



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



In the matter of: )  
 )  
[REDACTED] ) ISCR Case No. 15-00746  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Meg Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

04/29/2016

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**Decision**

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HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant incurred debt when she was unemployed. She is resolving her delinquent debts through Chapter 13 bankruptcy. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on September 14, 2012. On August 1, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD 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 DOD on September 1, 2006.

Applicant answered the SOR on September 16, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on

December 30, 2015, and the case was assigned to me on December 17, 2015. On March 15, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 6, 2016. I convened the hearing as scheduled. On Department Counsel's motion and without objection, I amended SOR ¶ 1.h to correct a typographical error in the amount of the debt. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. I kept the record open until April 20, 2016, to enable her to submit additional documentary evidence. She timely submitted AX H, which I have admitted without objection. DOHA received the transcript (Tr.) on April 14, 2016.

### **Findings of Fact**

The SOR alleges 16 delinquent debts totaling approximately \$43,730. The delinquent debts primarily include a mortgage loan, student loans, and multiple medical bills. In her Answer, Applicant admitted six of the allegations, but qualified five of the admissions with the repayment status of each debt. She denied ten of the allegations, and qualified six of the denials with brief explanations. Her admissions in her Answer are incorporated in my findings of fact.

Applicant is a 54-year-old information technology hardware specialist employed by a defense contractor since October 2012. She received an associate's degree in 2014. (Tr. 33.) She served honorably in the U.S. Army Reserves from January 1980 until June 1986. (GX 1.) She divorced in 1986 and 2001. She is a single parent who has two sons who reside with her, one of whom is a minor. (GX 1.) Applicant is solely responsible for her minor child's health insurance coverage. (AX E.)

Applicant's ex-husband required to make monthly child-support payments. However, he has been sporadic in his child-support payments. (Tr. 31-32.) He is currently approximately \$41,900 in arrears. (AX E.) Over the years, the unpredictability of these payments has contributed to Applicant's financial difficulties. (Tr. 31.)

Applicant was unemployed from April 2011 until approximately October 2012, and fell behind on her financial obligations. (Tr. 29.) In an effort to maintain paying her bills, she exhausted her 401(k). (Tr. 55.) When she finally found employment, her salary was approximately \$20,000 less annually than she had previously earned. (Tr. 30.) She resumed making contributions to her 401(k) in early 2016. (Tr. 55.)

Following the receipt of the SOR, Applicant realized she needed help in resolving her delinquent debts. (Tr. 30.) She completed the required credit counseling, then filed Chapter 13 bankruptcy petition in November 2015. (AX D; GX 5.) Her 60-month payment plan was accepted by the court, and she has made four payments of \$420. (AX C; Tr. 50.) Applicant testified that all of her delinquent debts, including her student loans, are included in the Chapter 13 plan. (Tr. 36; Tr. 41.) She is current on her mortgage payments, and the past-due balance, alleged in SOR ¶ 1.a, is included in the Chapter 13 plan. (Tr. 38.)

Applicant testified that the outstanding medical debts alleged in SOR ¶¶ 1.f, 1.h, 1.i, and 1.n-p, were incurred for medical services for her children. (Tr. 49.) The most recent of these debts is from 2011. (GX 4.) These debts total \$1,317 and are included in the plan. (Tr. 49.)

She admits owing \$467 to a clothing store (SOR ¶ 1.g), which became delinquent in 2014. She was making payments on that account, but it is now included in the plan. She has not incurred any other delinquent debt since 2011. (GX 5.) She is current on her taxes and all her ongoing financial obligations. She lives within her means. (Tr. 54-55.) She is considered to be a hardworking, dependable, and trustworthy employee by her supervisor and coworkers. (AX H.)

Applicant also experienced a period of financial strain in approximately 2008, in part because several of her student loans came due. (GX 4; Tr. 54.) Applicant testified that she was subject to a garnishment of \$65 biweekly on a judgment for a delinquent student loan. The garnishment began in approximately 2009. She notified the creditor when she was laid off in 2011. The garnishment resumed with her current employer, and continued until December 2015, when it was terminated due to her bankruptcy filing. It is the only debt not included in the Chapter13 plan. The balance due is approximately \$300, and she intends to pay this debt off. (Tr. 47-48.)

The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) dated January 2015 and October 2012. (GX 3; GX 4.) She discussed the bankruptcy during her testimony.

### **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's 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, corroborated by the record evidence 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 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; and

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

AG ¶ 20(a) is established. Applicant has not incurred any significant delinquencies since approximately 2011. Her financial difficulties were not the result of irresponsible behavior and her conduct "does not cast doubt on [her] current reliability, trustworthiness, or good judgment."

AG ¶ 20(b) is established. Applicant experienced circumstances largely beyond her control when she was unemployed from April 2011 until October 2012. She also suffered a significant decrease in income beginning in 2012. Additionally, her ex-husband's failure to comply with the court-ordered child support payments, as evidenced by his substantial arrearage, was beyond her control. Her outstanding medical debts for her sons' medical care also arose from circumstances beyond her control. She has acted responsibly by resuming her monthly mortgage payments, not incurring recent delinquent debt, and filing Chapter 13 bankruptcy to manage her debt.

AG ¶ 20(c) is established. She has resolved or is resolving her delinquent debts and has not incurred any additional delinquencies since about 2011. Her Chapter 13

repayment plan has been approved and she is making monthly payments. Thus, there are “clear indications” that her financial problems are under control.

AG ¶ 20(d) is established. Applicant’s bankruptcy includes all but \$300 of her delinquent debt. She is adhering to her repayment plan and her conduct constitutes a good-faith effort to resolve her debts. “Good faith” 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).

Applicant previously repaid the majority of the balance of one of her student loans through a garnishment. The fact that Applicant was paying this debt through garnishment rather than a voluntary effort diminishes its mitigating force. ISCR Case No. 08-06058 at 4 (App. Bd. Aug.26, 2010). However, payment by garnishment does not bar mitigation of financial concerns. ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006).

A security clearance adjudication is an evaluation of an individual’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has addressed and is repaying her debts in a responsible manner. Although her financial record is not perfect, she has implemented a reasonable plan to resolve her financial issues within her means.

### **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 I have also considered the following:

Applicant clearly recognized the importance of resolving her financial issues by proactively entering into a Chapter 13 plan. She has been living within her means for several years, despite her reduced income and unreliable child support. She served honorably in the military and is a hardworking and dependable employee. Such actions are indicative of an individual who is reliable and trustworthy and who exercises good judgment. I am confident that Applicant will continue her good-faith effort to resolve her remaining delinquent debt.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.p:

For Applicant.

### **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge