



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-00017

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel

For Applicant: *Pro se*

01/28/2016

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges 13 delinquent debts totaling \$33,051. She failed to provide sufficient information about her finances and progress resolving her SOR debts. Financial considerations security concerns are not mitigated. Access to classified information is denied.

**History of the Case**

On January 23, 2014, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 2) On August 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a statement of reasons (SOR) pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF made a preliminary decision to deny or revoke Applicant's eligibility for access to classified information. Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

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Applicant provided an undated response to the SOR, and she did not request a hearing. On October 19, 2015, Department Counsel completed the File of Relevant Material (FORM). On October 27, 2015, Applicant received the FORM. Applicant did not respond to the FORM.<sup>1</sup> On January 7, 2016, the case was assigned to me. The Government's case consisted of five exhibits. (Items 1-5)

### **Findings of Fact<sup>2</sup>**

In Applicant's SOR response, she admitted the allegations in SOR ¶¶ 1.a through 1.k and 1.m. She denied SOR allegation ¶ 1.l. She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 32-year-old administrative assistant employed by a defense contractor since August 2012.<sup>3</sup> In 2001, she graduated from high school, and in 2007, she received a bachelor of arts degree. She has never served in the military. She has never married, and she has a one year old child.

### **Financial Considerations**

Applicant's history of delinquent debt is documented in her credit report, SF 86, and SOR response. Her 13 delinquent SOR debts totaling \$33,051 are described as follows: ¶ 1.a is a past-due debt for \$1,025; ¶ 1.b is a past-due debt for \$2,482; ¶ 1.c is a debt placed for collection for \$1,876; ¶ 1.d is a telecommunications debt placed for collection for \$511; ¶ 1.e is a past-due medical debt for \$307; ¶ 1.f is a debt placed for collection for \$111; ¶ 1.g is a charged-off debt for \$2,617, which resulted when her vehicle was stolen and totaled; ¶ 1.h is a charged-off debt for \$14,493; ¶ 1.i is a debt placed for collection for \$8,071; ¶ 1.j is a medical debt for \$397; ¶ 1.k is a telecommunications debt placed for collection for \$192; ¶ 1.l is a telecommunications debt placed for collection for \$491; and ¶ 1.m is a past-due student loan debt for \$479.

There is no evidence that Applicant received financial counseling. There is no evidence that she abused alcohol or used of illegal drugs. She disclosed several delinquent debts on her SF 86.

In Applicant's SOR response, she said she was making monthly payments on of \$50 to \$150 on the SOR debts in ¶¶ 1.a, 1.b, 1.d-1.k, and 1.m. She said she had paid the debt in SOR ¶ 1.c on February 19, 2015. She disputed the debt in SOR ¶ 1.l. She

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<sup>1</sup>The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated October 21, 2015, and Applicant's receipt is dated October 27, 2015. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to submit information.

<sup>2</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>3</sup>Unless stated otherwise, the source for the information in this paragraph is Applicant's January 23, 2014 Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 2)

disclosed her student loans are past due; however, she is making payments to bring them to current status. She had medical bills, which resulted from being rushed to the emergency room, and she did not have health insurance. She said she was working diligently to bring all debts to current status, and she is an honest and loyal employee and citizen.

Applicant's FORM noted the absence of "documentary evidence in the administrative record that Applicant has paid, arranged to pay, settle, compromise, or otherwise resolve any of the delinquent accounts alleged in the SOR." (FORM at 3) The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her financial problems and other mitigating information and explained that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3) As indicated previously, Applicant did not respond to the FORM.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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 meeting the criteria contained in the revised adjudicative guidelines. These guidelines 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 overarching 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.

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 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 "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, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 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 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

### Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in her credit report, SF 86, and SOR response. Her records document evidence of 13 delinquent SOR accounts totaling \$33,051. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

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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;<sup>4</sup> 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.

The 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

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<sup>4</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the 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 merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

*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).

Applicant’s conduct in resolving her delinquent debt does not warrant full application of any mitigating conditions to all of her SOR debts; however, she presented some important mitigating information. Applicant disclosed two circumstances beyond her control that adversely affected her finances. She had medical problems, and she did not have medical insurance. Her vehicle was stolen and totaled. She did not provide details about the degree of impact of these circumstances beyond her control. She did not describe financial counseling.

Applicant did not provide any of the following documentation relating to the other SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditors; (2) correspondence to or from any creditors to establish maintenance of contact with creditors;<sup>5</sup> (3) credible debt disputes indicating she did not believe she was responsible for the debts and why she held such a belief; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these debts; or (5) other evidence of progress or resolution of her debts.

Applicant said she disputed the debt in SOR ¶ 1.I. She failed to establish mitigation under AG ¶ 20(e) because she did not provide a copy of her letter to the creditor and credit reporting companies disputing her responsibility for the debts.

Applicant’s failure to provide more detailed information and corroborating documentation shows a lack of judgment and responsibility that weighs against approval of her security clearance. There is insufficient evidence about why she was unable to make greater progress resolving most of her SOR debts. There is insufficient assurance that her financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, she failed to establish that financial consideration security concerns are mitigated.

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<sup>5</sup>“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The 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.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant is a 32-year-old administrative assistant employed by a defense contractor since August 2012. In 2001, she graduated from high school, and in 2007, she received a bachelor of arts degree. Her medical problems and the theft of her vehicle adversely affected her finances. She did not provide any employer evaluations or character statements. There is no evidence of abuse of alcohol or use of illegal drugs. She disclosed some of her financial problems on her January 23, 2014 SF 86.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. Her SOR alleges 13 delinquent debts totaling \$33,051. She did not provide any corroborating or substantiating documentary evidence of payments to her SOR creditors, payment plans, or her communications to those creditors. She did not provide documentation showing her attempts to resolve those 13 debts in good faith. Her failure to provide more corroborating documentation shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to

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Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of her past-due debts, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated, and it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time. Financial considerations concerns are not mitigated.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.m:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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.

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MARK HARVEY  
Administrative Judge