



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. 18-02341

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel

For Applicant: *Pro se*

03/29/2019

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**Decision**

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WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant failed to mitigate the security concerns regarding her financial considerations. Eligibility for access to classified information is denied.

**Statement of Case**

On October 9, 2018, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken 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 Security Executive Agent, Directive 4, National Adjudicative Guidelines (SEAD 4), effective June 8, 2017.

Applicant responded to the SOR on November 8, 2018, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on January 7, 2019 and interposed no objections to the materials in the FORM, and did not supplement the FORM. The case was assigned to me on March 22, 2019.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 37 delinquent medical, consumer, and tax debts exceeding \$52,000. Allegedly, these debts remain unresolved and outstanding.

In her response to the SOR, Applicant admitted all but three of the alleged debts. She denied SOR debts ¶¶ 1.f (a disputed consumer debt for \$750), 1.ii (1.ii (a federal tax debt for \$2,000 that she disputes as to amount); and 1.mm (a state tax debt for \$7,000 that she disputes as to amount) She added explanations for the debts she admitted. For these debts she claimed she intends to set payment arrangements to pay off the debts, but is unable to do so at the present time due to her limited income.

### **Findings of Fact**

Applicant is a 43-year-old service desk analyst for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in 2017 and has two minor children (ages nine and two) from a prior relationship. (Items 3-4 and 7) She attended vocational classes between July 2003 and September 2004, but earned no degree or diploma. She earned a certificate in cosmetics in November 2003 and has taken university classes from August to December 2013 without earning a degree or diploma. (Items 3-4) Applicant reported no military service.

Since February 2017, Applicant has worked for her current employer. (Item 3) Previously, she worked for other employers in various types of positions. (Item 3) Some of Applicant's past work experience consisted of teaching in private schools (from June 2005 to March 2009). (Items 3-4)

### **Applicant's finances**

Between 2008 and 2018, Applicant accumulated 37 delinquent medical, student loan, and consumer debts exceeding \$43,000. (Items 5-7) Besides these debts, she incurred federal and state tax delinquencies for tax year 2014 in the amount of \$2,000 (federal taxes) and \$7,000 (state taxes). (Items 5-7)

To date, Applicant has made no documented progress in addressing listed delinquent debts. While she claimed an intent to work out payment arrangements with her creditors, she cautioned that she was not in a position at this time to pay on any of her admitted debts.

Addressing the three debts she denies (SOR debts ¶¶ 1.f and 1.ii and 1.iii), Applicant failed to provide any proof that the disputed 1.f debt did not belong to her, or what payments she claimed to have made towards satisfaction of the alleged federal and state taxes owing for tax year 2014. Without evidence to corroborate her claims, the information taken from her credit reports must be accorded presumptive accuracy and reliability. (Items 5-7)

Applicant attributed some of the debt delinquencies to emergent surgical procedures and hospitalization for her son in 2010. Medical bills began accumulating following her son's release from the hospital, and Applicant was unable to keep up with them. (Item 7) Her problems with her accrued medical bills were compounded by the loss of both her job and her husband's job. (Item 7) In a personal subject interview (PSI) with an investigator from the Office of Personnel Management (OPM) in November 2017, Applicant confirmed that she joined an on-line support group that provides advice on improving credit scores. (Item 7) She adamantly denied that she was receiving financial counseling and indicated that she will continue to contact her creditors until she has established payment plans with each of them. (Item 7) To date, however, she has provided no evidence of establishing payment plans with any of her creditors

Applicant did not provide any character references, performance evaluations, or personal financial information to assess her available income sources and any extenuating circumstances to consider in evaluate her overall financial situation.

### **Policies**

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG

¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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 chances; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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 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 of dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Security concerns are raised over Applicant’s accumulation of delinquent debts: medical, student loan, consumer, and federal and state taxes owed for tax year 2014. Altogether, Applicant accumulated over \$52,000 in delinquent debts over a five-year period (2008-2013) that she has not addressed to date. Applicant’s debt delinquencies warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; and 19(c), “a history of not meeting financial obligations.”; and 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”

Applicant’s admitted delinquent debts negate the need for any independent proof. See Directive 5220.6 at E3.1.14; *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant’s admitted debts are fully documented and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving tax filing lapses and debt delinquencies.

Historically, the timing of addressing and resolving federal and state tax delinquencies and other debt delinquencies are critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a

sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's cited circumstances (i.e., surgical procedures for her son and resulting medical bills and unemployment for both herself and her husband) are extenuating and entitle Applicant to partial mitigation credit for her inability to address her debt delinquencies. MC ¶ 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), and the individual acted responsibly under the circumstances," has partial application to Applicant's situation. Her failure to address her debt delinquencies after she returned to full time employment status precludes her, however, from taking advantage of the "acted responsibly" prong of MC ¶ 20(b).

Similarly, satisfaction of Applicant's evidentiary burden of providing probative evidence of her addressing her debt delinquencies requires more documentation of her working payment efforts than she has provided in her submissions. While her extenuating circumstances are highly probative, they are not enough to mitigate her major financial delinquencies without more evidence of past and recent efforts to address her delinquent debts.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts, and implicitly where applicable the timely resolution of federal and state tax debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, her failures or inability to establish documented payment initiatives with her listed SOR creditors, both before and after the initiation of the security clearance process, preclude favorable findings and conclusions with respect to raised security concerns over the state of her finances.

### **Whole-Person Assessment**

Whole-person assessment is unfavorable to Applicant. She has shown insufficient progress to date in addressing her delinquent debts to merit enough positive credit to mitigate financial concerns. Overall, Applicant's actions to date in addressing her finances reflect too little evidence of restored financial responsibility and judgment to overcome reasonable doubts about her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Conclusions are warranted that her finances are not sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.mm:

Against Applicant

**Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge





