



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-00537
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2016

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant did not meet her burden of producing information that mitigates the security concerns about her past-due or delinquent debts. Her request for access to classified information is denied.

**Statement of the Case**

On January 8, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for access to classified information required as part of her employment with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>1</sup>

<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On August 5, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).<sup>2</sup> Applicant timely responded to the SOR and requested a decision without a hearing. On October 22, 2015, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)<sup>3</sup> in support of the SOR. Applicant received the FORM on November 2, 2015, and had 30 days from the date of receipt to submit additional information in response to the FORM. Applicant did not submit additional information within the time allotted. The record closed on December 2, 2015, and the case was assigned to me on January 5, 2016.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes \$23,889 for 13 delinquent or past-due accounts (SOR 1.a - 1.m). It was also alleged that in November 2006, Applicant was arrested and charged with shoplifting (SOR 1.n); and that in January 2014, she was arrested and charged with larceny over \$250 (SOR 1.o). In her Answer, Applicant admitted all of the allegations and provided explanatory comments. (FORM, Item 1) In addition to the facts established by her admissions to the remaining allegations, I make the following findings of fact.

Applicant is a 33-year-old employee of a defense contractor, where she has worked since January 2014. She is a single mother with two children, ages 13 and 5. Since June 2013, she has cohabited with her boyfriend. This is her first application for a security clearance.

At various times between September 2003 and June 2012, Applicant attended community college and technical school. The debts alleged at SOR 1.a, 1.g, and 1.h consist of unpaid student loans she used to pay for her tuition. They total \$20,069, or about 85 percent of the total debt alleged in the SOR.

When Applicant submitted her EQIP, she disclosed the arrests at SOR 1.n and 1.o, as well as three delinquent credit card accounts, in response to EQIP Section 26 (Financial Record) questions. On February 12, 2014, she was interviewed by a Government investigator and discussed the results of a credit report obtained as part of her background investigation. (FORM, Items 3 and 6)

Applicant attributed her financial problems to periods of unemployment and underemployment which caused her to fall behind on her bills. Additionally, for several years she has suffered from a psychiatric disorder for which she started receiving effective treatment after her January 2014 larceny arrest. At that time, she had been unemployed for about 18 months after her condition caused her termination from a job she had held for almost four years. While unemployed, she had no medical insurance and whatever income she had was not sufficient to pay her student loans or her regular

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<sup>2</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included five exhibits (Items 1 - 5) proffered in support of the Government's case.

monthly obligations. Applicant's two arrests were motivated by financial difficulty and poor decision making caused by her psychiatric condition, which she is now managing successfully with medication. (FORM, Items 2 and 6)

Applicant has not paid or otherwise resolved any of the debts listed in the SOR. She is able to meet her regular obligations using her income from her current job and her boyfriend's income. Applicant's mother died recently, and Applicant expects to receive insurance proceeds with which she can pay off many of her debts. The record does not contain any detailed information about Applicant's current monthly finances. (FORM, Items 2 and 6)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.<sup>6</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>7</sup>

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<sup>4</sup> Directive, 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> Directive, E3.1.14.

<sup>7</sup> Directive, E3.1.15.

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.<sup>8</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>9</sup>

## Analysis

### Financial Considerations

The Government met its burden of production in support of the allegations in the SOR. The facts established herein raise a security concern addressed, in relevant part, at AG ¶ 18 as follows:

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 19(f) (*financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern*). This record presents reasonable security concerns about a significant amount of unpaid debts that are still unresolved, and which arose, in part, from a serious psychiatric condition. Indeed, her two arrests were motivated by unstable judgment, a manifestation of her condition, and by financial distress.

By contrast, I have considered the following pertinent AG ¶ 20 mitigating conditions apply:

(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;

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<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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; 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.

Applicant's psychiatric problems are no longer of concern, because she has been able to hold a steady job and is managing her condition with medication. Nonetheless, this record does not support application of any of these mitigating conditions. Applicant's debts are current, as they have not been paid or otherwise resolved. She has not established that any of the debts are not hers, she has not made any payments on her debts, and she has not sought any financial counseling or other professional help for her financial problems. Even though her financial problems stem largely from the interconnection of her psychiatric condition and a long period of unemployment, available information does not show that she has acted responsibly under the circumstances. Applicant has been gainfully employed for over two years and has not taken any discernable action regarding her debts.

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant had the burden of presenting sufficient information to refute the SOR allegations or to mitigate the security concerns established by the Government's information. Without such information, doubts remain about her suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

### **Formal Findings**

Formal findings 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 - 1.o:                   Against Applicant

## **Conclusion**

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge