



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



In the matter of:

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2025

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on September 8, 2022. On September 17, 2024, the Department of Defense (DoD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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) implemented by the DoD on June 8, 2017.

Applicant answered the SOR on October 15, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 17, 2024, and the case was assigned to me on January 13, 2024. Applicant requested an expedited hearing. On January 22, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 6, 2025. I convened the hearing as scheduled. Government Exhibits (GE) 1, and 3 through 6 were

admitted in evidence without objection. Applicant objected to GE 2, a Report of Enhanced Subject Interview, dated October 26, 2022, with follow-on interview on August 9, 2023. I sustained Applicant's objection. Applicant provided documents with her Answer, testified, and submitted Applicant's Exhibits (AE) A through P at the hearing, which were admitted without objection.

I kept the record open to enable Applicant to submit additional documentary evidence. Applicant timely submitted AE T through Z, which were admitted without objection. DOHA received the transcript (Tr.) on February 19, 2025. The record closed on March 3, 2025.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.b, 1.g-1.h and 1.j and denied SOR ¶¶ 1.c-1.f and 1.i.

Applicant is a 36-year-old employee of a defense contractor. She has been employed by her sponsor since April 2024. She was laid off in September 2024 pending a determination on her security clearance. She is currently collecting \$430 a week in unemployment from her state. She was unemployed for about eight to nine months while in school. She graduated high school in 2005 and earned a professional certificate in information technology in 2022. She received an interim security clearance when she was hired by her sponsor. She is a single mother of five children ranging in age from 4 to 17. One child has special needs. She receives about \$900 in child support a month and additional support for her disabled child. (GE 1; Tr. 22-25; 59-60.)

Applicant testified to being a victim of identity theft. She had two accounts opened between August 2020 and May 2022 in her name. She filed a police report on the matter. She was contacted in 2022 or 2023 by an agent from the Department of Justice and told her that someone had "compromised [her] identity" and had applied for Federal unemployment. (Answer; Tr. at 70-71.)

SOR ¶ 1.a: a judgment entered in May 2019 in [District Court] in the amount of \$4,500, which remains delinquent. In her Answer, Applicant admitted the debt and stated it arose from a cosigned loan with her stepfather. She had only cosigned for \$800. She was not sure what had resulted in the higher amount, possibly "interest, late fees, and attorney fees." The creditor had her served on May 2, 2019, with notice of the lawsuit. Her stepfather had worked out an agreement with the creditor and was making payments from February 2019 until the lawsuit. Her stepfather passed away in August 2023. The judgment resulted in her wages being garnished in October 2023. She went to court in December 2023 and in January 2024 and a judge terminated the garnishment. She was advised by counsel to stop payments and have her stepfather's estate resolve the debt. After her interim clearance was revoked in September 2024, she entered into an agreement to make monthly payments on the portion of the loan she cosigned for. She presented her payment receipts from October 2024 through January 2025 and confirmed

a payment made on February 14, 2025, to the creditor. (Answer at 1, 5; AE D-G, AE W; Tr. 25-30; 65, 70.)

SOR ¶ 1.b: indebted to a cellular phone carrier for an account placed for collection in the amount of \$1,908, which remains delinquent. In her Answer, Applicant admitted the debt and stated she switched phone carriers and was charged an early termination fee. She is working with the carrier to setup payment arrangements to pay this debt off. After her interim clearance was revoked in September 2024, she reached back out to the creditor to setup a new payment arrangement. She provided a January 16, 2025 letter showing her payment arrangement to settle the debt by making four \$281.51 payments on 01/22/2025, 01/29/2025, 02/12/2025, and 02/26/2025, and provided a February 28, 2025 letter from the carrier stating the account had been settled. (Answer; AE K; AE V; Tr. 30-32, 70.)

SOR ¶ 1.c: indebted to a cable tv provider for an account placed for collection in the amount of \$1,152, which remains delinquent. In her Answer, Applicant denied the debt and stated she had returned the equipment when she canceled her service in 2021. She disputed the debt on her credit report. She testified she returned the equipment during the COVID pandemic in approximately April 2021. "I did turn in the equipment, but they can't find it. So, it's like I'm stuck with paying, you know, this debt off." The last payment on the account was April 16, 2021. In March of 2022 she had engaged a credit law firm to challenge this debt. Even though she disputes this debt she has tried to negotiate a settlement so that matter would no longer be on her credit report and jeopardize her security clearance eligibility. She made a \$150 payment on January 22, 2025 and provided a March 3, 2025 payment receipt for \$200 to the creditor. (GE 4-6; AE A, AE B, AE S, AE X; Tr at 33-35, 61-62.)

SOR ¶ 1.d: delinquent account placed for collection in the amount of \$790. In her Answer, Applicant denied the debt and stated she was the victim of identity theft. She adamantly maintained at the hearing she was not admitting this debt. She provided a police report with her Answer. She noted her credit report shows her dispute. She maintains that this debt was incurred by fraud. Even though she disputes this debt she negotiated a settlement of \$280 and paid it on January 17, 2025, so that it would no longer be on her credit report and jeopardize her security clearance eligibility. (GE 4-6; AE C; Tr. 36-37, 61-62.)

SOR ¶ 1.e: delinquent account charged off in the approximate amount of \$503. In her Answer, Applicant denied the debt and stated she was the victim of identity theft. She testified this was a credit card that was opened "in fraud." She provided a police report with her Answer. She noted her credit report shows her dispute. She testified the credit bureau informed her that they had investigated the matter and that the account was closed, and that the account was removed from her credit report. She maintained it had not simply fallen off her credit report after seven years. She provided a February 12, 2025 letter from the creditor stating, "we have completed our investigation and have determined you are not responsible for the disputed account. We have sent information to the major

consumer reporting agencies to remove the account from your consumer file." (GE 4-6; AE M; AE V; Tr. 37-40.)

SOR ¶ 1.f: delinquent account charged off in the approximate amount of \$489. In her Answer, Applicant denied the debt and stated the debt had been returned to the original creditor in November 2023. In March of 2022 she had engaged a credit law firm to challenge this debt. She stated the balance owed on the account was zero and the account was closed. She testified she was informed over the phone by the original creditor that the balance was zero. She has not made any payments on this account. (GE 4-6; Answer; AE S; Tr. 40-42.)

SOR ¶ 1.g: delinquent car loan past due in the approximate amount of \$28,693. In her Answer, Applicant admitted the debt. It was a car loan for a 2014 vehicle she purchased in 2018. The account became overdue in 2021, which was when she made her last payment until her security clearance application. She initiated contact with the creditor shortly after receiving the SOR. She denied this contact was initiated due to the SOR and said it was part of an ongoing dispute over a warranty for the vehicle. She had been going back and forth with the dealers and the creditor. The creditor advised her that whatever issues she was having with the vehicle and the warranty that she needed to go back to the place where she purchased it. The dealer, without admitting liability, ultimately paid her \$2,000 to resolve the matter. The creditor never picked the car up and it does not run due to a transmission issue. She has an agreement with the creditor to settle the debt with a one-time payment. After the hearing she continued to communicate with the creditor. The creditor granted her an extension on the agreement because she was unemployed. (Answer; AE N-R; AE Y; Tr. at 42-51, 66-69.)

SOR ¶ 1.h: delinquent account past due in the approximate amount of \$60, with a total balance of \$620. In her Answer, Applicant admitted this debt and stated it was no longer delinquent after she completed a payment of \$125 in December 2024. She attached a payment receipt with her answer, which reflects her actions after receipt of the SOR. (Answer; AE H; Tr. at 51.)

SOR ¶ 1.i: delinquent consumer account placed for collection in the approximate amount of \$635. In her Answer, Applicant denied the debt on the basis she had been the victim of identity theft. In March of 2022 she had engaged a credit law firm to challenge this debt. The firm sent a letter on her behalf in April 2022 requesting validation of the loan. She attached a copy of a police report to her Answer. She stated she had disputed this with the creditor and informed the credit bureaus and that the debt was removed from her credit report in November of 2023 on the basis of identity fraud. (GE 4-6; Answer; AE T; Tr. 51-54.)

SOR ¶ 1.j: delinquent media account placed for collection in the approximate amount of \$475. In her Answer, Applicant acknowledged she told the investigator during her security clearance interview she would set up a payment plan but that it did not happen. In March of 2022, she engaged a credit law firm to challenge this debt. The firm sent a letter on her behalf in April 2022 requesting validation of the loan. She ultimately

resolved the debt, and the creditor issued a September 27, 2024 letter stating the account had a zero balance. (Answer; AE T; Tr. at 54-56.)

Applicant requested her hearing and decision be expedited. Therefore, many of her actions involving her debts were in close proximity to the hearing. However, her testimony regarding her actions prior to the security clearance application process is supported by documentary evidence. (AE Q, AE S, AE T; GE 1; Tr. 61-62.)

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)

Applicant's admissions and the evidence admitted at the hearing 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 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

AG ¶ 20(a) is established. Applicant's delinquent debts occurred while she was underemployed and in school. These are circumstances that are unlikely to recur. She has established her reliability, trustworthiness, and good judgment by providing evidence that she is paying off debts, hired a credit law firm prior to her September 2022 SCA, was communicating with creditors to resolve debts in dispute, and made payments on debts she disputed to demonstrate her reliability and good judgment.

AG ¶ 20(b) applies because Applicant's debts occurred due to circumstances beyond her control. She supported her testimony concerning her major debt, the delinquent car loan, with her efforts to negotiate a resolution and that she had incurred repair costs that were not honored by the warranty she had purchased. She supported testimony regarding identity theft with documentary evidence, including a creditor removing a debt after their investigation. She has demonstrated that she acted responsibly under the circumstances by making payments on debts whenever she had the financial resources. She provided sufficient evidence to show that she acted responsibly under the circumstances to resolve them. AG ¶ 20(b) is established.

AG ¶ 20(d) is established. Applicant provided substantial evidence that she was active in resolving her debts going back to 2020. When she had additional income available, she initiated and has adhered to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant does not present a perfect case in mitigation, but perfection is not required. She documented that she was engaged in her finances prior to the SOR being issued. After the SOR was issued she sought an expedited hearing and during that limited time period she continued trying to mitigate the security concerns. Under the circumstances of this case, I find that her finances no longer generate questions about her judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about her finances are mitigated.

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). Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-j: For Applicant

Conclusion

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.

Charles C. Hale
Administrative Judge