



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 12-07446
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by her delinquent debts. She did not supply sufficient evidence reflecting what steps, if any, she has taken to address her past-due debts and take control of her finances. Clearance is denied.

**Statement of the Case**

On July 3, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances, specifically, five delinquent debts totaling over \$20,000, raised security concerns under the financial considerations guideline.<sup>1</sup> On August 3, 2015, Applicant answered the SOR, admitted all the SOR allegations, waived her right to a hearing, and elected to have her case decided on the written record (Answer). In her Answer, Applicant claimed that she paid or was in the process of paying several of the delinquent debts listed in the SOR.

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<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

On October 17, 2015, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. The FORM contains five documents that are admitted into the record without objection as Exhibits 1 – 5.

On December 1, 2015, Department Counsel forwarded Applicant's response to the FORM (Response), noting the Government had no objection to its admission. In the Response, Applicant states: "All information is correct. Please move forward." The Response is marked and admitted into the record as Exhibit (Ex.) 6.

On January 20, 2016, I was assigned Applicant's case. On my own motion, I opened the record to provide Applicant an opportunity to submit documentation to corroborate her claims that she addressed or was in the process of addressing her past-due debts. See Administrative Exhibit (Ax.) I. Applicant did not submit any additional information or documentation, and the record closed on February 5, 2016.

### **Findings of Fact**

Applicant, 50, is married. She is a high school graduate and served in the U.S. military from 1983 to 1992, receiving an honorable discharge. She has been employed full time since at least June 1996, except for a four-month period of unemployment in 2010. She is a painter for a federal contractor, and submitted a security clearance application (SCA) in March 2012 in connection with her employment.

In the SCA, Applicant disclosed that she was experiencing tax-related financial issues. She further expanded on her tax-related problems during her security clearance background interview in May 2012. Notably, Applicant discussed with the investigator a \$3,000 past-due property tax debt from either 2007 or 2008. This tax debt is referenced in SOR 1.e.

During the course of the background investigation, Applicant also revealed that she failed to timely file her 2010 federal and state tax returns. She told the background investigator that she filed them in 2012. Applicant also told the background investigator that her wages were being garnished to satisfy past-due personal property taxes for the years 2007 through 2010.<sup>2</sup>

Applicant now claims that she satisfied the \$3,000 property tax debt listed in SOR 1.e. Applicant submitted a release of tax lien, but it does not clearly indicate which of the property tax debts, i.e., the 2007 / 2008 property tax or the 2007 – 2010 personal property taxes, was actually satisfied. The release, however, was sent to the attention of Applicant's payroll department presumably to stop the garnishment of her wages that were levied to satisfy the 2007 – 2010 personal property taxes.

In addition to the \$3,000 property tax debt, the SOR lists four other past-due debts. These non-tax related debts total about \$18,000, and range from a \$330

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<sup>2</sup> These other tax-related financial problems were not alleged in the SOR and are only being considered in assessing Applicant's mitigation case and whole-person concept.

collection account to a 2009 judgment for \$8,295. Applicant claims to have addressed some of these non-tax related SOR debts, but did not provide any documentation to corroborate her claims. She claims her financial issues stem from a divorce in 2007. She did not submit evidence of having sought or received financial or debt counseling, or information regarding the current state of her finances.

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that applicants are afforded the due process provided by the Directive. Judges make certain that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty in accurately assessing the security suitability of an individual and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may

deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The financial considerations security concern is explained at AG ¶ 18:

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.

The record evidence establishes by substantial evidence that Applicant accumulated over \$20,000 in past-due debt. As of the close of the record, this debt remains unsatisfied, including a sizeable judgment from 2009. This evidence is sufficient to raise the financial considerations security concern, and the disqualifying conditions listed at AG ¶¶ 19(a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligations.

The financial considerations guideline lists a number of conditions that could mitigate the security concern. The following mitigating conditions are most relevant:

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), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated 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.

Applicant claims her financial situation is related to her 2007 divorce. However, over eight years have passed since the divorce, and notwithstanding nearly full-time employment since then, Applicant did not supply sufficient supporting documentation of what, if any, steps she has taken to responsibly address her past-due debts or basis upon which to dispute them. Applicant's past-due debt is substantial and, in light of the lack of corroborating documentation, I find the SOR debts remain unresolved as of the close of the record. AG ¶¶ 20(a), 20(b), and 20(e) do not apply.

Furthermore, even if I were to assume that the tax debt referenced in SOR 1.e was satisfied through garnishment, such does not amount to a good-faith effort to resolve the debt because Applicant did not voluntarily pay it. Rather, the creditor was forced to seek a legal remedy to compel her to pay the debt. Moreover, even without reference to the tax debt in SOR 1.e, a substantial amount of delinquent debt remains. These debts were originally brought to Applicant's attention during her 2012 background interview. AG ¶ 20(d) does not apply.

Applicant did not provide information regarding the current state of her finances, and the record is devoid of any evidence of financial counseling. Without substantial evidence of financial reform, I am unable to affirmatively conclude that Applicant's finances are under control. AG ¶ 20(c) does not apply.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to this nation's secrets.<sup>3</sup> Applicant failed to meet her burden.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F and highlight some additional whole-person factors.

I gave due consideration to all the favorable and extenuating factors in this case, to include Applicant's honorable military service and candor in disclosing and discussing her financial situation during the course of the security clearance process. Also, the

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<sup>3</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

extensive time lag from Applicant's submission of her security clearance application to the adjudication of her case by the DOD CAF (over three years) may have led her to incorrectly assume she had mitigated any security concerns raised by her background investigation, to include her finances. However, any such misimpression should have been quickly dispelled when Applicant received the SOR, which placed her on clear notice that her past-due debts were a security concern. Additionally, the FORM and other relevant record documents placed her on notice of the need to provide documentation to corroborate any claims of debt resolution.<sup>4</sup>

Applicant did not take the opportunity afforded to her by the delay in the adjudication of her case to responsibly address her past-due debts in order to mitigate the concerns raised by her finances. Accordingly, notwithstanding the favorable information in the record, the security concerns raised by her past-due debts remain. Overall, the record evidence leaves me with doubts about her present eligibility for access to classified information.

### 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 (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant

### Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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<sup>4</sup> See Hx. I, Letter to Applicant, dated January 21, 2016 ("You did not supply any documentation to support your claims of having taken steps to address the debts listed in the SOR (beyond the release of tax lien letter from 2012). I want to make sure that I have all the information you want me to consider in deciding your case. **Remember you bear the burden of mitigating the security concerns addressed in the SOR and ultimately it is your burden to establish that it is clearly consistent with the national interest to be granted access to classified information. By electing to represent yourself and relying solely on the written record, you bear the burden of presenting clear, concise, and unambiguous documentary evidence in support of your position.**") (emphasis in original).