



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



In the matter of: )  
)  
) ISCR Case No. 14-03910  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Christopher Morin, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2015

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Clearance is denied.

**Statement of the Case**

On October 8, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On October 20, 2014, Applicant answered the SOR. In an email dated November 7, 2014, Applicant stated, "I

would like an administrative judge to issue a decision” in her case. In a telephone conversation with Applicant on November 24, 2014, Department Counsel confirmed that Applicant elected to have her case decided on the written record in lieu of a hearing. On December 17, 2014, Department Counsel compiled the Government’s File of Relevant Material (FORM) that contained documents identified as Items 1 through 9.

On December 23, 2014, the Defense Office of Hearings and Appeals (DOHA) forwarded to Applicant a copy of the FORM with instructions to submit any objections or any additional information within 30 days of its receipt. Applicant received the FORM on January 7, 2015, and submitted no matters within the allotted period. The case was assigned to me on March 16, 2015. Items 1 through 9 are entered into the record.

### **Findings of Fact**

Applicant is a 49-year-old employee of a defense contractor. She began working for that employer in December 2012. She graduated from high school in 1984 and earned a bachelor’s degree in 2007. She married for the second time in 2012 and has two adult children. She was granted a security clearance in 2007.<sup>1</sup>

The SOR alleged that Applicant had 12 delinquent debts totaling \$21,857. In her answer to the SOR, Applicant indicated “I accept” in response to four allegations (SOR ¶¶ 1.a, 1.d, 1.h, and 1.l), indicated “I accept but deny responsibility” for three allegations (SOR ¶¶ 1.g, 1.i, and 1.j) and denied five allegations (SOR ¶¶ 1.b, 1.c, 1.e, 1.f, and 1.k). Credit reports in the record establish each of the alleged debts.<sup>2</sup>

Since 2002, Applicant was unemployed for three periods totaling about 13 months. These periods include from about September 2004 to January 2005, from March to June 2005, and from February to May 2010. In her Electronic Questionnaire for Investigations Processing (e-QIP) dated February 27, 2013, she indicated that she left her job in September 2004 because she “Needed a break,” that she left her job in March 2005 to obtain a job with a government contractor, and that her self-employment ended in February 2010 due to a “bad economy.”<sup>3</sup>

SOR ¶¶ 1.a, 1.d, and 1.h – delinquent accounts totaling \$2,816. In her answer to the SOR, Applicant stated these accounts are from the same retail store and the total balance owed was \$1,248. She indicated that she loaned her credit card to a friend who ran up the balance. She further indicated that she disputed the charges to no avail and that she would set up payment arrangements to resolve the issue. A review of Applicant’s credit reports supports her implication that these accounts are for the same debt. I find in favor of Applicant on SOR ¶¶ 1.a, and 1.d. The debt in SOR ¶ 1.h has a

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<sup>1</sup> Item 6.

<sup>2</sup> Items 1 and 4.

<sup>3</sup> Item 6.

date of last activity of 2008, was assigned for collection in February 2011, and remains unresolved.<sup>4</sup>

SOR ¶¶ 1.b and 1.c – delinquent medical account totaling \$198. In her answer to the SOR, Applicant stated these accounts were for a surgical procedure. She indicated a doctor assured her that her insurance would cover the costs of the procedure. She also claimed that the doctor told her the bill would be written off if her insurance did not cover the costs. When her insurance did not pay the bill, she contacted the doctor's office to ensure they coded the billing correctly. The insurance company then advised her that her insurance did not cover that surgical procedure. The doctor's office said there was nothing they could do after Applicant advised them that the insurance company would not pay the bill. She also indicated the doctor's office did not pre-certify the procedure, which she said they were required to do. She provided no documentation to substantiate the basis of her dispute. Insufficient evidence was provided to establish that steps are being taken to resolve these debts.<sup>5</sup>

SOR ¶ 1.e – charged-off account for \$1,000. This debt was a credit card account that had a date of last activity of July 2010. In her answer to the SOR, Applicant indicated this debt was paid and referred to an attached credit report as proof. While the credit report indicated that the balance of the debt was zero, it also indicated it was charged off. Insufficient evidence was provided to establish that this debt was resolved.<sup>6</sup>

SOR ¶ 1.f – collection account for \$5,050. This was an installment loan that had a date of last activity of March 2010. In her answer to the SOR, Applicant indicated this debt was paid and referred to an attached credit report as proof. The credit report merely reflected the balance was zero. I find this debt is resolved.<sup>7</sup>

SOR ¶¶ 1.g, 1.i, and 1.j – delinquent medical accounts totaling \$12,238. A review of Applicant's credit reports revealed that the debt in SOR ¶ 1.j is a duplicate of the debt in SOR ¶ 1.b. I find in favor of Applicant on SOR ¶ 1.j. In her answer to the SOR, Applicant stated that, after being hit by a truck, she had a total knee replacement. She indicated that her doctor said her insurance would cover her medical bills except for her deductible. She said she paid the deductible. Because her medical bills were the result of someone else's negligence, she indicated in her answer that she accepted these debts, but denied responsibility. She provided no documentation to substantiate the basis of her dispute. Insufficient evidence was provided to establish that steps are being taken to resolve the debts in SOR ¶¶ 1.g and 1.i.<sup>8</sup>

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<sup>4</sup> Items 1, 4, 8, and 9.

<sup>5</sup> Items 1, 4, 8, and 9.

<sup>6</sup> Items 1, 4, 8, and 9.

<sup>7</sup> Items 1, 4, and 8.

<sup>8</sup> Items 1, 4, 8, and 9.

SOR ¶ 1.k – medical collection account for \$413. This debt had a date of last activity of August 2007. In her answer to the SOR, Applicant indicated that this debt was not listed on her credit report and she believed it was a billing error. A credit report (Item 9) indicated that this account was paid. This debt is resolved.<sup>9</sup>

SOR ¶ 1.l – medical collection account for \$142. This debt was assigned for collection in March 2012. In her answer to the SOR, Applicant indicated that this debt arose when her son was injured in a motorcycle accident. Her ex-husband used her insurance for the medical expenses. She asked her ex-husband and son to pay this debt, but evidently neither of them did so. She indicated that she would resolve this debt. Insufficient evidence was provided to establish that steps are being taken to resolve this debt.<sup>10</sup>

### **Policies**

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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, to reach his decision.

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 of potential, rather than actual, risk of compromise of classified

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<sup>9</sup> Items 1, 4, 8, and 9.

<sup>10</sup> Items 1, 4, 8, and 9.

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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed 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. Sep. 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**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18 as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts that she was unable or unwilling to pay for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

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

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

Applicant has multiple delinquent debts that remain unresolved. From the evidence presented, I am unable to find that her financial problems are unlikely to recur. Her financial problems continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant was unemployed from February to May 2010 because of a bad economy. She was injured in a vehicle accident and had a total knee replacement. Her son was injured in a motorcycle accident. Her unemployment and the reported injuries were the result of conditions beyond her control that contributed to her financial problems. Nonetheless, she has failed to establish that she has acted responsibly under the circumstances in addressing her financial problems. She paid the debt in SOR 1.k, but provided no evidence of a meaningful track record of payments toward the other delinquent debts. No evidence was presented that she attempted to enter into repayment agreements with any creditors. She contests some of the debts, but provided no documentation to establish that she had a legitimate basis for disputing them or that she formally disputed them. No evidence of financial counseling was presented. From the evidence presented, I am unable to find that her financial problems are under

control or are being resolved. AG ¶ 20(b) partially applies. AG ¶ 20(d) applies to the debts in SOR ¶¶ 1.f and 1.k, but not the remaining debts. AG ¶¶ 20(c) and 20(e) do not apply.

### **Whole-Person Concept**

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.<sup>11</sup> In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. In general, Applicant failed to establish that she acted responsibly in the handling of her financial problems. Following the “clearly consistent with the national interest” standard, doubt about granting Applicant eligibility for a security clearance must be resolved in favor of national security.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.i:	Against Applicant
Subparagraphs 1.j-1.k:	For Applicant
Subparagraph 1.l:	Against Applicant

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<sup>11</sup> The nine adjudicative process factors listed at AG ¶ 2(a) 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.

## **Decision**

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

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James F. Duffy  
Administrative Judge