



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 14-02011
	)	
Applicant for Security Clearance	)	

**Appearances**

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

05/13/2015

**Decision**

MALONE, Matthew E., Administrative Judge:

The security concerns about Applicant’s personal conduct stemming from a 2011 shoplifting arrest are mitigated. However, Applicant did not mitigate the security concerns raised by the Government’s information about her financial problems. Her request for a security clearance is denied.

**Statement of the Case**

On December 13, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for her employment at a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is

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

On July 21, 2014, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines<sup>2</sup> for personal conduct (Guideline E) and financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. However, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) timely requested a hearing,<sup>3</sup> and the case was assigned to me on February 4, 2015.

I convened a hearing by video teleconference on March 19, 2015. DOHA received the transcript of hearing (Tr.) on March 27, 2015. At hearing, Department Counsel presented Government Exhibits (Gx.) 1 - 4, but withdrew Gx. 2 (Summary of a Personal Subject Interview conducted on January 21, 2014) and Gx. 4 (an Incident Report from the Joint Personnel Adjudications System (JPAS), dated December 30, 2014). Those exhibits have not been reviewed or considered as part of this decision, but I have included them in the administrative file for possible appellate review. (Tr. 23, 25 - 29) Gx. 1 and 3 were admitted without objection.

Applicant testified but did not present any documentary evidence. I left the record open after the hearing to receive post-hearing submissions from Applicant. The record closed on April 1, 2015, when I received information included in the record without objection as Applicant's Exhibits (Ax.) A - C.<sup>4</sup>

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes \$9,225 for six past-due or delinquent debts (SOR 1.a - 1.f). In response, Applicant denied the SOR 1.a allegation of a state tax lien against her. Applicant averred that she never lived in the state listed in the allegation. Department Counsel moved to amend the allegation to reflect the state in which the tax lien was filed. I granted the motion because it conforms to the evidence regarding SOR 1.a. However, Applicant did not change her denial, averring that the debt was satisfied through a diversion of her state income tax refund sometime in the past five or six years. Applicant admitted the other Guideline F allegations.

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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).

<sup>3</sup> A copy of Department Counsel's request for hearing and a letter notifying Applicant of that request are included in the record as Hearing Exhibit (Hx.) 1.

<sup>4</sup> Ax. A (five pages) consists of Applicant's performance evaluations for 2011 - 2014. Ax. B (four pages) consists of Applicant's pay stubs between November 22, 2014, and January 18, 2015. Ax. C (three pages) consists of an account statement related to the debt alleged at SOR 1.b.

Under Guideline E, the Government alleged that in 2011, Applicant was charged and convicted of a shoplifting offense. Applicant admitted this allegation. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 37-year-old employee of a defense contractor, for whom she has worked as an assembly operator since March 2004. This is her first request for a security clearance. (Gx. 1; Tr. 9 - 11)

Applicant has never been married. She and her boyfriend of 16 years have two children, ages 12 and 2. Applicant and her children lived with her grandmother between 2003 and 2011. Applicant and her boyfriend have lived together since about 2010. They now rent an apartment for \$309 each month. Applicant's boyfriend has worked in road construction and pipeline assembly jobs, but has been unemployed for over a year. (Gx. 1; Tr. 38 - 40, 42)

When Applicant submitted her EQIP, she disclosed a \$4,100 delinquent debt from a June 2009 car repossession. A credit report obtained during her background investigation listed this debt, for which she actually owes \$6,524 as alleged in SOR 1.e, as well as the other debts listed in the SOR. In 2006, Applicant financed the purchase of a used car for which she had to pay about \$300 each month. In 2009, the car began experiencing mechanical problems for which she was unable to pay and still keep up with her loan payments. The car was repossessed after she missed two monthly payments. Applicant does not know if the car was resold after it was repossessed. (Answer; Gx. 1; Gx. 3; Tr. 35 - 36, 51)

In 2005, Applicant was displaced by Hurricane Katrina. Unemployed during that time, she received unemployment benefits from her state. For a brief time after returning to work, she continued to receive unemployment benefits. Applicant did not return those overpayments, resulting in a debt that was enforced through a state tax lien. Applicant claims that the lien, alleged in SOR 1.a, was satisfied a few years ago through diversion of her state income tax refund. (Answer; Gx. 3; Tr. 15, 45 - 47)

The debt alleged at SOR 1.b is for one of several personal loans Applicant has obtained from that creditor. She was unable to repay the loan, originally for about \$500, and it is now the subject of a civil judgment against Applicant for \$1,368 after interest and court costs. Applicant's pay is being garnished to satisfy this debt. (Answer; Gx. 3; Ax. C; Tr. 32 - 33, 47 - 49)

The debt alleged at SOR 1.c is for an unpaid medical bill associated with the birth of her younger child. Her pay is being garnished to satisfy this debt. (Answer; Gx. 3; Tr. 33 - 34, 50)

The debts at SOR 1.d and 1.f are for delinquent cable television and internet provider accounts, respectively, for the apartment where she and her boyfriend live. Applicant's services were cut off in early 2014, but she has not contacted either creditor

to repay or otherwise resolve those debts, which total \$660. (Answer; Gx. 3; Tr. 34 - 35, 37, 52)

After deductions for taxes, insurance, and garnishments, Applicant earns about \$1,700 each month. This is an average which takes into account occasional overtime. Applicant pays \$309 in rent each month and is the only income producer in her household. She did not provide any details about her expenses; she lives paycheck to paycheck without using a structured budget; and she acknowledged that she overspends and “shops a lot.” (Ax. B; Tr. 41, 65 - 67, 69)

Applicant timely filed her federal and state income tax returns for the 2014 tax year. Because she was eligible for the Earned Income Credit, she received a federal tax refund in 2015 of about \$6,000 and a state tax refund of about \$500. Applicant did not use that money to repay any of the debts alleged in the SOR. She stated that she used the money to pay off other things and to spend money on her children. (Tr. 53 - 54, 68)

In March 2011, Applicant was arrested and charged with shoplifting. She claimed the \$10 piece of clothing she was accused of stealing was accidentally stuck outside of one of the bags containing items she had paid for. Nonetheless, she pleaded guilty and was sentenced to 10 days in jail. After paying a fine of \$1,125, Applicant’s jail sentence was suspended. This is the only time Applicant has been charged with a criminal offense. (Answer; Gx. 1; Tr. 55 - 57)

Applicant has a good reputation at work. Her performance appraisals reflect solid to superior performance over the past 10 years. She and other members of her team have been recognized for outstanding performance several times (Ax. A; Tr. 61 - 64)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</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:

- (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

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<sup>5</sup> See Directive. 6.3.

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>6</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>7</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>8</sup>

## Analysis

### Financial Considerations

Available information is sufficient to support all of the SOR allegations under this guideline. The facts established raise a security concern about Applicant's finances that is addressed, in relevant part, 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

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<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>8</sup> See *Egan*; AG ¶ 2(b).

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, this record supports application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

I have also considered 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.

The mitigating condition at AG ¶ 20(a) does not apply because Applicant's past-due debts are multiple and remain unpaid or otherwise unresolved. The mitigating condition at AG ¶ 20(b) partially applies to the repossession debt at SOR 1.e. It appears she was making her car payments for several years before having to pay for significant repairs in addition to her regular payments. These were unexpected circumstances; however, Applicant did not show that she took any action to resolve any remaining debt after the car was repossessed. As to the remaining debts, Applicant did not establish that they arose from unusual circumstances or unplanned events. Applicant has been steadily employed for the past ten years, and she did not cite to any event beyond her control that would account for her indebtedness.

AG ¶¶ 20(c) and 20(d) do not apply because the only payments made on any of her debts have been through involuntary wage garnishment. Additionally, she did not explain why she did not use the money from her income tax refunds to pay off any of the debts listed in the SOR. Applicant acknowledges that she spends too much and that

she does not use a budget to manage her finances. On balance, she has not mitigated the security concerns raised by her past-due debts.

## **Personal Conduct**

Applicant admitted the allegation at SOR 2.a. The basis for that allegation was Applicant's disclosure in her EQIP. The fact that she was arrested and convicted of a shoplifting offense in 2011 was sufficient to raise a security concern about her personal conduct. That security concern is articulated at AG ¶ 15, as follows:

Conduct 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

More specifically, I have considered the potential applicability of AG ¶ 16(c):

credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

By contrast, the mitigating condition at AG ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) applies. This conduct is criminal, but occurred four years ago and is the only such event in Applicant's background. She disclosed the arrest and conviction, even though she denied culpability. Aside from the EQIP and her admission, no documentation about the arrest was submitted against which her version of events could be tested. On balance, the security concern under this guideline is mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a good worker and has been recognized for her performance. While the 2011 arrest is no longer of security concern, Applicant's poor judgment regarding her finances continues to create doubt about her suitability for access to classified information. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

## 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge