



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. 14-00350

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel

For Applicant: *Pro se.*

08/21/2014

**Decision**

WESLEY, Roger C., Administrative Judge:

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

**Statement of Case**

On March 13, 2014, 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 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 the Adjudicative Guidelines (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on April 14, 2014 and requested a hearing. The case was assigned to me on June 26, 2014, and was scheduled for hearing on July 21, 2014. At hearing, the Government's case consisted of three exhibits (GEs 1-3). Applicant relied on one witness (herself) and three exhibits (AEs A-C). The transcript (Tr.) was received on July 31, 2014.

### **Procedural Issues**

Before the close of the hearing , Applicant requested the record be kept open to permit her the opportunity to supplement the record with a confirming settlement letter and payments to one of her creditors (creditor 1.e), documented payments to another creditor (creditor 1.d), and endorsements. For good cause shown, Applicant was granted 10 days to supplement the record.

Within the time requested, Applicant documented her degrees and certifications, her awards and recognitions, her community service credits, endorsements, a confirmed settlement letter from creditor 1.e, and an account activity statement from her debt consolidation firm. Applicant's submissions were admitted as AEs D-J.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated eight delinquent debts exceeding \$64,000. The listed debts covered mostly delinquent credit card accounts.

In her response to the SOR, Applicant admitted two of the debts and denied the remaining ones. She claimed she has never been married and has one child. She claimed she lost her job in 2011, survived on unemployment benefits for just under 18 months, and remained unemployed for nearly two years. While struggling to find employment, Applicant claimed she exhausted her personal savings, withdrew funds from retirement savings, sold personal vehicles, and reduced and eliminated non-essential expenses wherever she could.

Applicant claimed she turned to her credit cards to mitigate the impact on her savings, believing she would find work long before it became a severe hardship for her to pay them off. She claimed she enrolled in a debt consolidation firm in 2012, and through their efforts, she has been able to address her creditors with negotiated settlements, using an account dedicated and managed by her debt consolidation firm. She claimed she granted a power of attorney to the law firm responsible for managing her debt consolidation to negotiate settlements with her creditors, and to use funds in the firm's creditor settlement account for that purpose. And she claimed extenuating circumstances associated with her employment loss, and not poor judgment, as the principal source of her financial difficulties.

Applicant also claimed that she kept up her payments on her credit cards for so long as she could to preserve her credit rating before coming to the painful realization that she could not make minimum payments on her credit cards, pay her mortgage, and cover her basic needs for much longer without any viable job prospects in sight.

## **Findings of Fact**

Applicant is a 43-year-old systems engineer of 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 has never been married and has one child. (GE 1) She earned her bachelor's degree in industrial engineering in 1994, her master's degree in mechanical engineering in 2004, and her PhD degree in systems engineering in 2010, all from well-known universities. (GE 1 and AEs A and D; Tr. 8-86, 89) Additionally, she earned certificates in lean practice (2004), project management (2006), quality auditing (2002), and basic training qualifications (2001) from recognized institutions. (AEs A and D; Tr. 86-88) She claims no prior military service.

### **Applicant's finances**

Between September 2001 and July 2011, Applicant was employed by the same defense contractor in her specialized fields of systems and nuclear engineering and enjoyed considerable professional success in her tasked assignments over the course of her employment. (AE A; Tr. 91-94) For reasons unknown to her, she was terminated by her supervisor and former peer in July 2011, following her return to work from an unexpected 30-day disability-related leave of absence. (GE 1 and AE A; Tr. 30-32, 37-38) She identified the source of her disability as severe migraines, compounded by significant anxiety and stress. (Tr. 31)

For the first months of her employment loss, Applicant was able to keep up with her bills with the aid of her unemployment benefits, personal savings, withdrawn funds from retirement savings, proceeds from sold personal vehicles, and reduced and eliminated non-essential expenses. (AE A; Tr. 32-33) As she exhausted and modest unemployment benefits, she turned to the use of her credit cards to mitigate the impact on her savings. (AE A; Tr. 33-40) Applicant kept up her payments on her credit cards for so long as she could to preserve her credit rating. By May 2012, though, she came to the painful realization that she could not make minimum payments on her credit cards, pay her mortgage, and cover her basic needs for much longer without any viable job prospects in sight in a still struggling economy.

Still unable to find work, Applicant enrolled in a debt consolidation firm in May 2012. (AEs A and H; Tr. 41-49) With the firm's help, she has been able to address her creditors with negotiated settlements, using an account dedicated by her debt consolidation firm. (AEs A and J; Tr. 43-49) She attributes extenuating circumstances associated with her employment loss, and not poor judgment, to her delinquent debt accruals. (AE A)

Since returning to full-time employment with another defense firm in April 2013, Applicant made considerable progress in settling her outstanding debts. (AEs A-C, H-J ; Tr. 93-95) In June 2012, she completed a consolidated payment agreement with a debt consolidation firm. (AEs A and B) Under the terms of her agreement, she made monthly payments of \$522 (AEs A, B, and J) In June 2013, her monthly service fees were raised to \$741 a month to ensure completion of her repayment program within five years. (AEs A and J; Tr. 51) Applicant issued powers of attorney to the law firm managing her program to access her account and negotiate settlements on her behalf. (AEs A and J) She has consistently made her monthly payments in accordance with the terms of her debt consolidation agreement. (AEs A and C; Tr. 51)

Applicant documented payment settlements with creditor 1.b for debt cancellation backed by an issued Form 1099-C; creditor 1.c for \$4,850; creditor 1.d for \$1,500; creditor 1.e for \$4,229, payable in monthly installments of \$422; creditor 1.f for \$84; creditor 1.g for \$156; and creditor 1.h for \$1,600. (AEs A, C, H, I, and J; Tr. 52-80) Applicant's account activity statement documents her agreed payments to the listed creditors in the SOR. (AE J) She has continued to negotiate with creditor 1.a (her only remaining debt still unresolved) over its \$8,934 debt. Since June 2014, Applicant has made the \$422 monthly payments to creditor 1.e in accordance with their agreed \$4,229 settlement. (AEs I and J; Tr. 51, 81-82)

Applicant never foresaw the need for financial counseling beyond what she has received from her debt consolidation firm. (Tr. 95-98) Accordingly, she has never sought additional financial counseling.

## **Endorsements**

Between 1999 and 2010, Applicant received numerous awards recognizing her many contributions to her employers' performance goals. (AE E) She was cited on numerous occasions for her significant contributions to charitable and educational organizations in the communities she worked in. (AE F) Applicant's credits include endorsements from civic organizations and charitable institutions. Her professional endorsements include letters from the chairman and academic advisor of her engineering doctoral program, who described her as an accomplished student of engineering; adjunct professor; an intelligent, dedicated, clear thinker; and a skilled communicator who has displayed passion and compassion for sharing knowledge with others. (AE G)

## **Policies**

The AGs list 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 "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They 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 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 AG ¶ 2(a) of the revised 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 AG ¶ 2(a) 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 changes; (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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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 history of delinquent debts, attributable to her lengthy period of unemployment (almost two years), despite her high level of academic achievement and earned professional successes as a systems engineer with her previous employer. Applicant's delinquent debts were mostly credit-card related and were accumulated only after she exhausted her other monetary sources during her earnest but unsuccessful attempts to find work. Her debt accruals raise potential security concerns about her judgment, reliability, and trustworthiness in managing her personal finances. Her actions warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts;" and DC ¶ 19(c) "a history of not meeting financial obligations."

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Applicant's extended loss of income over a two-year period spanning 2011 and 2013 reflects extenuating circumstances and entitles her to the application of 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," to her situation. The limited counseling she received from her debt consolidation firm, bolstered by the encouraging prospects she has shown for stabilizing her finances, entitles her to some application of MC ¶ 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," as well.

By settling (with both payments and payment plans) or resolving all but one of her listed delinquent debts, Applicant has established a promising track record for resolving her debts. MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," applies to Applicant's situation. Her documented settlements and payoffs reflect satisfactory progress in accordance with the criteria established by the Appeal Board for assessing an applicant's efforts to rectify her poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009).

In determining whether Applicant acted reasonably when dealing with her financial difficulties caused by her unexpected loss of employment, consideration is given to her documented track record of sustained repayment efforts through her retained debt consolidation firm. Applicant's actions satisfied a major component of the criteria established by the Appeal Board to gauge an applicant's payment initiatives. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan., 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999). Mitigation efforts necessary to meet Appeal Board requirements are met.

While Applicant has not resolved one of her covered creditors (i.e., creditor 1.a) and is still making payments on a payment plan with another creditor (i.e., creditor 1.e), she hopes to complete a negotiated settlement with creditor 1.a in the near future through her retained debt consolidation firm. Moreover, it is settled practice that an applicant need not have paid every debt alleged in the SOR to restore her financial trustworthiness. So long as Applicant is able to establish a credible and realistic plan to resolve her financial problems, accompanied by significant actions to implement her plan, she meets the Appeal's Board requirements for stabilizing her finances. ISCR Case No. 07-06482 (App. Bd. May 21 2008). This Applicant has ably demonstrated.

From a whole-person standpoint, the evidence reflects some unfortunate economic circumstances associated with Applicant's unanticipated loss of employment following a stellar 10-year career as a successful systems and nuclear engineer. Her ensuing debts arose only after she made every concerted effort to maintain her debts with the limited resources available to her. Her strong academic record, meritorious work credits, and considerable civic and charitable contributions combine to demonstrate a highly productive and dependable engineering professional in the

defense industry who experienced a precipitous decline of income during an extended period of unemployment (2011-2013).

Applicant has since made steady inroads in stabilizing her finances and shows excellent prospects for avoiding any recurrent financial problems in the foreseeable future. Overall, Applicant's efforts to date are sufficient to meet mitigation requirements imposed by the guideline governing her finances.

### **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):                      FOR APPLICANT

Subparas. 1.a through 1.h:    For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge



