



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



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

**Appearances**

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

July 16, 2009

**Remand 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

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<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.

Section VII of the FORM stated as follows:

DoD Directive 5220.6, Additional Procedural Guidance.[sic] Paragraph 7 also provides that after Department Counsel has submitted the File of Relevant Materials, Applicant will be given the opportunity to submit documentary information in the file. This information must be submitted within thirty days after receipt by Applicant of the File of Relevant Material [sic].

On February 2, 2009, less than 30 days after her receipt of the FORM, Applicant submitted a single-page letter, ostensibly in response to the FORM. In her letter, she represented that she was taking certain actions to resolve the financial issues raised through the SOR and addressed in the FORM. Nothing else was submitted.

The case was assigned to me on March 3, 2009. On March 17, 2009, I issued a decision in this case denying Applicant's request for a security clearance. On May 19, 2009, the DOHA Appeal Board remanded this case to me "for further processing." Specifically, the Appeal Board found as ambiguous and possibly in error my description of a personal financial statement (PFS) submitted by Applicant in response to DOHA interrogatories (FORM, Item 7). The Board further determined that such ambiguity may have been "in error and may well have affected [my] evaluation of the case." (Appeal Board Decision, p. 1 - 2)

The Appeal Board also determined that Section VII of the FORM "contains language which may not reasonably have advised Applicant of the nature of her opportunity to submit evidence (e.g., documents which would corroborate her claims) under the Directive." (Appeal Board Decision, p. 2) I was instructed to re-open the record to allow the Applicant and Department Counsel an opportunity to submit information.

I received the case on May 29, 2009. On June 2, 2009, I issued a written order notifying the parties they had until the close of business on Monday, July 6, 2009, to

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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 supersede 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.

submit additional relevant information in this matter. On June 22, 2009, Department Counsel advised me the government would not submit additional information. On July 1, 2009, I received by facsimile from Applicant, a 29-page document marked for identification as Applicant's Exhibit (Ax. A). I provided a copy to Department Counsel. On July 13, 2009, Department Counsel advised that the government had no objection to the admissibility of Applicant's submission. Accordingly, the record closed on July 13, 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.l, asserting the debt was paid through a settlement offer. In addition to the facts established by Applicant's admissions, and after reviewing the FORM, Applicant's February 2, 2009, response to the FORM, and Ax. A, I make the following findings of relevant fact.

Applicant is 28 years old. Since June 2005, she 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 efforts to resolve her debts, she asserted in her September 2007 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 of them, 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 in January 2008, Applicant submitted a PFS that showed she had, at that time, about \$526 remaining after monthly household expenses. After making payments to five personal credit accounts (including payments to the debts listed in SOR ¶¶ 1.e and 1.f), she had about \$263 remaining each month. (FORM, Item 7)

The information Applicant submitted through Ax. A shows the following:

a. Applicant is again using a financial counseling firm to help her with a budget and a plan to resolve her debts. She asserts she began working with them in September 2008, but all of the firm's information provided in Ax. A (balance sheets and correspondence) is dated June 20, 2009.

b. The financial counseling firm concluded that, before she increased her income with her part-time work, even a modest \$100 payment on her unsecured debt would result in a \$631 monthly deficit. The firm suggested she voluntarily surrender her car because of the high monthly payment. However, as she experienced in 2005, she would probably incur a deficiency on the car loan. As the firm also recommended that Applicant consider bankruptcy, on June 29, 2009, Applicant retained an attorney so she can file a Chapter 7 bankruptcy petition and reaffirm her car loan payment.

c. According to her July 1, 2009, Ax. A cover letter, Applicant is the sole income earner for her family. She claims an increase in monthly income of \$3,567. In addition to her bi-weekly defense contractor pay of about \$925, or \$1,850 monthly, she has taken a part-time job as a newspaper carrier which nets her about \$1,200 monthly. Also, a monthly disability payment from the Veteran's Administration increased from \$471 to \$519 in December 2008.

d. Because of her increased pay, she is no longer eligible for food stamps. Her monthly food expenses have increased by \$200. Because she uses her car for her part time job, her monthly gas expense has increased \$200 and her insurance now costs \$264 each month. Applicant now estimates she "is incurring a monthly net of \$94.52 after expenses." (Ax. A, July 1, 2009, cover letter from Applicant)

## **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 policies 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 factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

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

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 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

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

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

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

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.

On remand, I again find that the government presented sufficient information in the FORM to support the allegations in SOR ¶¶ 1.a - 1.m. Further, Applicant admitted to all but one (SOR ¶ 1.l) 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 that 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.l, 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.

Applicant's additional information presented on remand shows she is working with a financial counseling firm. She also claimed she has eliminated some expenses in order to save money. However, as with the last such effort, it does not appear that she is actually resolving her past delinquencies. In fact, the new information she submitted shows that, while her income each month is higher, because of operating expenses and loss of public assistance for food, her net monthly cash flow is less than half what it was in January 2008. Because it also appears she would incur more debt (as she did in 2005) through a voluntary repossession of her car, she may also file for Chapter 7 bankruptcy and reaffirm her car loan. However, a discharge of her debts through Chapter 7 does not change the fact that Applicant still has less than \$100 remaining each month after expenses and any credit payments.

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 financial obligations*). In response, Applicant's information supports consideration of the mitigating condition at AG ¶ 20(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*). However, Applicant used a financial counselor before and to no avail. Absent information, which she has not presented, that shows her current counseling arrangement may actually help resolve her financial problems, AG ¶ 20(c) offers little benefit to Applicant. Nor does Applicant's new information support application of any of the other mitigating conditions at AG ¶ 20.

As I noted in my original decision, it is understandable that periods of unemployment, unexpected reductions in income, or marital separation would cause or exacerbate one's indebtedness. The recent positive steps she has taken to reduce expenses and increase income are commendable. However, all available information about her finances, including the materials she submitted on remand, shows her financial circumstances have not improved. Further, the available information shows her

finances are not likely to be resolved in the near future. Accordingly, I conclude Applicant has not mitigated 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 has not presented any new information on remand that changes my original conclusions. A fair and commonsense assessment<sup>8</sup> of all available information bearing on Applicant's finances still 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

**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

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

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