



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 17-03553
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: *Pro se*

06/01/2018

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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 granted.

**Statement of the Case**

Applicant submitted a security clearance application on January 26, 2016. On October 17, 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 November 6, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November

28, 2017, and the case was assigned to me on January 16, 2018. On February 8, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 1, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until March 31, 2018, to enable her to submit additional evidence. DOHA received the transcript (Tr.) on March 9, 2018.

On March 30, 2018, Applicant requested that the deadline be extended for an additional week to enable her to present evidence. I did not receive her request until April 9, 2018, when she submitted AX G through O. Department Counsel noted that her submission was untimely but did not otherwise object to the additional documents. (Hearing Exhibit I.) I determined that Applicant had demonstrated good cause for extension of the deadline, and I admitted the additional documents. The record closed on April 10, 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 48-year-old project coordinator employed by a defense contractor since November 2015. She served on active duty in the U.S. Navy from November 1989 to September 1997, and in the U.S. Navy Reserve from October 1997 to April 2010, when she retired. She was employed by a defense contractor as an engineering technician from May 1999 to March 2012, when she was laid off. She was self-employed until she was rehired by her former employer in November 2015. (AX A.) She held a security clearance while in the Navy and while previously employed by a defense contractor. She has applied to renew her security clearance, and she currently has a common access card that expires in February 2019. (AX F.)

Applicant married in January 1994 and divorced in June 1999. She has two adult children. She received an associate's degree in December 1995.

Applicant purchased a franchised fast-food restaurant in September 2009, borrowing \$150,000 to finance the purchase. (Tr. 22.) For the first four years, she was able to cover the business expenses but did not make a profit. She was also working as a real estate agent, but was not earning any commissions because of the depressed real-estate market. She decided to sell the fast-food business, and she found a buyer who agreed to close on the sale in August 2015, but closing was delayed. Applicant's landlord refused to renew her lease, and she closed the business in November 2015 and the business equipment was put in storage. (Tr.25-28.) The purchasers of the business had promised to pay her for the equipment in December 2015. (Tr. 32.) While in storage the

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

equipment was stolen. Applicant insurance was terminated in December 2017 for non-payment of premiums, and the theft was discovered in January 2018, after her insurance coverage lapsed. (Tr. 33; AX H; AX I.)

In an effort to cover her debts related to the business, Applicant sold her primary home and a rental property in March 2016. (Tr. 31, 35, 37.) She obtained a home-equity loan for \$9,000 to prepare her rental property for sale. The loan was satisfied by the proceeds from the sale and is not alleged in the SOR. (Tr. 44.)

Applicant was able to pay off many of the business debts. However, she was unable to pay a food supplier, who eventually obtained a \$5,000 judgment against her. (AX E; Tr. 34.) In May 2017, she negotiated an agreement to make monthly \$100 payments on the judgment. (GX 3 at 8.) She satisfied the judgment with a \$2,500 payment in April 2018. (AX J.) She was unable to timely pay \$14,000 in state taxes related to the business. (Tr. 34.) She was able to pay delinquent city taxes related to the business. (Tr. 36.) She negotiated a payment agreement for her state taxes and had made seven monthly payments as of March 2018, reducing the balance to \$8,080. (AX K.) The judgment and unpaid state taxes were not alleged in the SOR.

The SOR alleges six delinquent debts totaling about \$81,000. The evidence concerning these debts is summarized below.

**SOR ¶¶ 1.a and 1.b: credit-card accounts with same credit union, charged off for \$25,848 and \$25,207.** The SOR and the credit report on which it is based allege two accounts but do not reflect any account numbers. (GX 2.) Applicant testified that she has only one credit-card account with this credit union. (Tr. 43-44.) She used the account to pay business expenses and taxes. (Tr. 45, 51.) An account statement from the credit union reflects only one account, which was charged off for \$25,848. (AX M.) I conclude that the debts alleged are duplicates. They were not resolved when the record closed.

**SOR ¶ 1.c: home-improvement loan charged off for \$18,293.** This loan was separate from the loan related to Applicant's rental property. The credit union's account statement reflects that this debt was charged off for \$16,985. It was not resolved when the record closed. (AX M.)

**SOR ¶ 1.d: credit-card account past due for \$2,031, with a balance of \$15,310.** Applicant testified that she used this credit card for daily living expenses. It is reflected in the credit report as closed at Applicant's request and past due for \$2,031. (GX 2 at 2.) She testified that she contacted the credit union, requested a payment agreement, and she was told by the credit union to come back when she could pay \$1,000. (Tr. 49.) The debt was not resolved when the record closed.

**SOR ¶ 1.e: telecommunications account charged off for \$281.** This debt was for service in Applicant's primary home that was sold. (Tr. 53.) It was resolved on March 3, 2018, two days after the hearing. (AX N.)

Applicant testified that she was relying on her income as a real estate agent to pay off the debts alleged in the SOR. She testified that she was working with nine home buyers and has assigned her potential commissions for each sale to paying a particular debt. (Tr. 50.) She complied with that plan by satisfying the judgment obtained by the food supplier with her commission from her next closing on March 30, 2018.

Applicant's project manager, who has known her for two years, submitted a letter describing her as reliable, trustworthy, dedicated, and generous with her free time. (AX C.) A friend and professional colleague, who has known Applicant for 17 years, regards her as "consistently reliable, compassionate, honest, and trustworthy in all aspects." (AX D.)

### **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).

The record reflects that the debts alleged in SOR ¶¶ 1.a and 1.b are duplicates. 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 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.b in Applicant’s favor.

Applicant's admissions and the documents submitted at the hearing establish two potentially disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions are potentially relevant:

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; and

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

AG ¶ 20(a) is partially established. Applicant's debts are numerous and recent, but the financial losses attributed to the failure of her business and the theft of the business equipment are not likely to recur, because she is not likely to venture into establishing her own business again.

AG ¶ 20(b) is established. Applicant encountered several conditions largely beyond her control: her loss of employment in March 2012, the decline in the real-estate market, which adversely affected her income as a real estate agent, the failure of her fast-food business, and the theft of her business equipment. She has acted reasonably by remaining in contact with her creditors, selling her primary home and a rental property to generate cash and reduce her indebtedness, negotiating payment agreements, and paying her debts as her real estate commissions are received.

AG ¶ 20(d) is established. Applicant has resolved several business debts not alleged in the SOR and the telecommunications debt alleged in SOR ¶ 1.c. She has negotiated with the creditor alleged in SOR ¶ 1.d and has an open offer to renew the negotiations when she is able to make a \$1,000 payment. She has not yet resolved the duplicate debts in SOR ¶¶ 1.a and 1.b, the loan in SOR ¶ 1.c, or the credit-card account in SOR ¶ 1.d. However, the adjudicative guidelines do not require an individual to make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or resolve every debt alleged in the SOR. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan.

Applicant has resolved several debts, negotiated and complied with payment agreements, has earmarked the commissions from several pending real-estate transactions to resolve her remaining debts, and complied with her plan by using her commission received on March 30, 2018 to resolve the food supplier's judgment against her. Applicant's income as a contractor employee, supplemented by her commissions as a real estate agent, are sufficient for her to regain and maintain her financial stability.

### **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 my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have noted Applicant's service in the U.S. Navy, years of service with her current civilian employer, and significant efforts to resolve debts that were incurred by conditions largely beyond her control. She held a security clearance for many years in the Navy and as an employee of a defense contractor. 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 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.f:

For Applicant

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

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge