



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00210
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

10/17/2014

**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems appear to be, in part, due to circumstances beyond her control. Notwithstanding, she failed to present sufficient evidence to show that she acted responsibly under the circumstances, and that her financial problems are resolved or under control. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 1, 2013. On March 19, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on April 23, 2014, and elected to have her case decided on the written record.

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<sup>1</sup> DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

A copy of the Government's file of relevant material (FORM), dated May 22, 2014, was provided to her by transmittal letter dated May 29, 2014. Applicant received the FORM on June 5, 2014. She was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant's response was due on July 5, 2014. She did not respond to the FORM or provide any information in mitigation or extenuation. The case was assigned to me on September 12, 2014.

### **Findings of Fact**

Applicant admitted the factual allegation in SOR ¶ 1.a. Her admission is incorporated as a finding of fact. She denied the remaining three SOR allegations. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 49-year-old employee of a government contractor. She graduated from high school in May 1983. She married her husband in May 1986, and they have two adult children, ages 28 and 24. Her 24-year-old son is currently serving in the U.S. Navy.

Applicant worked for a private company from January 1988 to June 2012. The company closed the facility where she worked, and Applicant was unemployed from June 2012 until she was hired by her current employer, a government contractor, in August 2013.

Applicant submitted her first security clearance application (SCA) on October 1, 2013. She disclosed in Section 26 (Financial History) of the 2013 SCA that she had financial problems that included delinquent debts alleged in the SOR. The subsequent background investigation disclosed the four alleged delinquent SOR debts, totaling over \$17,000.

Applicant claimed that SOR ¶ 1.a and SOR ¶ 1.b allege the same delinquent judgment resulting from a delinquent credit card. In her 2013 SCA, Applicant disclosed that she and her husband opened a credit card account that became delinquent in the amount of \$4,000 in 2006. Her husband became ill and was unable to work from June 2006 until June 2007. During that period, she was the sole breadwinner and her income was insufficient to pay for the family's day-to-day living expenses and their debts. The credit card debt increased from \$4,000 to over \$9,000 with penalties and interests accrued over the years.

In her October 1, 2013 SCA, Applicant stated that, as of that day, she was working on "cleaning up" her credit. She claimed she was in the process of negotiating a settlement agreement with the creditor of the debt alleged in SOR ¶ 1.b seeking the reduction of the fees and penalties accrued, and then establishing a payment plan. Applicant submitted no documentary evidence to corroborate any contacts with the creditor.

In her 2014 answer to the SOR, Applicant stated that after reviewing her credit report she noticed that the debt alleged in SOR ¶ 1.b was no longer showing in the credit report (“fell off”). And, that the credit report was currently showing a debt to another creditor for \$6,423 (SOR ¶ 1.a). Applicant believed that both debts are the same. She filed a dispute with the credit bureaus for the debt alleged in SOR ¶ 1.a on April 23, 2014. In the dispute, she claimed that the debt alleged in SOR ¶ 1.b was more than seven years old (uncollectable), and it was removed from her credit report. Because she believed that the debt alleged in SOR ¶ 1.a was based on the same debt alleged in SOR ¶ 1.b, she asked for it to be removed from her credit report.

Applicant presented insufficient evidence to show that SOR ¶¶ 1.a and 1.b alleged the same delinquent account. She also presented no documentary evidence showing the outcome of her dispute. Nor did she present any documentary evidence of any payments made to the two creditors, contacts with creditors, or efforts to otherwise resolve these debts since they became delinquent, except for the April 2014 dispute.

I note that the November 2013 credit report (FORM, Item 8), shows the unsatisfied judgment was filed in June 2011. (SOR ¶ 1.a) Applicant presented no documentary evidence to show that the judgment was paid, released, or that it is otherwise invalid. I also note that the credit report reflects 14 accounts (not counting duplicate accounts), which include the 4 delinquent accounts alleged in the SOR, and 10 accounts that are in good standing. I further note that the FORM credit report reflects numerous accounts that appear to be satisfied pay day loans. Without evidence explaining those entries, it is not clear whether Applicant is financially overextended or living beyond her financial means.

Concerning the debt alleged in SOR ¶ 1.c, Applicant presented documentary evidence to show that she settled and paid it in April 2014. Applicant successfully disputed the debt alleged in SOR ¶ 1.d, and it was removed from her credit report. Apparently, the debt was not paid by her insurance company.

Applicant provided little information about her current earnings and financial position. She did not provide any information about her monthly income, her monthly expenses, whether her husband works or if she is the only breadwinner in the family, and whether her current income is sufficient to pay her current day-to-day living expenses and her debts. There is no information to indicate whether she participated in financial counseling or whether she follows a budget.

## **Policies**

Eligibility for access to classified information may be granted “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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

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

Under Guideline F, the security concern is that 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 ¶ 18)

Applicant was laid off after 24 years working for a company. She was unemployed from June 2012 to August 2013 when she was hired by her current employer. Additionally, she averred that her husband became ill and was unable to work from June 2006 until June 2007. During that period, she was the sole breadwinner and her income was insufficient to pay for the family’s day-to-day living expenses and their

debts. These periods of unemployment apparently contributed to the four alleged delinquent debts. AG ¶ 19(a) “inability or unwillingness to satisfy debts” and AG ¶ 19(c) “a history of not meeting financial obligations,” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Considering the evidence as a whole, I find that financial considerations mitigating conditions AG ¶¶ 20(b) and (e) partially apply, but do not fully mitigate the financial considerations security concerns. Applicant’s financial problems appear to be, in part, due to circumstances beyond her control – her and her husband’s periods of unemployment.

Notwithstanding, she failed to present sufficient evidence to show that she acted responsibly under the circumstances. She presented documentary evidence that she paid one debt and successfully disputed another after she was served with the SOR. She presented little documentary evidence of any payments made, contacts with creditors, or efforts to otherwise resolve the other two large delinquent debts alleged in the SOR, except for disputing the debts because she believes they are uncollectable.

Moreover, Applicant provided little information about her current earnings and financial position. She did not provide any information about her monthly income, monthly expenses, whether her husband works or if she is the only breadwinner in the

family, and whether her current income is sufficient to pay her current day-to-day living expenses and debts. There is no information to show that she participated in financial counseling or that she follows a budget. The available information is insufficient to establish clear indications that her financial problem is being resolved or is under control. The remaining mitigating conditions are not applicable to the facts in this case.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant started to make some progress resolving her financial problems after receipt of the SOR. She seems to be on the path to establish financial responsibility. Notwithstanding, she failed to submit documentary evidence to show that she acted responsibly under the circumstances, and that her financial problem is being resolved or is under control. She failed to mitigate the Guideline F security concerns.

### **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 and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant

### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge