



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



In the matter of:  REDACTED  Applicant for Security Clearance	) ) ) ) )	ISCR Case No. 14-03022
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**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

09/30/2015

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by her financial situation. She responsibly addressed the majority of her past-due debts and her finances appear to be under control. Clearance is granted.

**Procedural History**

On July 28, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant's circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> On September 11, 2014, Applicant answered the SOR, waived her right to a hearing, and requested a decision on the written record (Answer). See Hearing Exhibit I (Applicant requests administrative determination).

<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 April 23, 2015, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. The FORM contains four documentary exhibits that are admitted into evidence, without objection, as Exhibits (Ex.) 1 – 4. Applicant did not submit a response to the FORM or any documents within the allotted 30-day period. See Hearing Exhibit 1 (Applicant acknowledges receipt of FORM on May 11, 2015).

On July 18, 2015, I was assigned Applicant's case. On my own motion, I opened the record to provide Applicant a final opportunity to submit a response to the FORM and relevant documents. The original deadline was twice extended due to technical issues in transmitting the notice reopening the record and receiving Applicant's submission. See Hx. III – V. Applicant submitted documentation regarding the satisfaction of one of the SOR debts, Ex. 5, by the deadline. Ex. 5 was admitted without objection, and the record closed on September 11, 2015.

### **Findings of Fact**

Applicant, who is in her mid-forties, is divorced with two children. She is a high school graduate. She has owned and lived in her home since 1992. She has been a federal contractor since 2006, working for her current employer as a quality inspector. She supplements her income with part-time work as an animal trainer.

Applicant submitted a security clearance application (SCA) in 2013. She disclosed that she was experiencing financial trouble. She noted that her mortgage had become delinquent when her former husband, who was responsible for paying the mortgage, had failed to do so. She went to court to remedy the situation and contacted her lender to modify the loan. She was able to modify the loan and is paying her mortgage.<sup>2</sup> A recent credit report, Ex. 4, corroborates her statement.<sup>3</sup>

Applicant also revealed in her SCA two delinquent debts for a past-due credit card account and a delinquent car loan that her former husband was responsible for paying.<sup>4</sup> She submitted documentation that the \$12,000 credit card debt was satisfied in June 2015,<sup>5</sup> and the recent credit report reflects that the \$7,000 car debt was satisfied in March 2015.<sup>6</sup> These two debts are listed at SOR ¶¶ 1.a and 1.b. In addition to these paid debts, the background investigation uncovered six medical accounts in collection status. These medical accounts together total less than \$800, and are listed at SOR ¶¶ 1.c – 1.h. Applicant denies these alleged medical debts.

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<sup>2</sup> Ex. 1 at 31.

<sup>3</sup> Ex. 4, *Trade Lines* 3 and 13.

<sup>4</sup> Ex. 1 at 28-30.

<sup>5</sup> Ex. 5.

<sup>6</sup> Ex. 4, *Public Records* 1.

## 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, 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.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

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 at times in making suitability determinations 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.<sup>7</sup>

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.

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.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

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<sup>7</sup> See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“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.”).

## Analysis

### Guideline F, Financial Considerations

The security concern under this guideline 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.

Applicant's recent financial problems raise the financial considerations security concern. It also establishes the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The guideline also lists a number of conditions that could mitigate the 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; and

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

Applicant's financial problems appear to stem from her divorce after nearly 20 years of marriage and her former husband's failure to live up to his legal obligations to pay debts that he accepted as part of the divorce. Applicant responsibly addressed the majority of her past-due debts. Specifically, she modified her mortgage and brought it current. Additionally, she submitted evidence of having satisfied her past-due credit card account and a recent credit report reflects that her past-due vehicle account has been satisfied. The remaining SOR debts, which together total less than \$800, do not undercut the significant efforts Applicant has made to take control of her finances.

Furthermore, her demonstrated track record of debt repayment provides sufficient assurance that she will address any remaining debts and continue to manage her finances in a manner expected of those granted access to classified information. AG ¶¶ 20(a) through 20(d) 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>8</sup> Applicant met 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 all the relevant circumstances, to include the nine factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F, and note some additional whole-person factors. Applicant has been upfront and candid about her financial situation since the start of the security clearance process. This favorable record evidence, when coupled with Applicant's responsible action in addressing her delinquent debts, mitigates the security concerns at issue. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations)	FOR APPLICANT
Subparagraphs 1.a – 1.h:	For Applicant

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge

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<sup>8</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).