



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-05348
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esq., Department Counsel  
For Applicant: *Pro Se*

January 30, 2009

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern that arises from her outstanding delinquent debts. Although she sought Chapter 13 bankruptcy protection in May 2008, two bankruptcy petitions she filed in 2006 were previously dismissed and there is insufficient evidence to warrant a finding that her financial problems are going to be resolved through the current petition.

On July 31, 2008, 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 a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR, dated August 25, 2008, and requested a decision based on the written record without a hearing. She admitted all SOR allegations except those contained in subparagraphs 1.d and 1.e.

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<sup>1</sup> This action was taken under Executive Order 10865, 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.

Department Counsel prepared a File of Relevant Material (FORM) on October 27, 2008, which was mailed to Applicant on November 7, 2008. Applicant was informed she had 30 days from receipt of the FORM 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 November 13, 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 January 22, 2008.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 29 years old and has been employed as an operations controller by a defense contractor since September 2006. She served on active duty in the U.S. Navy from January 1999 to March 2006, and attained the rank of petty officer second class (paygrade E-5). She was unemployed from April 2006 to May 2006, and worked as an administrative assistant from May 2006 until she obtained her current employment. Applicant was awarded an associate's degree in paralegal studies in June 2005, and she attended a university from August 2005 until October 2006. The record does not indicate if she received a degree from the university.

Applicant has been married since November 2003. She has a four-year-old son. Her decision to leave the Navy after almost eight years of service was based on family considerations. She did not anticipate the period of unemployment she experienced following her release from active duty and attributes her current financial problems to that unemployment.

Applicant filed for Chapter 13 bankruptcy protection on September 18, 2006. She explained in her response to the SOR that she and her husband struggled unsuccessfully to stay current on their bills but decided their only option was to seek bankruptcy protection. According to the information contained in the Electronic Questionnaire for Investigations Processing (e-QIP) she filed in or about February 2008, she had only been unemployed for approximately one month following her release from active duty, and, as she stated in her response to the SOR, the employment she obtained in May 2006 was "a great opportunity with decent pay."

The September 2006 bankruptcy petition was dismissed on October 17, 2006, without a Chapter 13 plan having been filed. Applicant explained in her response to the SOR that the petition was dismissed because she missed a court date due to her need to attend her grandmother's funeral.

Applicant again filed for Chapter 13 bankruptcy protection on October 24, 2006. Apparently, a plan was approved because the case was dismissed on February 22, 2008, for failure to make payments. Applicant explained in her response to the SOR the dismissal was because she and her husband missed two payments due to her husband being laid off from his job for over a month beginning in October 2007.

Applicant filed for Chapter 13 bankruptcy protection a third time on May 20, 2008. In her response to the SOR, Applicant stated she and her husband were currently making payments on their debts, presumably under an approved plan, and their goal is to be caught up on their delinquent debts or have them paid off by the end of 2009 or in early 2010.

SOR subparagraph 1.d lists a collection account owing in the amount of \$4,887. Applicant denied this allegation and asserted it was a student loan that had been consolidated with other student loans. She did not provide any evidence in support of her claim. This account is listed in her credit bureau report (CBR), dated October 27, 2008, as remaining unpaid. Likewise, she denied the \$60 medical bill alleged in subparagraph 1.e by asserting it had been paid without providing any evidence to support her assertion. This account is also listed in her October 27, 2008 CBR as being unpaid.

SOR subparagraphs 1.f and 1.g list accounts owing to a credit union that had been charged off as bad debts. The account listed in subparagraph 1.e, owing in the amount of \$4,056, represents a credit card debt. The account listed in subparagraph 1.f, owing in the amount of \$30,238, was for an automobile loan. The creditor on these two accounts is listed on four occasions as a creditor in Applicant's May 2008 bankruptcy filing, so it is likely these accounts are included in that filing.

The accounts listed in SOR subparagraphs 1.h through 1.m, owing in the total amount of \$33,433, arise from student loans that had been in a deferment status. All these accounts are included in Applicant's May 2008 bankruptcy filing.

Without specifying the nature of the debts or the amount owing on the debts, SOR subparagraph 1.c alleged Applicant listed 21 separate delinquent accounts in her May 2008 bankruptcy filing. Applicant admitted this allegation. Most of the creditors listed in the May 2008 bankruptcy filing are in addition to the those listed individually in the SOR. Those creditors include an insurance agency, a department store, a jewelry store and an athletic club, among others. Additionally, Applicant's CBR, dated March 18, 2008, on page 6 lists two collection accounts with dates of last activity indicating they became delinquent and/or had been submitted for collection while Applicant was still on active duty in the Navy.

Applicant submitted letters from her military and civilian supervisors. They attest to her being a dedicated and valued Sailor and employee who has earned a reputation for being dependable and reliable. She possessed a security clearance for almost her entire time in the Navy. There is no indication in the record that any prior adverse action was ever taken to revoke or downgrade her security clearance eligibility.

## **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 and mitigating conditions 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), with its disqualifying and mitigating conditions, is 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>2</sup> The government has the burden of proving controverted facts.<sup>3</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>4</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>5</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>6</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 her.<sup>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</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>11</sup>

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## 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

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

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

<sup>4</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>6</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>7</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

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

<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id.* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

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. . . . (Adjudicative Guideline [AG] 18)

Applicant acquired numerous delinquent accounts that caused her to first seek Chapter 13 bankruptcy protection in September 2006. That petition was dismissed because she reportedly missed a court date. She refiled for bankruptcy protection in October 2006, and that petition was dismissed for failing to make the required payments in February 2008. She has now filed a third time for Chapter 13 bankruptcy protection and indicated in her SOR response that she is making required payments under a plan. She failed to provide any evidence in support of that assertion. The May 2008 petition lists numerous creditors in addition to those specifically alleged in the SOR. Finally, Applicant denied two of the allegations in the SOR, but she failed to submit any evidence in support of the reasons she provided for those denials. 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 the origin of her financial problems to an approximate one-month period of unemployment she experienced after voluntarily deciding to end her service with the Navy. She did not provide any further explanation for her financial problems or any evidence in support of her assertion. Further, the record indicates at least two accounts were delinquent and may have been submitted for collection while she was still in the Navy. Other than filing for Chapter 13 bankruptcy protection on two occasions in 2006, months after she obtained full-time employment at what she herself described as a decent wage, Applicant did not provide any evidence to support a finding that she acted in a responsible manner to either prevent the financial problems she encountered or to resolve them in a timely manner. Finally, she allowed her second bankruptcy petition to be dismissed for failing to make required payments with her only explanation for the dismissal being that her husband was laid off from his job for about a month. Thus, Mitigating Condition (MC) 20(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* does not apply.

Applicant has once again filed for Chapter 13 bankruptcy protection. While she claims she is making payments to resolve her debts and she hopes to be current with all her debts within about the next two years, she did not submit any proof she actually is current on the plan. Additionally, the record is devoid of any information concerning Applicant's family income and expenses or other information to warrant a finding that she will be able to successfully complete any bankruptcy plan that may be in existence and thereafter live a financially responsible lifestyle. Accordingly, MC 20(a): *the behavior . . . 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*; MC 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*; and MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* do not 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 her 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.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, including the letters of reference Applicant submitted, the action she has thus far taken to bring her finances under control, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate the financial considerations security concern. She has not overcome the case against her nor satisfied her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance. Guideline F is decided against Applicant.

### **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

### **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.

Henry Lazzaro  
Administrative Judge

