



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



In the matter of:	)	
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	)	ISCR Case No. 14-00383
Applicant for Security Clearance	)	

**Appearances**

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

09/23/2014

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her a security clearance to work in the defense industry. A 31-year-old engineer technician, Applicant has a history of criminal conduct during 2004–2012 consisting of driving while her driver’s license was suspended in her state of residence. She resolved those matters about two years ago by paying the necessary fines and she obtained a valid driver’s license. But she has an outstanding arrest warrant for similar conduct in 2009 in another state, and that matter is unresolved. She also has a history of financial problems or difficulties that are unresolved and ongoing. She did not present sufficient evidence to explain and mitigate the criminal conduct and financial considerations security concerns. Accordingly, this case is decided against Applicant.

**Statement of the Case**

On April 17, 2014, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the

national interest to grant or continue access to classified information.<sup>1</sup> The SOR is similar to a complaint, and it detailed the reasons for the action under the security guidelines known as Guideline F for financial considerations, Guideline E for personal conduct, and Guideline J for criminal conduct.

The case was assigned to me August 11, 2014, to conduct the hearing requested by Applicant. The hearing was held as scheduled on August 26, 2014. At the hearing, Department Counsel presented Exhibits 1–5, which were admitted. Applicant testified, called no other witnesses, and did not offer any documentary evidence. The transcript (Tr.) was received September 4, 2014.

The record was kept open until September 9, 2014, to allow Applicant an opportunity to present documentary evidence. Those matters were timely submitted and are made part of the record as Exhibits A–H. In particular, Exhibits A, B, and C are IRS Records of Account for tax years 2010, 2011, and 2012; and Exhibits D, E, F, G, and H are letters of recommendation.

### **Findings of Fact**

Applicant is a 31-year-old employee of a federal contractor who is seeking a security clearance for the first time. She completed high school and has some college, but has not earned a degree. She has never married; she has a three-year-old son; and the child's father is deceased, a victim of a shooting before the child was born. On her son's behalf, Applicant receives a Social Security payment of about \$600 monthly, which she uses to pay for daycare and other childcare expenses.

She is employed as an engineer technician who is responsible for testing communications equipment used by the military. She has held this job since January 2013, and it is a part-time, on-call position. She has a good record of employment according to a favorable letter of recommendation from her current supervisor.<sup>2</sup> In addition to her supervisor, four other people submitted favorable letters of recommendation on her behalf.<sup>3</sup>

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<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> Exhibit H.

<sup>3</sup> Exhibits D, E, F, and H.

The SOR alleges and there is substantial evidence to show that Applicant has a history of criminal conduct.<sup>4</sup> In her answer to the SOR, Applicant admitted five incidents where she was cited or arrested for driving while her driver's license was suspended. The incidents occurred in 2004, twice in 2008, 2009, and 2012. In addition, she disclosed the four incidents that took place in her state of residence when she completed her security clearance application, but she did not disclose the fifth incident that took place in 2009 in another state because she forgot about it.<sup>5</sup>

Applicant explained that her driver's license was initially suspended because of failure to pay fines for traffic offenses. She resolved this matter in 2012, except for the 2009 incident, when her state of residence issued her a driver's license after she paid about \$2,000 in fines and attended traffic schools and classes.<sup>6</sup>

In 2009, Applicant was driving in another state when she was stopped for driving without wearing a seatbelt. The police discovered that her driver's license was suspended and she was arrested. According to Applicant, a search of the car found a set of brass knuckles, which she attributed to a passenger in the car. The police released Applicant on her own recognizance, she never appeared in court or retained an attorney to address the matter, and there is an outstanding arrest warrant for her. Since having this matter brought to her attention during the security clearance process, Applicant has taken no action to resolve the outstanding arrest warrant.

The SOR alleges and there is substantial evidence to show that Applicant has a history of financial problems or difficulties that are unresolved and ongoing.<sup>7</sup> That history consists of the following: (1) \$24,404 in collection or charged-off accounts; (2) \$2,000 in delinquent debt for a broken apartment lease; (3) \$6,721 in medical collection accounts; (4) failure to timely file federal income tax returns for tax years 2010, 2011, and 2012; and (5) failure to timely file state income tax returns for tax years 2010, 2011, and 2012. The medical collection accounts resulted from necessary medical expenses incurred by Applicant without the benefit of health insurance.

Although Applicant stated that she has made some payments, she presented no documentation showing proof of payment, and she admitted that all the accounts alleged in the SOR are unresolved. She has filed federal income tax returns for tax years 2010, 2011, and 2012; the 2010 return was filed in May 2014, the 2011 return was filed in April 2014, and the 2012 return was filed in March 2013; and there are zero

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<sup>4</sup> Exhibits 1, 3, and 5.

<sup>5</sup> Exhibit 1; Tr. 85–86.

<sup>6</sup> Tr. 39–43.

<sup>7</sup> Exhibits 2, 3, and 4.

balances for those three tax years.<sup>8</sup> She claimed she filed state income tax returns as well, but she did not present any documentation to verify her claim.

Applicant retained the services of a credit repair firm about four months ago, but that process has not produced results at this time. Applicant stated that she had about \$20 in her checking account, nothing in savings, and was relying on her son's Social Security payment because she had just returned to work after a short layoff.<sup>9</sup> At present, Applicant is weighing her options, including bankruptcy, in order to determine a course of action to address her delinquent debts.<sup>10</sup>

Applicant completed a security clearance application (also known as an e-QIP) in June 2013.<sup>11</sup> She stated that "the e-QIP was really confusing. It took forever to [complete] it."<sup>12</sup> In completing the form, she disclosed four criminal incidents that occurred in her state of residence and she disclosed a vehicle repossession (which is alleged SOR ¶ 1.c). In response to questions calling for such information, she did not disclose an incident of criminal conduct in 2009 in another state; she did not disclose the various delinquent debts in SOR ¶¶ 1.a, 1.b, and 1.c through 1.v; and she did not disclose her failure to file federal and state income tax returns for 2010, 2011, and 2012.

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>13</sup> As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>14</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>15</sup> An

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<sup>8</sup> Exhibits A, B, and C.

<sup>9</sup> Tr. 82–85.

<sup>10</sup> Tr. 81–82.

<sup>11</sup> Exhibit 1.

<sup>12</sup> Tr. 39.

<sup>13</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>14</sup> 484 U.S. at 531.

<sup>15</sup> Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>16</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>17</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>18</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>19</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>20</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>21</sup> The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>22</sup>

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>23</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

## Discussion

Under Guideline J for criminal conduct,<sup>24</sup> the concern is that criminal activity creates doubt about a person's judgment, reliability, and trustworthiness, and calls into question a person's ability or willingness to follow laws, rules, and regulations. In this

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<sup>16</sup> Directive, ¶ 3.2.

<sup>17</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>18</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>19</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>20</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>21</sup> *Egan*, 484 U.S. at 531.

<sup>22</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>23</sup> Executive Order 10865, § 7.

<sup>24</sup> AG ¶¶ 30, 31, and 32 (setting forth the security concern and the disqualifying and mitigating conditions).

case, Applicant has a well-established track record of offenses for driving while her driver's license was suspended during the period 2004–2012. And for the 2009 incident, an arrest warrant was issued and is still outstanding. Those facts and circumstances are sufficient to raise a concern under the following disqualifying conditions:

AG ¶ 31(a) a single serious crime or multiple lesser offenses; and

AG ¶ 31(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Guideline J also contains conditions that may mitigate security concerns. The most pertinent here is:

AG ¶ 32(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant receives partial credit under AG ¶ 32(d) because she successfully resolved her problematic driving record in her state of residence in 2012 by paying the fines, attending traffic schools, and obtaining a valid driver's license. But the credit in mitigation is partial because she has yet to resolve the 2009 incident in another state. It should be obvious but it is nonetheless stated here that any applicant who has an outstanding arrest warrant is not a good candidate for a security clearance. For that reason, the Guideline J concern is decided against Applicant.

Under Guideline F for financial considerations,<sup>25</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.<sup>26</sup> The overall concern is:

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.<sup>27</sup>

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<sup>25</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>26</sup> ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

<sup>27</sup> AG ¶ 18.

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. Taken together, the collection and charged-off accounts, the delinquent account stemming from the broken apartment lease, and the failure to timely file state and federal income tax returns indicate inability or unwillingness to satisfy debts<sup>28</sup> and a history of not meeting financial obligations<sup>29</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also suggest a degree of financial irresponsibility.

With that said, I attach little security significance to the eight medical accounts in collection for a total of about \$6,721. Applicant incurred those debts for necessary medical care without the luxury of health insurance as opposed to high-living or frivolous expenditures, and they do not indicate poor self-control, questionable judgment, unreliability, or untrustworthiness. On that basis, the debts in SOR ¶¶ 1.d, 1.e, 1.g, 1.k, 1.m, 1.n, 1.p, and 1.s are decided for Applicant.

In mitigation, Applicant has filed federal income tax returns for the three years in question and there are no balances due. On that basis, the failure to file is mitigated. The same cannot be said for the failure to file state income tax returns for the three years in question. Applicant did not present any documentation to verify her claim that she has in fact filed the returns, and given the circumstances here, I cannot simply take her word for it. As for the other matters (e.g., the collection and charged-off accounts), none of the six mitigating conditions under Guideline F are sufficient to fully mitigate the concern stemming from her delinquent debts.<sup>30</sup> Applicant is facing a small mountain of debt with few financial resources. Understandably, she is weighing her options, trying to make the best decision for her family, but there is no indication of any type of realistic plan to address her delinquent debts.

Of course, the purpose of this case is not aimed at collecting debts.<sup>31</sup> Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the

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<sup>28</sup> AG ¶ 19(a).

<sup>29</sup> AG ¶ 19(c).

<sup>30</sup> AG ¶¶ 20(a)–(f).

<sup>31</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>32</sup>

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the concern.

Under Guideline E for personal conduct, the concern is that “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.”<sup>33</sup> In addition to those general matters, a particular concern is any failure to provide truthful and candid answers.<sup>34</sup> A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

Here, the SOR alleges that Applicant falsified her June 2013 security clearance application (the e-QIP) by failing to disclose the incident of criminal conduct in 2009; the various delinquent debts in SOR ¶¶ 1.a, 1.b, and 1.c through 1.v; and her failure to file federal and state income tax returns for 2010, 2011, and 2012. I am not persuaded that Applicant deliberately omitted, concealed, or falsified material facts when answering the relevant questions for two reasons. First, she disclosed other adverse information, criminal and financial, which undercuts any effort to hide or conceal her unfavorable background. Second, after having an opportunity to observe and listen to Applicant during the hearing, my view is that she has an unsophisticated understanding of her tax obligations and financial matters in general. Given these circumstances, I am not persuaded that she was endeavoring to hide or misrepresent her unfavorable criminal or financial record.

Applicant's outstanding arrest warrant and problematic financial history raise doubt about her reliability, trustworthiness, and good judgment. Following *Egan* and the

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<sup>32</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>33</sup> AG ¶ 15.

<sup>34</sup> *Id.*



clearly-consistent standard, I resolve that doubt in favor of protecting national security. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>35</sup> In doing so, I considered Applicant's favorable evidence. Nonetheless, the favorable matters are not enough to justify a conclusion that she met her ultimate burden of persuasion to obtain a favorable clearance decision.

### Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.c:	Against Applicant
Subparagraphs 1.d–1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h–1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m–1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q–1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t–1.v:	Against Applicant
Subparagraph 1.w:	For Applicant
Subparagraph 1.x:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a–2.c:	For Applicant
Paragraph 3, Guideline J:	Against Applicant
Subparagraphs 3.a, 3.c, 3.d, 3.e:	For Applicant
Subparagraph 3.b:	Against Applicant

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<sup>35</sup> AG ¶ 2(a)(1)–(9).

## **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard  
Administrative Judge