



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



In the matter of:)
) ISCR Case No. 24-01474
[Redacted])
)
Applicant for Security Clearance)

Appearances

For Government: George A. Hawkins, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2025

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 (SCA) on September 6, 2023. On September 5, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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), which became effective on June 8, 2017.

Applicant received the SOR on September 20, 2024, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's

written case on October 9, 2024. Applicant received a complete copy of the file of relevant material (FORM) on November 14, 2024, and 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 September 13, 2022, and timely responded. Her response has been marked as Applicant's Exhibit (AX A) and admitted without objection. The case was assigned to me on January 14, 2025.

The FORM consists of thirteen items. Items 1 and 2 are the pleadings in the case. Items 3 through 13 are the evidence submitted by Department Counsel in support of the allegations in the SOR. Applicant did not object to any of items in the FORM. Items 3 through 13 are admitted.

Findings of Fact

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a through 1.e and 1.i through 1.k. She denied the allegations in SOR ¶¶ 1.f, 1.g, and 1.h. Her admissions are incorporated in my findings of fact.

Applicant is a 50-year-old employee of a defense contractor. She previously worked for federal contractors until March 2018, worked for a non-federal employer from April 2018 to April 2022, and has worked for her current employer since April 2022. She first received a security clearance in August 2001. She earned an associate degree in June 2016.

Applicant married in December 1996 and divorced in January 2005. She has four children, ages 29, 27, 24, and 18. In her response to the SOR, she stated that one of her children was born with a congenital heart defect that required special attention and expensive treatment.

Applicant's SCA reflects that she traveled to Jamaica in August 2021 and November 2022 for one to five days and to Mexico in June 2023 for six to ten days. The purpose of each trip is listed as "other."

In November 2024, Applicant hired a debt-management company to assist her in resolving the debts alleged in SOR ¶¶ 1.d-1.j. (AX A at 26) The evidence pertaining the debts alleged in the SOR is summarized below:

SOR 1.a: Chapter 7 bankruptcy filed in August 1999. Applicant's debts were discharged on December 6, 1999. (FORM Item 6) In Applicant's response to the FORM, she stated that debts totaling \$44,000 were discharged and that the debts were incurred early in her career and due to insufficient income and financial inexperience. (AX A at 1)

SOR ¶ 1.b: Chapter 13 bankruptcy filed in December 2002. This case was voluntarily dismissed. (FORM Item 7) In Applicant's answer to the SOR, she stated that this bankruptcy was filed during a period of financial hardship, including substantial medical expenses, and that her financial situation changed after her separation from her husband and the sale of the marital home.

SOR ¶ 1.c: Chapter 7 Bankruptcy Filed in October 2014. The petition listed Applicant's assets totaling \$36,873 and liabilities of \$138,827. The debts were discharged in December 2014. (FORM Item 8) In Applicant's response to the FORM, she stated that the debts included in this bankruptcy were for medical emergencies and necessary caregiving expenses. (AX A at 1)

SOR ¶ 1.d: Car loan charged off for \$20,259. In Applicant's answer to the SOR, she stated that this debt was included in the Chapter 7 bankruptcy in October 2014. (Answer item c) However, in her response to the FORM, she submitted documentary evidence that this debt was incurred in January 2015, became delinquent on a date not reflected in the record, and was settled for less than the full amount in November 2024, after she received the SOR. (AX A at 4)

SOR ¶ 1.e: Credit-card account placed for collection of \$1,626. In June 2024, a judgment was entered against Appellant for \$1,577. (FORM Item 11) She made a payment agreement in September 2024, providing for an initial payment of \$200 and bi-weekly payments of \$50. (Answer Item e) In her response to the FORM, she submitted evidence that the debt was settled on November 1, 2024. (AX A at 5)

SOR ¶¶ 1.f and 1.g: Delinquent rent payments placed for collection of \$5,907 and \$9,452. Applicant lost her job in December 2020 due to the COVID-19 pandemic and applied for assistance through the Emergency Rental Assistance Program (ERAP). The ERAP paid her rent during the pandemic. In her response to the SOR, she submitted documentation of her job loss. (Answer Items f and g) In her response to the FORM, she submitted documentary evidence that payments of \$5,907 and \$12,360 were paid through ERAP. She was notified on October 30, 2024, that there were balances due, and she timely made the required payments in November and December 2024 (AX A at 6-11)

SOR ¶ 1.h: Account placed for collection of \$386. In Applicant's answer to the SOR, she stated that she had no knowledge of this debt and that its contact information appeared to be invalid. She stated that she had disputed the debt with the credit bureau. The August 2024 credit report reflected that the original creditor was a telecommunications provider, and that the debt was disputed. In her response to the FORM, she submitted evidence that the dispute was resolved in her favor. (AX A at 30)

SOR ¶¶ 1.i and 1.j: Credit-card accounts charged off for \$1,195 and \$867. In Applicant's answer to the SOR, she stated that these debts were included in the Chapter 7 bankruptcy. (Answer Items i and j) However, in her response to the FORM, she provided documentary evidence that both debts were settled in December 2024 for less than the full amount. The account numbers for the two credit-card accounts in her FORM response are not the same as the account numbers alleged in the SOR, but they are the only two debts to this creditor reflected in the credit reports that were the basis for the SOR. I am satisfied that the debts alleged in SOR ¶¶ 1.i and 1.j were settled in December 2024 and not in the Chapter 7 bankruptcy.

SOR ¶ 1.k: Homeowners association debt reduced to judgment for \$1,300. Court records reflect that this judgment was satisfied on September 13, 2024, a week before she received the SOR. (Answer Item k).

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* at 531. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is "less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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. 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* at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 evidence in the FORM establish the following 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 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to 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 delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant has experienced several conditions largely beyond her control: loss of employment during COVID-19, a divorce, and unusual medical expenses for a child. She acted responsibly regarding the delinquent rent during COVID, alleged in SOR ¶¶ 1.f and 1.g, by seeking help through ERAP and timely paying the balance due as soon as she was notified of it, and she resolved the debt in SOR ¶ 1.k before she received the SOR. However, she has not acted responsibly regarding the other debts in the SOR. Notwithstanding her delinquent debts, she took foreign trips in August 2021, November 2022, and June 2023. The debts alleged in SOR ¶¶ 1.d-1.g and 1.i-1.j were not resolved until after she received the SOR. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(c) is established. Applicant engaged the services of a financial management company in November 2024, and there are clear indications that her financial problems are being resolved, albeit not until after she received the SOR and realized that her security clearance was in jeopardy.

AG ¶ 20(d) is not established. Chapter 7 bankruptcy is a legitimate means of resolving debts, but it does not constitute a good-faith effort within the meaning of the

Directive. The fact that a debt is not collectable does not establish that the debt has been resolved within the meaning of the Directive. ISCR Case No. 10-03656 (App. Bd. Jan. 19, 2011). Payment under pressure of qualifying for a security clearance is not a good-faith effort within the meaning of the Directive.

AG ¶ 20(e) is established for the telecommunications debt alleged in SOR ¶ 1.h. It is not established for the other debts alleged in the SOR.

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(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 have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). 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). Applicant has made progress in resolving her financial problems. She may well qualify for a security clearance at some time in the future, but she has not yet reached that point. "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." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991). 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:

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

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.e:	Against Applicant
Subparagraphs 1.f-1.h:	For Applicant
Subparagraphs 1.i and 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge