



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 14-01264
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

11/18/2014

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant has paid or resolved her past-due debts. Her largest debt, resolved in 2008, was the result of a business that failed seven years ago. The debt was settled but is erroneously still reported in her credit history as past-due. Applicant’s current finances are sound and she is not likely to incur future delinquencies. Her request for a security clearance is granted.

**Statement of the Case**

On August 23, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a top secret security clearance required for her work as a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it

was clearly consistent with the national interest for Applicant to hold a security clearance.<sup>1</sup>

On May 28, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines<sup>2</sup> financial considerations (Guideline F) and personal conduct (Guideline E). Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On August 27, 2014, Applicant requested a hearing. Her request is included in the record as Hearing Exhibit (Hx.) 1.

The case was assigned to me on September 5, 2014, and I convened a hearing on September 10, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 5. Applicant testified and presented Applicant Exhibits (Ax.) A and B. All exhibits were admitted without objection. DOHA received the transcript of hearing (Tr.) on September 25, 2014.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$34,704 for six past-due debts (SOR 1.a - 1.f). Of those debts, SOR 1.f alleges a debt of \$33,847. Applicant admitted SOR 1.b and 1.f. (Answer) At hearing, Department Counsel moved to withdraw the SOR 1.e allegation to conform to the evidence. I granted the motion. (Tr. 54)

Under Guideline E, the Government alleged that Applicant deliberately falsified her answers to financial questions in her EQIP (SOR 2.a). Applicant denied, with explanations, this allegation. (Answer) At hearing, Department Counsel moved to withdraw this allegation to conform to the evidence. I granted the motion. Accordingly, only security concerns under Guideline F are addressed in this decision.

In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 42-year-old mother of two children, ages 20 and 12. She and her husband, an information technology specialist and Naval Reserve officer, have been married since 1991. Applicant works for a defense contractor, who hired her in August 2013 as a planner in support of a joint U.S. military command. She requires a top secret clearance for her work. Applicant previously held a secret clearance between 1999 and 2011 when she was employed as an analyst by a different defense contractor. (Gx. 1; Tr. 49 - 50)

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

<sup>2</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

Between 2011 and 2013, Applicant was unemployed outside the home. During that time, she took college-level courses online. She had already earned a bachelor's degree in 1995. In 2008, Applicant worked in a marketing communications job unrelated to the defense industry. (Gx. 1; Tr. 14)

Applicant did not list any delinquent debts in her EQIP; however, she disclosed that a publishing business she started in 2003 had been "liquidated" in 2008. The debt alleged at SOR 1.f is for a business credit card used for her business-related expenses. This account became past-due at times starting in 2007, when business revenue was shrinking. The balance past-due around 2007 and 2008 was \$12,872. It was not listed as a delinquency in her 2009 credit report, and Applicant testified that she was not asked about it during her first background investigation subject interview. During her current subject interview, and during her hearing testimony, Applicant stated that after the business closed, she continued to make payments when she could but eventually had to negotiate a settlement with the creditor, a bank that is no longer in business. When the balance had been paid down to about \$7,000, the creditor agreed to accept \$3,500 to settle the debt. Applicant averred that she paid the settlement account but that the debt was repeatedly sold to collection agencies. The amount alleged in SOR 1.f reflects fees, penalties, and interest added on by those collection agencies. This debt no longer appears on Applicant's credit reports. (Answer; Gx. 1 - 5; Ax. B; Tr. 35 - 37, 43 - 44, 48, 49 - 50, 52 - 53).

As to the remaining SOR allegations, Applicant presented information showing that they have been paid or otherwise resolved. The debt at SOR 1.c was paid in 2008, and the debt at SOR 1.d became past-due because of a billing error. Applicant also provided information showing a good credit rating and prudent use of personal credit. Applicant has no debts that are past-due or delinquent. (Answer; Ax. B; Tr. 32 - 34)

Applicant has an excellent reputation in the workplace. Until her interim clearance was revoked pending this adjudication, she had handled classified information properly and without incident. Past and present co-workers, both civilians and military members, hold her in high regard for her reliability and trustworthiness. (Ax. A)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>3</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

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<sup>3</sup> See Directive. 6.3.

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>4</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>5</sup>

A person who has access to classified information enters 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 one who will protect the national interests as his or her 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.<sup>6</sup>

## **Analysis**

### **Financial Considerations**

Aside from the debt alleged at SOR 1.e, which was withdrawn at hearing, available information is sufficient to support the SOR allegations under this guideline.

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<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; AG ¶ 2(b).

The facts established raise a security concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). Until recently, available information showed that Applicant had accrued significant debt since 2008.

By contrast, available information requires consideration of the following pertinent AG ¶ 20 mitigating conditions:

(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; and

(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.

All of these mitigating conditions apply. All of the information probative of Applicant's debt resolution efforts shows the debts alleged in the SOR have been paid

or otherwise resolved. Applicant is well-informed about her credit and was already addressing her debts before the SOR was issued. For example, the debts at SOR 1.c and 1.f were resolved in or about 2008. Applicant also showed that she and her husband have good credit with no past-due or delinquent debts. Applicant's dispute of the debts at SOR 1.d, 1.e, and 1.f are supported either by actual payment receipts or, as with SOR 1.f, that debt was not listed as delinquent in a 2009 credit report, but turned up in a 2013 credit report as a collection account. It is now absent from her more recent credit reports. On the matter of SOR 1.f, I also found Applicant's statements and testimony to present credible and plausible explanations of the status of that debt. Her claims that she acted several years ago to settle that debt is consistent with her documented approach to her other debts. On balance, I conclude Applicant has satisfactorily addressed the security concerns about her past indebtedness, and that she is unlikely to experience financial problems in the future.

### **Whole-Person Concept**

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 42 years old and presumed to be a mature, responsible adult. Her good reputation in the workplace, and the positive way she responded to her financial problems support that presumption. Applicant's finances are sound and she is not likely to incur such debts in the future. A fair and commonsense assessment of all available information shows that Applicant has mitigated the security concerns presented by her past-due debts.

### **Formal Findings**

Formal findings 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:	FOR APPLICANT
Subparagraphs 1.a - 1.d, 1.f:	For Applicant
Subparagraph 1.e:	Withdrawn
Paragraph 2, Guideline E:	WITHDRAWN

## **Conclusion**

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

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MATTHEW E. MALONE  
Administrative Judge