



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 14-00921
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: Mark S. Zaid, Esq.

05/13/2015

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant established her eligibility for access to classified information, which was called into question by the accumulation of delinquent debt during a period of financial turmoil. Her recent financial problems are directly linked to a lengthy period of unemployment and underemployment. After regaining full-time employment, Applicant resolved her past-due debts. Before this period of financial instability, Applicant managed her finances in a responsible and conscientious manner. She is again in firm control of her finances and demonstrated that she possess the pertinent qualities required of those granted access to classified information. Clearance is granted.

**Statement of the Case**

On October 20, 2014, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR), alleging that her circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> Applicant timely answered the SOR and requested a hearing to establish her eligibility for access to classified information.

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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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines implemented by DOD on September 1, 2006.

On January 26, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed. After coordinating with the parties, I scheduled the hearing for April 16, 2015. The hearing was held as scheduled. Department Counsel offered Government exhibits (Gx.) 1 – 5. Applicant testified, called a longtime friend as a witness, and offered Applicant’s exhibits (Ax.) A – Q. All exhibits were admitted into evidence without objection. The hearing transcript (Tr.) was received on April 24, 2015.

### **Findings of Fact**

Applicant has held a security clearance since the mid-1970s. She has been primarily employed as a federal contractor. She has been with her current employer since about September 2014. On her recent performance evaluation, she received a rating of “excellent.” She is well regarded for her work ethic, reliability, and trustworthiness by coworkers and others who have known her through the years.<sup>2</sup>

Applicant’s financial trouble started in May 2011, when she lost her job. She was unemployed for about 18 months. She slashed her living expenses and exhausted her savings trying to pay her mortgage and other debts. She found a job, but it only paid \$8 an hour – far below the salary she commanded before becoming unemployed. Her debts started to mount despite her herculean efforts to remain financially stable. She incurred four non-mortgage related delinquent debts that are listed in the SOR at ¶¶ 1.a – 1.c, and 1.e. After regaining full-time employment, Applicant paid the debts or is paying them per the terms of an agreed upon payment plan. She submitted documentation to substantiate her claims of debt resolution.<sup>3</sup>

Applicant, after exhausting her savings, fell behind on her mortgage. She tried to save her former home, but was financially unable to and it was foreclosed upon by the lender. She had purchased the home in 2001, when she moved to the area to care for her ailing mother. Applicant had paid her monthly mortgage payments consistently and on time until losing her job in 2011. She tried to work with the lender to save her home from foreclosure, but when it became apparent that any plan to keep the home was going to be financially unfeasible, she found a buyer who offered to purchase the home for more than she had originally paid for the property and was owed on the mortgage. The lender refused to accept the offer, eventually foreclosing on the property and selling it for about \$35,000 less than the offer Applicant had secured. In the course of trying to sell the property, Applicant became aware that half the homes in her neighborhood had been foreclosed upon following the collapse of the housing market and general economic downturn. Applicant does not owe a deficiency balance on the mortgage.<sup>4</sup>

Applicant’s current annual salary is about \$80,000. She lives frugally, holding no credit cards, driving an old, late-model car, and renting an apartment that is half the size of the room where her hearing was held. She only purchases clothes that are steeply

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<sup>2</sup> Tr. at 14-25; Gx. 1; Ax. A; Ax. K – M.

<sup>3</sup> Tr. at 28-32, 51; Ax. B – D; Ax. Q.

<sup>4</sup> Tr. at 32-45; Gx. 5; Ax. E – G; Ax. O; Ax. Q.

discounted and exclaimed with pride at purchasing the sweater she was wearing at the hearing for less than \$2.<sup>5</sup>

Applicant's longtime friend, who is also a facility security officer for a large defense contractor, testified that she has never seen any signs of lavish spending or opulent purchases by Applicant. Her friend has been fully aware of Applicant's financial problems and has tried to ease the financial burden, including having her over for meals and bringing her leftovers on most weekends. Even after regaining full-time employment, Applicant still readily accepts her friend's leftover meals and eats them throughout the week to cut down on her monthly expenses. Applicant's largest monthly expense, outside her rent, is for unreimbursed medical bills that total about \$480 each month. She is now able to meet her monthly, recurring expenses and save for unexpected emergencies or contingencies. She has not incurred other delinquent debt since regaining full-time employment. She disclosed her financial problems on her security clearance application.<sup>6</sup>

### **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 only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

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, "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. 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

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<sup>5</sup> Tr. at 49.

<sup>6</sup> Tr. at 14-23; Gx. 1; Ax. H – I; Ax. M; Ax. P – Q.

clearance.”). However, a judge must examine and decide each case on its own merits because there is no *per se* rule requiring disqualification.<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.<sup>8</sup>

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.<sup>9</sup>

## Analysis

### Guideline F, Financial Considerations

The potential security concern regarding an applicant with financial problems 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 past financial trouble and the delinquent debt she incurred raises the financial security concerns. The record evidence also establishes the following disqualifying conditions:

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<sup>7</sup> ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

<sup>8</sup> Security clearance determinations are “not an exact science, but rather predicative judgments about a person’s security suitability.” ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). An administrative judge is required to examine an individual’s past history and current circumstances to make a predictive judgment about an individual’s ability and willingness to protect and safeguard classified information. ISCR Case No. 11-12202; ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013).

<sup>9</sup> ISCR Case No. 12-04554 at 4 (App. Bd. July 25, 2014) (“an adverse decision under the Directive is not a determination that the applicant is disloyal. Rather, such a decision signifies that the applicant has engaged in conduct or has otherwise experienced circumstances that raise questions about his or her judgment and reliability.”).

AG ¶ 19(a): inability or unwillingness to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The financial considerations guideline also lists a number of conditions that could mitigate the concern. The relevant mitigating conditions in this case are:

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 past financial trouble was directly tied to a lengthy period of unemployment and underemployment. Notwithstanding her dire financial situation, Applicant did not simply walk away from her financial obligations or idly stand by as her finances deteriorated. Instead, she drastically cut her living expenses, dipped into her savings to pay her financial obligations, and worked with her creditors to resolve her past-due debts. Of note, she attempted in good-faith to resolve the past-due amount on her mortgage. Even after it became clear that she was not going to be financially able to keep her home, Applicant continued to work to resolve her mortgage debt. She found a buyer who offered to purchase her former home for far more than it was eventually sold for by the lender. She does not owe any money for her former home and, after regaining full-time employment, resolved the other debts listed in her SOR. She has not incurred other delinquent debt and has a firm control over her finances. Applicant's past financial problems no longer raise a concern about her reliability, trustworthiness, or judgment. AG ¶¶ 20(a) through 20(d) apply.

### **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).<sup>10</sup>

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<sup>10</sup> The non-exhaustive list of adjudicative factors are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the

Applicant's past financial problems were not a result of matters raising an independent security concern. Instead, her financial problems were caused by a lengthy period of unemployment and underemployment. She acted responsibly in trying to manage her finances under the circumstances. After securing full-time employment, Applicant resolved the debts she incurred. Her overall history, before and after this period of financial instability, denotes an individual who manages her personal affairs in a responsible and conscientious manner. In short, Applicant exhibits in her personal affairs the self-control, judgment, and other pertinent qualities required of those granted access to classified information.<sup>11</sup> Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

### **Formal Findings**

Paragraph 1, Guideline F (Financial Considerations):      FOR APPLICANT

Subparagraphs 1.a – 1.e:      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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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.

<sup>11</sup> ISCR Case No. 13-00311 at 3 (App. Bd. Jan. 24, 2014) ("In a Guideline F case, a Judge must evaluate an applicant's financial condition for what it may reveal about the applicant's self-control, judgment, and other pertinent qualities.").