



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



In the matter of: )  
)  
) ISCR Case No. 14-04996  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

07/09/2015

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated security concerns under Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On January 22, 2014, Applicant submitted a security clearance application (SCA).<sup>1</sup> Based on a review of Applicant’s SCA and the ensuing investigation, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on November 14, 2014, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006. The SOR alleged security concerns under Guideline F.

<sup>1</sup> The SCA was a Questionnaire for National Security Positions.

On December 9, 2014, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. On April 30, 2015, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 5. On May 14, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections or supply additional information. On June 8, 2015, she submitted a response to the FORM. The case was assigned to me on June 26, 2015.

### **Findings of Fact**

The SOR alleged that Applicant had five debts totaling about \$10,276 (SOR ¶¶ 1.a-1.e). In her Answer to the SOR, Applicant denied the debts in SOR ¶¶ 1.a and 1.b and admitted the remaining debts. Her admissions are incorporated as findings of fact.<sup>2</sup>

Applicant is a 46-year-old information technology specialist who has been working for a federal contractor since August 2013. She graduated from high school in 1986. She has never been married, but indicated she lives with a cohabitant. She has two children, ages 16 and 17. This is the first time that she is seeking to obtain a security clearance.<sup>3</sup>

In her SCA, Applicant listed five periods of unemployment, including a 33-month period prior to obtaining her current job. She was unemployed from February 2004 to March 2004; June 2005 to August 2005; March 2009 to January 2010; March 2010 to April 2010; and December 2010 to August 2013. She was laid off from jobs for each of these periods with the exception of a short period of unemployment (March 2010 to April 2010) when she left a job for personal reasons.<sup>4</sup>

SOR ¶ 1.a – collection account for \$787. This was a credit card account that had a date of last activity of March 2009. In her Answer to the SOR, Applicant indicated that she made several attempts to contact the creditor. She learned the creditor is no longer in business and is apparently in a liquidated trust. She indicated that she intended to dispute this debt. It no longer appears on her most recent credit report dated October 24, 2014.<sup>5</sup>

SOR ¶ 1.b –collection account for \$7,686. This debt arose from an apartment lease. It was assigned for collection in September 2009 and constitutes almost 75% of the alleged indebtedness. In her interview with an Office of Personnel Management

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<sup>2</sup> Item 1.

<sup>3</sup> Item 2.

<sup>4</sup> Items 1, 2; Response to the FORM.

<sup>5</sup> Items 1, 4, 5.

(OPM) investigator, her Answer to the SOR, and her Response to the FORM, Applicant stated that she paid this debt. Her monthly rent for that apartment was \$1,995. She fell behind on two months of rent. She indicated that, before she vacated the premises, she hand delivered to the manager a cashier's check for over \$4,000, which included the rent payments and late fees. In 2011, she was contacted by a representative of the collection agency requesting payment. She then submitted a copy of the cashier's check showing proof of payment. She heard nothing further from the creditor and thought the matter was closed. She now is unable to locate a copy of the cashier's check.<sup>6</sup>

SOR ¶¶ 1.c-1.e – collection accounts totaling \$1,803. In her Response to the FORM, Applicant provided copies of letters she sent to each creditor in May 2015 requesting documentation to verify these debts. She indicated that she has not received any responses from the creditors. These debts are no longer reflected on her most recent credit report dated October 24, 2014.<sup>7</sup>

Applicant had a state tax lien that was filed against her in January 2010. She explained that the state claimed it had not received her 2007 income tax return. She had filed that tax return. She refiled in 2010. The tax lien was released in June 2011 and she received a refund for that year.<sup>8</sup>

Applicant's most recent credit report reflected that she had no delinquent debts other than the debt reflected in SOR ¶ 1.b. She stated that she adjusted her lifestyle when she was laid off, disposed of her credit cards, and only purchased what she could afford. In her Response to the FORM, she stated that she recently obtained a secured credit card and pays the balance in full each billing cycle.<sup>9</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

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<sup>6</sup> Items 1, 3, Response to FORM.

<sup>7</sup> Items 1, 3, Response to FORM.

<sup>8</sup> Items 1, 3, Response to FORM.

<sup>9</sup> Items 1, 3, Response to FORM.

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, in reaching a 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 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 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 the record evidence established two disqualifying conditions in AG ¶ 19:

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

Five 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 disputes the debt in SOR ¶ 1.b, which is approximately 75% of the alleged debt. She claimed that she paid that debt in 2009 and later provided a collection agency a copy of the cashier's check in 2011 as proof of the payment. She no longer has a copy of the cashier's check, which is understandable, because she submitted it six years ago. This is the only delinquent debt that appears in her most recent credit report. Considering this debt was incurred six years ago and her claim that she paid it, I find that this debt occurred under circumstances that make it unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

The remaining debts are relatively minor and no longer appear on Applicant's credit report. She requested each creditor provide her verification of the debt and had not received any responses from them by the time she submitted her Response to the FORM.

Applicant was laid off from jobs and experienced a number of periods of unemployment, including a 33-month period before starting her current job. When she was laid off, she adjusted her lifestyle and lived within her means. Although she most likely could have taken quicker action to resolve the debts after obtaining her current job, she has acted in a reasonable manner in addressing them. Her financial problems are being resolved and are under control. Each of the mitigating conditions applies in varying degrees.

### **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>10</sup> In this case, I gave due consideration to the information in the record

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<sup>10</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.

about Applicant and concluded the favorable information, including the mitigating evidence, outweighs the security concerns at issue. Applicant met her burden of persuasion and mitigated the financial security concerns. Overall, the record evidence leaves me with no questions or doubts as to her eligibility for a security clearance.

### **Formal Findings**

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:           For Applicant

Subparagraphs 1.a–1.e:           For Applicant

### **Decision**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

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James F. Duffy  
Administrative Judge