



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



In the matter of:

SSN:

Applicant for Security Clearance

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ISCR Case No. 06-25288

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: Pro Se

April 22, 2008

**Decision**

LAZZARO, Henry, Administrative Judge:

Applicant failed to mitigate the security concerns that arise from her financial delinquencies and her failure to disclose the same in a security clearance application she submitted in March 2006.

On April 12, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted an answer to the SOR that was

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<sup>1</sup> This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

received by DOHA on May 9, 2007, in which she admitted all allegations and requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on January 17, 2008, that was mailed to Applicant the same day. Applicant was informed she had 30 days from receipt of the documents to submit her objections to any information contained in the FORM or to submit any additional information she wished to be considered. Applicant acknowledged receipt of the FORM on January 28, 2008, but did not submit a response to the FORM or object to anything contained in the FORM within the time allowed her. The case was assigned to me on April 7, 2008.

### **Findings of Fact**

After a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 60 years old and has been employed as a mail clerk by a defense contractor since December 2005. Applicant was unemployed from either January 2000 to about October 2000 (as stated in her SOR response) or February 2002 to October 2002 (as listed in the Electronic Questionnaire for Investigations Processing (e-QIP) she submitted on March 2, 2006). She was employed as a mail clerk by an employer which was not a defense contractor from either October 2000 or October 2002 to December 2005; and by a defense contractor from July 1988 to either January 2000 or January 2002. She held a security clearance for about 10 years while employed with her first defense contractor employer. There is no report of any prior adverse action having been taken to revoke or downgrade that clearance.

Applicant attended college from September 1966 to January 1968, but did not report obtaining a degree. She was married in January 1969. That marriage ended in divorce in February 1970. She has one adult child.

The SOR alleges nine delinquent debts, totalling \$8,201, that have been submitted for collection; and an additional four delinquent debts, totalling \$9,153, that have been charged off as bad debts. Applicant admitted each of these debts in her response to the SOR. She attributes these delinquent debts to the eight or nine months of unemployment she experienced in either 2000 or 2002, and a decrease in salary when she again obtained employment.

In her February 2007<sup>2</sup> response to interrogatories propounded to her by the DOHA, Applicant included a letter from an attorney, dated February 6, 2007, who stated he had been retained to assist her in preparing and filing a bankruptcy petition. In her May 2007 SOR response, Applicant claimed she was filing for bankruptcy protection. However, she has failed to provide any documentation to show she has actually filed for bankruptcy protection.

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<sup>2</sup> The interrogatories indicate they were executed in February 2006. That date precedes the date on which Applicant submitted her security clearance application and is obviously in error.

Applicant failed to disclose she had any debts that were over 180 days delinquent in the preceding seven years or that were currently over 90 days delinquent in the March 2, 2006 e-QIP she submitted. In her February 2007 response to interrogatories, she explained the reason she failed to provide truthful answers to those questions was because: “ I was extremely embarrassed to admit. It was a mistake which I regret.” (Item 6) She also stated in her response to interrogatories: “Although I was not forthcoming concerning my debt (due to embarrassment and shame) I am a person of integrity.” (Item 6) In her SOR response to the Guideline E allegations, Applicant wrote: “I admit this paragraph is true. My poor judgment in answering questions was due to embarrassment and shame.) (Item 4)

## **Policies**

The Directive sets forth adjudicative guidelines to consider when evaluating a person’s eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F (financial considerations), and Guideline E (personal conduct) with their respective DC and MC, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>3</sup> The government has the burden of proving controverted facts.<sup>4</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>5</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>6</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>7</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

him.<sup>8</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

No one has a right to a security clearance<sup>10</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>12</sup>

## Analysis

### Guideline F, Financial Considerations

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 has 13 severely delinquent debts, totalling over \$17,000, that have either been submitted for collection or charged off as bad debts. All of those debts have been delinquent for many years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant attributes her severely delinquent debt to the eight or nine months unemployment she experienced in either 2000 or 2002, and the reduced wages she received thereafter. However, she has been gainfully employed for either the past five and one-half years or seven and one-half years, depending on which dates of unemployment are correct, but has failed to make any payment or payment arrangements on any of the debts. She did not submit any evidence to indicate she has sought financial counselling. Finally, although she claimed she was seeking bankruptcy protection and submitted a February 2007 letter from an attorney to that affect, she did not submit any evidence to indicate she has followed through and actually filed for bankruptcy protection. Accordingly, she is not entitled to application of any Guideline F mitigating condition.

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<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> *Id.* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

## Guideline E, Personal Conduct

Personal conduct is always a concern because 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 failure to cooperate with the security clearance process.

Applicant failed to disclose her numerous delinquent accounts in the e-QIP she submitted in March 2006. She admitted in her responses to interrogatories and the SOR that those omissions were deliberate. DC 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. I have considered all mitigating conditions under Guideline E and find none apply.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all relevant and material facts and circumstances present in this case, including the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying conditions. I conclude Applicant has failed to mitigate the security concern caused by the financial considerations present in this case and her personal conduct. She has failed to overcome the case against her or satisfy her ultimate burden of persuasion. Guidelines F and E are decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

### Formal Findings

Formal findings for or against Applicant 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-m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a & b:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

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HENRY LAZZARO  
Administrative Judge