



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



In the matter of:)
)
) ISCR Case No. 24-01584
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

02/19/2025

Decision

HALE, Charles C., 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 (SCA) on November 16, 2022. On October 9, 2024, the Department of Defense (DoD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. The DoD acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on October 30, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on November 5, 2024. On November 6, 2024, a complete copy of the FORM was sent to Applicant. She received the FORM on November 25, 2024.

She submitted a Response to the FORM on November 26, 2024. The case was assigned to me on January 31, 2025.

The SOR and Applicant's Answer and Response are the pleadings in the case. FORM Items 2 through 11 are admitted into evidence without objection.

Findings of Fact

Applicant admitted allegations SOR ¶¶ 1.a-1.d. Her admissions and statements in her Answer and Response are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is a 44-year-old employee of a defense contractor. She divorced in 2011, after five years of marriage and has three children. She is a single parent. She has worked as a substitute teacher since 2014 and held other positions during that period. She enrolled in a master's program in 2018 and earned her master's degree in 2020. She started a Ph.D. program in 2024, which she states further demonstrates her commitment to continuous personal and professional development. Her student loans are listed "payment deferred" on the most recent credit report generated in November 2024. (Item 2; Item 6; Response.)

In the last seven years Applicant has filed four bankruptcy petitions. In her January 2023 security clearance interview she cites unemployment, primarily due to extended periods of time when she was either in school or due to medical issues, for her financial difficulties. Her initial period of unemployment, from May 2012 to May 2013, was when she was finishing up her undergraduate degree. She was unemployed from December 2013 to July 2014, after being unexpectedly laid off from a legal secretary position. While she was looking for a new job she relied on her savings; help from family; and some child support. She was again unemployed from April 2022 to August 2022 and from December 2022 to the present. She has supported herself through savings and assistance from her son while actively seeking employment. (Item 3.)

At the time of her January 2023 security clearance interview, Applicant described her current financial situation as tight. She pays her basic expenses, not including her Chapter 13 bankruptcy payments, through her savings and help from her son and family at times. She now "lives a very sparse lifestyle as to avoid any further past due debts." She acknowledged she lived beyond her means by buying cars that were on high interest rate loans due to her poor credit, as well as her employment situation, medical issues, and raising her children as a single mother with limited to no assistance as reasons for her bankruptcy filings. She lives in low-income rental assistance housing and her groceries are covered by the Supplemental Nutrition Assistance Program (SNAP). She has no credit cards. (Item 3.)

SOR ¶ 1.d: In June 2017, Applicant filed Chapter 13 Bankruptcy and this bankruptcy was dismissed in October 2017. Applicant admits the allegation with an

explanation in her Response. She listed over \$81,000 in unsecured claims. In the two years prior to filing for bankruptcy she listed just over \$21,000 in gross income. She cited a gradual buildup of living expenses and her son's medical expenses, which were compounded by being a single mother of three boys with limited financial support, as the reasons she decided to contact a lawyer and file for a Chapter 13 bankruptcy. The large expense in this filing was a vehicle she was paying on that was used to transport her son. After a few months of payments into the Chapter 13 bankruptcy she determined this recourse was not manageable. She directed her lawyer to dismiss her Chapter 13 petition and file for Chapter 7 bankruptcy. Neither her situation nor income had changed. (Item 3; Item 11; Answer; Response.)

SOR ¶ 1.c: In November 2017, Applicant filed Chapter 7 Bankruptcy and this bankruptcy was discharged in March 2018. Applicant admits the allegation with an explanation. She listed over \$83,000 in unsecured claims. The Chapter 13 Bankruptcy alleged in SOR ¶ 1.d, listed over \$81,000 in unsecured claims. She had increasing health issues and had to take sick time and time off to care more for her son during this period. (Item 3; Item 10; Item 11; Answer.)

SOR ¶ 1.b: Applicant admits the allegation. In November 2021, she filed for Chapter 13 Bankruptcy. She listed over \$11,000 in unsecured claims. She states her attorney advised her to file this bankruptcy petition so she could refile (SOR ¶ 1.a). Her financial issues reoccurred in early 2020 when COVID hit. Her ability to work substitute teaching jobs ended as teachers were able to work from home requiring very few substitute teachers. She also incurred health issues and had to take sick time and time off to care more for her son during this period. The result was from early 2020 to November 2021 there was another buildup of living expenses. She was again unemployed from April 2022 to August 2022 and from December 2022 to the present. She stopped making her bankruptcy payments while unemployed. (Item 3; Item 9; Answer.)

SOR ¶ 1.a: On or about May 22, 2023, Applicant filed for Chapter 13 Bankruptcy and as of the date of the SOR, this bankruptcy is in process. She admits the allegation. She states that she is making her payments on time as ordered. Her Chapter 13 petition listed over \$172,000 in unsecured claims, of which over \$153,000 are student loans. Her motion to suspend her plan payments for October, November, and December 2024, was granted by the court on November 4, 2024. The judge stated, "the Debtor shall be deemed current on her plan payments through December 2024." (Item 3; Item 7; Item 8; Answer.)

Applicant states that COVID played a "big part" in her decision to file bankruptcy and that she is "currently good financial status." She states she has navigated challenging financial circumstances while maintaining consistent employment and personal responsibility. (Answer; Item 3.)

In her Response Applicant states:

My bankruptcy history reflects strategic financial management during this difficult period. The initial Chapter 13 filing was a necessary step when I was not eligible for Chapter 7 bankruptcy. Upon becoming eligible, I voluntarily dismissed the initial Chapter 13 and successfully filed a Chapter 7, which resulted in a discharge. This demonstrates my proactive approach to resolving financial challenges.

She adds later in her Response:

The subsequent Chapter 13 filings, including my current ongoing case, are part of my comprehensive strategy to manage significant student loan debt while maintaining financial stability. Throughout these proceedings, I have been consistently diligent in making Chapter 13 payments, highlighting my commitment to financial accountability. Also, it should be noted that the significant increase in debt reflects higher education loans, not because of excessive spending. I do not live beyond my means.

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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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.” 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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.

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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 handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

After filing for bankruptcy in 2017 and having her debts discharged in March 2018, Applicant accrued delinquent consumer debts and filed another bankruptcy petition three years later. Her admissions and the evidence in the FORM establish two disqualifying conditions under this guideline: AG ¶ 19(a): inability to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations.

The following 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 20(a), 20(c), and 20(d) do not fully apply. Applicant's financial delinquencies are ongoing and unresolved. She discharged in bankruptcy over \$83,000 in debt in 2018 and has accrued over \$172,000 in new debt. Her statements are insufficient to show that her financial concerns are unlikely to recur and do not mitigate the doubt concerning her current reliability, trustworthiness, or good judgment. Under mitigating condition AG ¶ 20(d), an applicant must initiate and adhere "to a good faith effort to repay overdue creditors or otherwise resolve debts" to receive full credit. She states she is current on her bankruptcy payments. However, she obtained a suspension of her monthly payments for the final quarter of 2024 and acknowledged not making payments in her 2021 bankruptcy filing while unemployed. The Directive does not define the term "good faith." However, the Appeal Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than show that he or she relied on a legally available option such as bankruptcy or the statute of limitations in order to claim the benefit of these mitigating conditions. She did not establish that she has made a good-faith effort to pay or resolve her debts. Additionally, her repeated bankruptcy filings are clear indications that any training mandated by the bankruptcy court did not help to resolve or give her a better understanding for how to control her financial problems. See ISCR Case No. 06-14521 at 2 (App. Bd. Oct. 15, 2007); ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009).

Applicant attributes her debts to raising three children by herself after her 2011 divorce, while also experiencing periods of unemployment and underemployment. The first prong of AG ¶ 20(b) therefore applies. For full consideration under AG ¶ 20(b) Applicant must establish that she acted responsibly under the circumstances. She has not done so. She discharged over \$80,000 in debt in bankruptcy in 2018. She filed for bankruptcy again in 2021, which she had dismissed in May 2023 and later that same month refiled for bankruptcy showing an increase of over \$100,000 in debts related to student loans. While she states she is employing a strategic plan for her finances, she admits living beyond her means at times and incurred a large student loan debt while unemployed or underemployed. The mere evidence of availing herself of a legally available option is not sufficient to establish she acted responsibly and in good faith. See, e.g., ISCR Case No. 04-14521 at 2 (App. Bd. Oct. 15, 2007). Applicant did not provide sufficient evidence that she acted responsibly under the circumstances. AG ¶ 20(b) does not fully apply.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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(d):

- (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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge