



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-02658
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2016

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Despite several events and circumstances largely beyond her control that contributed to her financial issues, Applicant failed to mitigate the 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 (e-QIP) on August 2, 2012. On November 10, 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; Department of Defense 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 November 24, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's

written case on January 4, 2016. A complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 8, was sent to Applicant on that same day. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on January 11, 2016, and did not respond.<sup>1</sup> The case was assigned to me on May 2, 2016.

### **Findings of Fact**

The SOR alleges 16 delinquent debts totaling approximately \$22,826. In her Answer, Applicant admitted the debts alleged in SOR ¶¶ 1.a, 1.e through 1.h, 1.k through 1.m, and 1.p. However, she stated that she is repaying the debt in SOR ¶ 1.p, and that the balance is less than \$700. She denied the debts alleged in SOR ¶¶ 1.b through 1.d, 1.i, 1.j, 1.n, and 1.o. Applicant's admissions in her Answer are incorporated in my findings of fact.

Applicant is a 49-year-old aircraft mechanic employed by a defense contractor since June 2012. She received a technical certificate from a community college in 2012. She served on active duty in the U.S. Marine Corps from January 1987 to June 1991. She married in 1990 and divorced in 2003. She has three adult daughters. This is her first application for a security clearance. (GX 3.)

The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) from October 2015, March 2015, and August 2012. (GX 8; GX 7; GX 6.) She listed a number of her delinquent accounts on her e-QIP, and discussed many of the accounts during her personal subject interview (PSI) on September 25, 2012. (GX 3; GX 4.)

The debts alleged in SOR ¶¶ 1.a, 1.d through 1.j, 1.l through 1.n are for delinquent credit-card accounts totaling \$7,472. The \$1,139 debt alleged in 1.k is owed to a bank. In her Answer, she admits SOR ¶¶ 1.a, and 1.e through 1.h, stating that she is "currently looking into working with the creditor to pay off debt." She denies 1.i for \$910 and 1.j for \$546, stating that her ex-husband is responsible for paying these debts. However, there is no record evidence that supports her denials.

The debts alleged in SOR ¶¶ 1.b and 1.c are for medical accounts totaling \$202. Applicant denies these debts, stating that she does not think she has any outstanding medical bills. There is no record evidence to support her denials.

In her Answer, she admits SOR debts 1.k through 1.m, and explains that she became delinquent on these debts due to a reduction in force at her job, which left her unemployed for six months, and resulted in her moving to another state for employment. She further explains that she had an accident in which her paid-off vehicle was totaled. She then had to incur the expense of buying another vehicle for transportation to and

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<sup>1</sup> The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated January 4, 2016, and Applicant's receipt is dated January 11, 2016. The DOHA transmittal letter informed Applicant that she had 30 days after receiving it to submit information. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit 1.

from work. She also states that her child support payments increased, and that the combination of these events created financial strain. However, the debts in SOR 1.k through 1.m, which total \$2,023, all became delinquent between March and June 2013, after Applicant had been with her current employer since June 2012. (GX 8.)

Applicant denies SOR 1.n for \$360, stating that she does not recognize the debt. However, the debt is currently owed to a collection agency, not the original creditor. Applicant listed the debt to the original creditor on her e-QIP and stated that she was “in the process of contacting the agency to set up payment arrangements to resolve this debt.” (GX 3.) In her PSI, she stated that her husband was supposed to have paid the debt but did not. She stated that she had made payment arrangements with the original creditor, and was in the process of paying the debt off. (GX 4.) There is no record evidence that shows that any payments were ever made on this account.

The \$3,525 debt alleged in SOR 1.o is owed to an apartment complex where Applicant previously lived. In her Answer, she states that she needed to move because her employer was relocating her job. She informed the apartment complex management, which had another renter for her unit, and released her from her lease. She further states that she received a letter stating she owed the debt. She contacted the new management of the apartment complex, which had no record of her having lived there, but still demanded payment. In her move, she lost all paperwork regarding the apartment complex. However, on her e-QIP and in her PSI, she states that she needed to move to a larger apartment to accommodate her children, that she broke her lease, and that she intended to contact the apartment complex to set up a payment plan. (GX 3; GX 4.)

The \$10,488 debt alleged in 1.p is owed to the U.S. Department of Veterans Affairs (VA). Applicant began receiving disability payments in 2006, and was apparently overpaid. In 2012, she was notified by the VA that she was required to repay the overpayment. She stated in her PSI that she was paying \$243 per month towards the debt. (GX 4.) In her Answer, she states that she owes a balance of less than \$700 and has three remaining payments. The debt appears as delinquent on her 2012 CBR, but does not appear on either of the 2015 CBRs. She did not provide any documentation regarding this debt.

Applicant explains that her financial issues began after she was hospitalized for post-traumatic stress disorder (PTSD) from her military duty, from March 2005 until April 2005. As a result of this hospitalization, she necessarily missed work and lost income. (GX 4; GX 3.) She was ultimately terminated, and was unemployed from March 2005 until July 2006. (GX 3.) Additionally, her ex-husband eventually gained custody of their children, and Applicant was required to pay child support. She further states that following their 2003 divorce, her husband was supposed to pay the majority of their marital debt, but did not, and Applicant remained liable for it. (GX 4.) She was unemployed between December 2011 and June 2012, due to a reduction in force by her employer. (GX 3.)

## 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”).

Some of Applicant’s financial difficulties may have been the result of circumstances largely beyond her control, such as her divorce, her hospitalization for PTSD, her periods of unemployment, and, her vehicle accident. However, there is no indication that she acted responsibly under the circumstances. While two of the delinquent debts totaling \$202 are for unpaid medical bills, there is no evidence that they originated from a medical emergency, and she denies that they are her debts. She stated in 2012 that she would contact her creditors and make payment arrangements. There is no indication that she ever did so. She stated that she would contact the apartment complex where she broke her lease and make payment arrangements. Now she denies owing this debt. There is nothing in the record that explains her 2013 delinquencies. In her November 2015 Answer, she again professes that she will contact her creditors to arrange payments, yet she failed to provide any evidence in response to the January 2016 FORM, that she has done so. AG ¶ 20(b) does not apply.

Applicant's debt to the VA represents nearly half the delinquent debt alleged in the SOR. Given her statements and the 2015 CBRs, it is likely that she has been in repayment of this debt since 2012, yet she did not provide any evidence to support this. Therefore, I cannot unequivocally conclude that she has made a good-faith effort to repay this debt. She has not paid any of the other SOR debts. AG ¶ 20(d) does not apply. None of the other mitigating conditions apply.

Although Applicant denied seven of the debts, she did not provide any evidence in support of these denials. Each of the SOR debts is established by the CBRs, thus, the Government has made its *prima facie* case as to all of the SOR allegations. Applicant has failed to meet her burden of proof of mitigation.

### **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 is to be commended for her military service, which unfortunately led to her PTSD, which in turn ultimately contributed to her financial issues. However, she has been steadily employed since June 2012, and she no longer has child-support payments. Her failure to make any payments on any of her consumer debts indicates that she does not have her finances under control. Her conduct is not consistent with that of individuals entrusted with access to classified information.

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 grant 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.p:

Against Applicant

### **Conclusion**

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

Stephanie C. Hess  
Administrative Judge