



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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SSN: ----- ) ISCR Case No. 08-05259  
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Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro Se*

March 17, 2009

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's request for eligibility for a security clearance is denied.

On June 13, 2007, Applicant submitted a Questionnaire for National Security Positions (SF 86) to renew a security clearance required for her job with a defense contractor, where she works as a senior data coordinator. After reviewing the results of Applicant's 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 continue Applicant's access to classified information. On October 14, 2008, DOHA issued to Applicant a Statement of Reasons

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

(SOR) alleging facts which have raised security concerns addressed in the Revised Adjudicative Guidelines (AG)<sup>2</sup> under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a decision without a hearing. On December 8, 2008, Department Counsel prepared a File of Relevant Material (FORM)<sup>3</sup> in support of the government's preliminary decision. Applicant received the FORM on January 6, 2009, and was given 30 days to file a response to the FORM. She timely responded to the FORM and the case was assigned to me on March 3, 2009.

### **Findings of Fact**

The government alleged Applicant owed approximately \$25,220 for 13 delinquent debts listed in SOR ¶¶ 1.a - 1.m. In response to the SOR, Applicant admitted all but one of the allegations. She denied SOR ¶ 1.i, asserting the debt was paid through a settlement offer. In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is 28 years old and, since June 2005, has worked for a defense contractor. She served in the U.S. Air Force from January 2001 until January 2005. After leaving the Air Force, she was unemployed until she was hired by her current employer. Applicant first received a security clearance in 2001 and the SF 86 she submitted in 2007 appears to be for a periodic re-investigation of her suitability for access to classified information.

Applicant has three children, ages 5, 4, and 3. She and her husband were married in April 2001. They separated after she left the Air Force, but reconciled around the time she was hired by her employer. In July 2005, the couple bought a van for their family, financing \$32,671 for the purchase. However, when Applicant's husband lost his job because the electrical company where he worked closed, they could not afford the payments and surrendered the car to the finance company. Applicant still owes approximately \$14,746 for the balance due on the loan after the car was resold. Applicant had accrued several credit card and other personal credit obligations while she was in the Air Force; however, after she left the service she was unable to continue paying those debts.

Applicant used a debt relief agency to whom she paid \$275 each month between November 2006 and June 2007. However, she stopped using the firm when she realized that, as often happens with such firms, the money was being taken as administrative costs rather than being used to pay down her debts. As to subsequent

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<sup>2</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

<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.

efforts to resolve her debts, she asserted in her subject interview, in response to the SOR, and in response to the FORM that she is (a) planning to settle her debts by February 2009, (b) will use or has used her income tax refunds to pay down her debts, (c) after speaking with creditors and reaching settlement agreements with some, she has set up a savings account into which funds are automatically deposited from her paycheck to use for repayment, (d) she has or will consult with a financial counselor who will help her adhere to a budget, and (e) she will get a second job so she can pay down her debts faster. Applicant has not submitted any documentation to corroborate these claims.

In response to interrogatories from DOHA adjudicators, Applicant submitted a personal financial statement that showed she has about \$263 remaining each month after expenses. That figure includes payment on the debts listed in SOR ¶¶ 1.e and 1.f.

### **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>4</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, those factor 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 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. In this case, the pleadings and the information presented by the parties require consideration of the security concern and adjudicative factors addressed under AG ¶ 18 (Guideline F - financial considerations).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of

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<sup>4</sup> Directive. 6.3.

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

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>6</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>7</sup>

## Analysis

### Financial Considerations.

The security concern about Applicant's finances, as stated in AG ¶ 18, is that

[f]ailure 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.

The government presented sufficient information to support the allegations in the SOR ¶¶ 1.a - 1.m. Further, Applicant admitted to all but one (SOR ¶ 1.i) of the allegations. As to her denial, the debt is documented in the government's information (FORM, Item 8), but it is unclear what information in the file corroborates Applicant's assertion she paid the debt. The file contains a receipt for payment of \$109.67 (FORM, Item 6); however, there is no apparent explanation for this payment. Even assuming it is in satisfaction of SOR ¶ 1.i, the record still shows that Applicant has a history of unpaid debts dating back to at least 2005. The record also shows she has been unable or unwilling (or both) to pay her debts. She has been steadily employed for nearly four years, but has not paid even those debts of less than \$120 each (SOR ¶¶ 1.b - 1.e and 1.m). As to her claims that she has taken action to resolve her debts and improve her personal finances, she has provided nothing that would corroborate her statements.

Based on the foregoing, I have applied the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting*

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<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

*financial obligations*). In response, Applicant did not present sufficient information to support application of any of the mitigating conditions at AG ¶ 20. It is understandable that periods of unemployment, unexpected reductions in income, or marital separation would cause or exacerbate one's indebtedness. However, Applicant has been employed with a positive cash flow for most of the past four years. Yet she has not presented any information that would establish she has actually done anything to resolve her debts, which must also be viewed as recent because they are ongoing and unresolved. Despite having the means to take action to resolve at least some of her more modest debts, she has failed to act in any meaningful way to improve her financial condition. Accordingly, I conclude Applicant has failed to mitigate the government's adverse information about her finances.

### **Whole Person Concept.**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 28 years old and presumed to be a mature adult. She has served in the military and has held a clearance since 2001. However, the great weight of the available information shows she has failed to meet her financial obligations since she was discharged from the Air Force and is unlikely or unable to do so in the near future. A fair and commonsense assessment<sup>8</sup> of all available information bearing on Applicant's finances shows she has failed to address satisfactorily the government's doubts about her ability or willingness to protect the government's interests as her own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.<sup>9</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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.m:	Against Applicant

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<sup>8</sup> See footnote 4, *supra*.

<sup>9</sup> See footnote 7, *supra*.

## **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge