



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-01573
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2016

**Decision**

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 24, 2012, seeking to continue a security clearance she has held since September 2004. On September 1, 2015, 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 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 September 1, 2006.

Applicant answered the SOR on September 28, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 12, 2015, and the case was assigned to me on November 23, 2015. On

November 30, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 14, 2015. 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 J, which were admitted without objection. I kept the record open until January 8, 2016, to enable her to submit additional documentary evidence. She timely submitted AX K through KK. DOHA received the transcript (Tr.) on December 22, 2015.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted SOR ¶¶ 1.a-1.i, 1.l, and 1.n-1.z. She denied SOR ¶ 1.j, 1.k, 1.m, and 1.aa. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 53-year-old security administrator employed by defense contractors since September 1989. She was a civilian employee of the Department of the Navy from September 1988 to September 1989. She has held a security clearance since the 1980s. (Tr. 34.)

Applicant married in November 1984 and separated in September 1996. She and her husband have a 25-year-old son, who is on active duty in the U.S. Army. She took courses at a community college from January 2002 to May 2011, but she did not receive a degree.

The SOR alleges 26 delinquent debts totaling more than \$10,000 and a Chapter 7 bankruptcy discharge in 2003. The bankruptcy is alleged in SOR ¶ 1.o. Applicant provided virtually no information about the circumstances surrounding her bankruptcy. The delinquent debts and the bankruptcy are reflected in Applicant's credit bureau reports dated September 27, 2012, and January 24, 2015. (GX 2; GX 3.)

Eight of the debts alleged in the SOR were reduced to judgments. The judgments in SOR ¶¶ 1.i and 1.j were filed in October and December 2006. The judgments in SOR ¶ 1.h, 1.k, and 1.l were filed in February, August, and November 2007. The judgment alleged in SOR ¶ 1.m was filed in February 2008, and the judgments alleged in SOR ¶¶ 1.g and 1.n were filed in January and October 2009.

Fourteen of the debts alleged in the SOR are medical debts. The \$133 dental bill alleged in SOR ¶ 1.n was reduced to judgment. Applicant stated in her response to the SOR that she made a telephonic \$25 payment on the judgment. She did not make any more payments. When asked why she made no more payments, she responded, "Just because I was paying something else. I'm not sure. (Tr. 80-81.) The judgment is not satisfied.

For eight of the medical debts (SOR ¶¶ 1.b-1.f and 1.w-1.y), the CBRs do not list the original creditor, a collection agency, or any or contact information. In December 2015, Applicant disputed these debts with the credit reporting agencies on the ground

that she could not determine the identity or location of the creditors. (AX MM.) As of January 7, 2016, she had not received a response to her disputes. (AX LL.)

Applicant provided documentation of her contacts with several medical providers and payments to some of them, but those providers were not alleged in the SOR. (AX G-J.) In her answer to the SOR and at the hearing, she stated that she telephonically contacted the collection agencies for the medical debts alleged in SOR ¶¶ 1.q, 1.r, 1.t, 1.u, and 1.z. but she presented no documentary evidence of payments or payment agreements.

The delinquent debt alleged in SOR ¶ 1.a and the judgment alleged in SOR ¶ 1.g are the same debt. Applicant is paying \$100 per month to resolve this debt. As of November 2015, she had paid a total of \$825. (Tr. 13-14, 24; AX E; AX BB; AX CC.)

The judgments for unpaid rent alleged in SOR ¶¶ 1.h and 1.i were obtained by the same creditor. Applicant is paying \$50 per month to the law firm collecting both judgments. (AX S; AX T; AX U.)

Applicant disputed the ten-year-old judgment alleged in SOR ¶ 1.j on the ground that she had paid it. However, she could produce no documentation of payment. She has disputed the debt, and a decision on her dispute is pending. (AX Z.)

In her answer to the SOR, Applicant denied the unsatisfied judgment for a furniture purchase alleged in SOR ¶ 1.k, because the creditor who obtained the judgment is not the furniture store from whom she purchased the furniture. The creditor appears to be the parent company for the furniture store. She has not taken any significant action to resolve the judgment or dispute the debt.

The judgment for a furniture purchase alleged in SOR ¶ 1.l has been satisfied. (AX V-Y.) This debt was incurred when Applicant and an intended cohabitant purchased furniture, but Applicant did not carry out her promise to pay half of the cost. They decided not to live together, and the intended cohabitant kept the furniture and obtained a judgment against Applicant for half of the purchase price. (Tr. 73-75.)

The judgment for unpaid rent alleged in SOR ¶ 1.m is unsatisfied. Applicant claimed she did not know the basis for the judgment. However, the creditor was listed on Applicant's lease. (AX AA.) She testified that when she called the creditor's office, she learned that it is a construction company. She did not determine whether it also was in the residential rental business. She did not investigate further, but she disputed the debt with the credit bureau. She has not received a response to her dispute. (AX Z; Tr. 78-79.)

The delinquent \$278 telephone bill alleged in SOR ¶ 1.p has been deleted from Applicant's credit report, based in part on her promise to pay it. (AX N.) However, as of the date the record closed, she had not made any payments. (Tr. 82.) The delinquent department store charge account alleged in SOR ¶ 1.v has been settled for less than

the full amount. (AX DD; AX EE.) The delinquent payday loan alleged in SOR ¶ 1.aa is unresolved. (Tr. 89-90.)

When Applicant was asked why she was unable to pay her medical debts, she testified,

Well it wasn't that I don't have no money, it's just that I wasn't really even thinking about the medical bills. . . . When they send the bill, yes it does come in the mail. I do see it. . . and I usually just put it to the side. I mostly am just paying my rent, my [electric bill], you know, the main bills. . . . It was never that I couldn't pay them. It was just that I didn't, right?

(Tr. 93-97.)

Applicant's take-home pay is about \$2,200 per month. Her rent is \$890 and her car payment is \$382. She has outstanding student loans, which are current, and she has an installment agreement to pay her federal income tax debt for tax years from 2009 to the present. (Tr. 94-99.)

### **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, *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 AG. 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.” See 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 ¶ 2(b).

## **Analysis**

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

The concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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 her CBRs establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

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

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.

AG ¶ 20(a) is not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. Her bankruptcy was almost 13 years ago, but she provided virtually no information that would mitigate the financial problems that precipitated it. She did not take advantage of the fresh start provided by her bankruptcy. Instead, she continued to accumulate delinquent debts, with two judgments entered against her within three years of her bankruptcy discharge.

AG 20(b) is not fully established. The record does not reflect the specific medical and dental services involved in the eight medical debts, but it is likely that some of them were unexpected and not routine periodic examinations. However, Applicant has not acted responsibly. She admitted at the hearing that she routinely set medical bills aside and ignored them.

AG ¶ 20(c) is not established. Applicant would have received court-ordered counseling in connection with her Chapter 7 bankruptcy in 2003. However, her financial situation is not under control.

AG ¶ 20(d) is not fully established. “Good faith” within the meaning of this mitigating condition means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts motivated by the pressure of qualifying for a security clearance. This mitigating condition is established for the judgments alleged in SOR ¶¶ 1.g (including the underlying debt in SOR ¶ 1.a), 1.h, 1.i, and 1.l; and the debts alleged in SOR ¶¶ 1.p, 1.s, and 1.v. It is not established for the judgments alleged in SOR ¶¶ 1.j, 1.k, 1.m, and 1.n; the medical debts alleged in SOR ¶¶ 1.q, 1.r, 1.t, 1.u, and 1.z; or the delinquent payday loan alleged in SOR ¶ 1.aa.

AG ¶ 20(e) is established for the medical collection accounts alleged in SOR ¶¶ 1.b-1.f and 1.w-1.y. The SOR allegations for these debts do not comply with the specificity required by Directive ¶ E3.1.3, making it virtually impossible for Applicant to verify the debts or take actions to resolve them. It is not established for the judgment alleged in SOR ¶ 1.l, because Applicant did not provide documentary evidence that the named creditor was not acting on behalf of the furniture store from which she admittedly made the purchase. It is not established for the judgment alleged in SOR ¶ 1.m, because the creditor was listed on Applicant’s lease, and she did not submit any evidence that the creditor was not entitled to collect the debt.

### **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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has been employed continuously since 1988. She received a fresh start after her Chapter 7 bankruptcy discharge in 2003, but within three years she had

two judgments filed against her for unpaid rent and a payday loan. She has no coherent plan for managing her debts. She admits that she routinely ignored medical debts. Her recent efforts to resolve her debts have been motivated largely by her desire to protect her security clearance. Her chaotic financial management does not inspire confidence in her ability to safeguard classified material.

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 delinquent debts. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

### **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.i:	For Applicant
Subparagraphs 1.j-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.p:	Against Applicant
Subparagraphs 1.q, 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t, 1.u:	Against Applicant
Subparagraphs 1.v-1.y:	For Applicant
Subparagraphs 1.z-1.aa:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge