



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



In the matter of: )  
)  
) ISCR Case No. 07-15062  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

January 29, 2009

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is denied.

On November 28, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP, SF-86 format) to request a security clearance required as part of her employment with a defense contractor (Item 5). After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

On August 27, 2008, DOHA issued to Applicant a Statement of Reasons (SOR), that specified the basis for its decision: security concerns addressed in the Directive

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

under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).

Applicant received the SOR (Item 1) on September 8, 2008. She signed her Answer on September 15, 2008, in which she admitted to SOR ¶¶ 1.a through 1.g., 1.i., and 1.k. through 1.u. She denied SOR ¶¶ 1.h and 1.j. In her Answer, Applicant also noted that 1.c., 1.e., 1.j. 1.p., and possibly 1.u. were duplicate allegations. She did not indicate whether she wished to have a hearing or have her case decided on the record. As neither Applicant nor the government requested a hearing,<sup>2</sup> the case was assigned to me on January 21, 2009, for an administrative decision based on the record.

On December 29, 2008, DOHA Department Counsel submitted a file of relevant materials (FORM)<sup>3</sup> in support of the government's preliminary decision. Applicant was given 30 days from the date she received the FORM to file a response. The government did not object to Applicant's response, which was timely received on January 9, 2009.

### **Findings of Fact**

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings of fact.

Applicant is a 46-year-old mother of three. She married in 1982, and divorced in 1993. Her three sons are 14, 21 and 24 years old. Her two oldest sons are from a prior marriage and she pays child support arrearages (Item 4). She attended one semester of college in 1999. Applicant was employed as a receptionist from 1997 to summer 2007, and completed her Security Clearance Application as part of that employment (Items 5; 6). As of July 2008, she worked for another defense contractor (Item 6). The file does not include information on whether or not she was employed from summer 2007 to summer 2008.

The SOR alleges that Applicant owes 21 debts, which total more than \$100,000<sup>4</sup> (Items 7, 8 and 9). In her Answer, Applicant admits to 19 debts. She denies allegation 1.j., stating that it is a duplicate of 1.e. However, in her Reply to the FORM, she indicates that it is allegation 1.r. that is actually the duplication of 1.e., noting that "This is item (e) on previous pg. Amount is after truck was sold." (Reply, Item 1) She also contends that allegations 1.c. and 1.p. are duplicates of other alleged debts, but does

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<sup>2</sup> See Directive, Enclosure 3, Section E3.1.7.

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the government's case.

<sup>4</sup> Applicant disputes this total, claiming that her delinquent debt amounts to approximately \$73,000 (see notes on copy of FORM in Applicant's Reply to FORM).

not state which debt each duplicates. She claims that 1.u. might be a duplicate, without further explanation (Item 4).<sup>5</sup>

Applicant denies the \$44,000 child support delinquency alleged in the SOR, stating that the account is current, and that she pays it monthly through payroll deduction. In her Answer, she notes that the amount owed is \$38,000, but in her Reply to the FORM, she lists the current debt as \$36,000 (Reply, Item 1). She also states in her Answer that her income tax refunds are applied to her child support debt.

Applicant claims that all the debts, except the child support, are in a debt consolidation program (Item 4). In her response to DOHA Interrogatories in June 2008, Applicant noted that she had “joined a debt-relief program to correct my outstanding debt” and that she would be “completely out of debt within 5 years.” (Item 6). She provided the name of a law firm as the point of contact, but did not forward documentation showing her enrollment. Three months later, with her Answer of September 15, 2008, she again stated that she was “trying to consolidate and pay off” her debts, and that she had obtained the services of a debt-relief organization. She provided the following documentation: an agreement signed on September 15, 2008; instructions on making payments; and a list of debts to be included in the plan. The list of debts in the agreement duplicates the debt list in the SOR, and the agreement was signed on the day Applicant wrote her Answer to the SOR. The file contains no documentation of payments made or any further contact with the agency between September 2008 and Applicant’s Reply to the FORM in January 2009.

Applicant did not provide a Personal Financial Statement, as requested. However, based on her earning statement of July 2008 (Item 6), her gross monthly pay is approximately \$2,707, or approximately \$32,485 annually. Her net monthly pay is \$1,668, or approximately \$20,000 annually. Her earning statement also shows a garnishment of \$280.85 per pay period, or approximately \$562 per month. She states that this garnishment is applied to her child support debt (Item 6).

Applicant noted in her Interrogatory response that she “recently went through a marital breakup and due to the financial situation I fell behind on things.” (Item 6). In her Answer to the SOR she referred to the same situation, noting that,

“A couple of years ago I was going through a bad relationship break up after 12 years... The one thing that did happen to me is my live in boyfriend whom I have a son with (age 13) walked out on us about 3 years ago and I could not keep up with my payments. I do not receive any child support from him and I could not pay all of these bills, part of them are his, just in my name.” (Item 4).

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<sup>5</sup>In its FORM, the government

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).<sup>6</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole person” concept.

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. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>7</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>8</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, 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>9</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

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<sup>6</sup> Directive. 6.3.

<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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 over-extended 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.

Based on the evidence contained in the FORM, disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*) apply. The credit bureau reports show that most of Applicant's debts became delinquent around 2005 and 2006, and they still appear on her 2008 reports (Items 7, 8 and 9), showing she has a history of being unable or unwilling to meet her financial obligations.

The following conditions that can potentially mitigate security concerns are relevant: 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;

(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.

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant's failure to pay her numerous delinquencies did not occur in the distant past, because they are still delinquent. Although Applicant appears to have signed an agreement with a debt counseling organization, she provided proof only that she is making payments on one of the SOR debts, child support, through garnishment of her pay. Given her failure to provide evidence of that she has actually started to make payments on the remaining debts, her reliability remains in question. AG ¶ 20a cannot be applied.

AG ¶ 20(b) is relevant because Applicant experienced a difficult break-up of her relationship with her son's father, which left her unable to handle the family debts on her own, a condition that was beyond her control. From her statement that it occurred about 3 years ago, the break-up appears to have taken place in approximately 2005. The credit bureau reports show that most of her delinquencies happened in the 2005-2006 time frame (Items 7, 8 and 9). Therefore, it does appear that the loss of her partner's support affected her ability to pay her debts. However, to be applicable, this mitigating condition requires that the person act responsibly under the circumstances. Applicant's failure to contact a debt-relief agency until she received the Statement of Reasons three years later, and her failure to provide evidence of actual payments on her debts, do not demonstrate responsible action. AG ¶ 20 (b) does not apply.

AG ¶ 20c is relevant because Applicant claims she has a payment plan in effect to resolve her debts. However, AG ¶ 20c cannot be applied because it also requires evidence that the problem is under control. Applicant has provided no such evidence.

AG ¶ 20d is also relevant because Applicant contacted a debt-relief agency to begin resolving her delinquencies. However, the record is insufficient to support a claim that she made a good-faith effort to pay her debts. For instance, she stated in June 2008 that she had started a debt-relief program, but provided only the name of a law firm, with no further evidence that she followed through with that firm and began a program (Item 6). She apparently sought out a different debt-relief agency in September 2008. However, the record contains no proof that she has done more than sign an agreement. There is no evidence that Applicant actually began making payments on any debts in the plan. The fact that she signed the agreement on the day she submitted her Answer, and that the debt list is simply a copy of the debts as listed in the SOR, indicate that Applicant engaged in a last-minute attempt to show some evidence of payment efforts. Finally, between her Answer in September 2008, and her Reply in January 2009, she had an opportunity to make payments to show that a plan was underway, but she took no action on any debt during those four months. Without evidence to support her claim of paying her debts through a payment program, and with only a promise of doing better in the future (Item 4), mitigation is not available under AG ¶ 20d.

AG ¶ 20(e) is also relevant. Applicant disputes several allegations, contending they are duplicates of debts alleged elsewhere in the Statement of Reasons. The evidence supports Applicant's claim in part. The credit bureau reports show that 1.c. and 1.p. are duplicates, as well as 1.k. and 1.u. (Items 8 and 9). However, the evidence does not support Applicant's contention that 1.e. and 1.j. are duplicates. AG ¶ 20(e)

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a):

(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) 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.

Applicant is 46 years old and presumed to be a mature, responsible adult. She accrued significant debt over the past several years. In response to the government's concerns she offered proof that she pays one debt: her child support arrearage, which is paid by garnishment. She also offered proof that she signed an agreement with a debt-relief organization, but no record evidence of payments. Absent evidence that the payment plan is underway, and that Applicant has, in fact, begun making payments, the government's security concerns remain. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has not satisfied the doubts about her ability or willingness to protect the government's interests. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.<sup>10</sup>

### **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 as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraph 1.a: - 1.g.	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i - 1.o.	Against Applicant
Subparagraph 1.p.	For Applicant (duplicate of 1.c.)
Subparagraph 1.q. - 1.t.	Against Applicant
Subparagraph 1.u.	For Applicant (duplicate of 1.k.)

### **Conclusion**

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

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RITA C. O'BRIEN  
Administrative Judge

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See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

