miss work for medical appointments and periods of extreme discomfort and have limited the number of hours she works. Because of her work limitations, she no longer has an opportunity to work overtime. (Tr. 20.)

Applicant testified that her reduced income caused her to be evicted from her home in December 2016, and she was homeless for four months. During this time, she stayed at motels or lived with friends. She and her cohabitant made a payment agreement to pay the past-due rent at a rate of \$100 per week and made the first payment in March 2017. (AX B.) The past-due rent is not reflected in the credit reports submitted by Department Counsel, is not alleged in the SOR, and appears to have been resolved. She and her cohabitant rented an apartment in March 2017, where she now resides. Her cohabitant lost his job and no longer lives with her, leaving her solely responsible for the rent, which is \$829 per month. (Tr. 20, 26; GX 2 at 2; AX A.)

The SOR alleges three collection accounts on behalf of various banks for \$656 (SOR ¶ 1.f); \$583 (SOR ¶ 1.g); and \$393 (SOR ¶ 1.i). The accounts are reflected in a credit report from March 2017 (GX 9.) Applicant has not contacted the banks or the collection agencies or taken any action to resolve them. (Tr. 33-34.)

The SOR alleges a delinquent state tax debt for \$1,483 (SOR ¶ 1.q). In July 2015, Applicant's pay was garnished for \$603 in unpaid state taxes. (GX 6.) After the hearing, Applicant submitted evidence that \$1,000 of a federal income tax refund was applied to her state tax debt in April 2018, leaving a balance of \$483. (AX F; AX G.) She submitted no evidence of efforts to resolve the remaining balance.

The SOR alleges that Applicant was arrested and charged with petit larceny in February 2016 (SOR ¶ 1.r). Department Counsel submitted no police or court records reflecting this incident. Applicant was questioned about this incident during a personal subject interview (PSI) in January 2017. According to Applicant, she went to a craft store at about 8:00 am, before the store opened, and there were bins of merchandise outside the store. When no one came to the door to admit her, she left and returned around noon and purchased some craft items. About two days later she was arrested. The police told her that a store employee accused her of stealing an item from the outside bins. At her trial, she was represented by an attorney and pleaded not guilty, but

she was convicted. She appealed and the district attorney reduced the charge to trespassing, to which Applicant pleaded guilty pursuant to a plea bargain. She was fined \$5 and sentenced to 75 hours of community service. (GX 2 at 4.) At the hearing, she denied stealing anything and testified that she does not know what she was accused of stealing. (Tr. 41.)

Applicant earns \$54,882 per year, or about \$4,570 per week. She has about \$20,000 in her 401(k) retirement account. She has no savings. Her monthly expenses include her rent (\$829), car payments and insurance (\$515), child care (\$175 per week), electric bill (\$150-\$200 per month), groceries (\$200 per week), and cellphone (\$200 per month). She did not have cable or a land-line telephone. Her testimony accounts for monthly expenses of about \$2,119. She testified that she has no money left at the end of the month, but the record does not reflect how her remaining income is spent. She does not have a budget. (Tr. 30, 42-46.) She did not present any evidence of financial counseling beyond what was required by the bankruptcy court.

### **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. . . . 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).

Applicant's admissions and the evidence submitted at the hearing establish the delinquent debts and the bankruptcies alleged in SOR ¶¶ 1.a-1.q. Applicant admitted being arrested for petit larceny as alleged in SOR ¶ 1.r, but she denied committing the offense at her first trial, in the PSI, and at the hearing. She admitted pleading guilty to trespassing under a plea agreement. I conclude that there is insufficient evidence to establish any personal conduct of security significance arising from the incident alleged in SOR ¶ 1.r. However, the conduct alleged in SOR ¶¶ 1.a-1.q is sufficient to raise the following potentially disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

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(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

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; 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 delinquent debts are recent, frequent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's medical problems and the financial irresponsibility of the fathers of her two children are circumstances largely beyond her control. However, she has not acted responsibly. She made contact with the lenders for her student loans, but she did not take any significant action to resolve the student loans until the day before the hearing. She admitted at the hearing that she had not contacted any of the creditors alleged in SOR ¶¶ 1.e-1.l and 1.o-1.q. She has taken no significant affirmative action to resolve her state tax debt. Even though part of her federal tax refund was applied to her state tax debt, she still owes a substantial sum to the state.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling beyond that required by the bankruptcy court, and her financial problems are not under control.

AG ¶ 20(d) is not established. The garnishments of Applicant's pay to collect the delinquent student loans and the diversion of her federal income tax refund to pay her state tax debt do not constitute good-faith efforts to resolve the debts. See ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011).

AG ¶ 20(e) is not established. Applicant has not disputed any of the delinquent debts alleged in the SOR.

AG ¶ 20(g) is not established. Applicant has not established a payment plan for her delinquent state taxes. Even after the involuntary diversion of her federal income tax refund, the state tax debt is not resolved.

### **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 and applying the adjudicative factors in AG ¶ 2(d).<sup>2</sup> I have incorporated

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<sup>2</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

my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). 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 not mitigated the security concerns raised by her financial history.

### **Formal Findings**

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

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

Subparagraphs 1.a-1.q:	Against Applicant
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Subparagraph 1.r:	For Applicant
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### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge

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changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.