



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-00624  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel

For Applicant: *Pro Se*

January 15, 2010

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. The record shows Applicant has a history of financial problems or difficulties as evidenced by more than two dozen delinquent accounts for about \$24,789. Although her current financial situation is improved, the record contains insufficient evidence to explain, extenuate, or mitigate the security concerns stemming from her problematic credit history. Accordingly, as explained below, this case is decided against Applicant.

## Statement of the Case

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) to Applicant on June 4, 2009. The SOR is similar to a complaint, and it detailed the factual basis for the action under Guideline F for financial considerations. Also, the SOR recommended submitting the case to an administrative judge for a determination whether to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion and requested a hearing. The case was assigned to me on August 5, 2009. The hearing took place September 21, 2009. The transcript (Tr.) was received September 29, 2009.

## Findings of Fact

Applicant is a 37-year-old software engineer who is employed by a federal contractor. She began her current employment in July 2008, and she completed a security clearance application in August 2008.<sup>2</sup> This is her initial application for a security clearance to work in the defense industry.<sup>3</sup>

Applicant's educational background includes a bachelor's degree in mathematics in 1999, a bachelor's degree in computer science in 2001, a master's degree in secondary education in 2004, and she has earned credits toward a master's degree in mathematics. She financed her education largely through student loans. She owes a total of about \$188,000, and the loans are now in deferment until April 2010.<sup>4</sup> She expects to receive another deferment based on her level of income.

Her first marriage ended in divorce in 2001. She remarried in 2003, and she has a five-year-old son from this marriage. She separated from her husband in January 2009, she filed for divorce in July 2009, and she expected the divorce to become final in October 2009.

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<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines), which were made effective within the Defense Department on September 1, 2006, apply to this case. They supersede or replace the guidelines published in Enclosure 2 to the Directive.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Tr. 8.

<sup>4</sup> Tr. 58.

Her employment history shows she has been continuously employed, except for a three-month period in 2002, since 1998.<sup>5</sup> She worked as a tutor/executive assistant from October 1998 to December 2001; she was unemployed from January 2002 to March 2002; she worked as a data entry clerk from March 2002 to August 2002; and she worked as a teacher for public schools from August 2002 to July 2008, when she began her current job. Her annual gross income as a teacher ranged from \$38,000 to \$48,000. She now earns about \$61,000 annually as an entry-level software engineer. She also has a part-time job teaching on Saturdays to earn extra money and pursue her love of teaching.

Applicant does not dispute that she has a history of financial problems, which she traces back to the 2004 period.<sup>6</sup> She was then pregnant with her son and her health insurance changed from full coverage for the pregnancy to 80% coverage. An unplanned C-section during child birth caused a longer period of maternity leave, which resulted in a six-week period of unpaid leave. These circumstances were the start of her financial problems.

Her husband lost his job about two weeks after their child's birth in 2004.<sup>7</sup> Her husband has three other children (two from a prior marriage and one from a prior relationship), and he fell behind on his child-support payments. By about January 2005, he was jailed for nonsupport, and Applicant incurred expenses to obtain his release and for legal fees. She also started paying the child-support payments (about \$200 monthly). According to Applicant, her husband did not work during most of their marriage.<sup>8</sup> Also according to Applicant, her husband did not finish high school, he is bipolar and has epilepsy, and he does little to help himself. Now separated, her husband lives in a shed behind his mother's house; he is unemployed, but he is taking his medications.<sup>9</sup> Applicant found that her teacher's salary, after deductions (including a sizeable payment for health insurance) was not enough to meet expenses.

Applicant has made some progress on her indebtedness since beginning her current job in 2008.<sup>10</sup> In February 2009, she withdrew the entire proceeds (about \$12,000 after taxes) from a teachers retirement system account and used that money to pay and settle debts.<sup>11</sup> She has about \$70 in cash in bank accounts, and she agrees

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<sup>5</sup> Exhibit 1.

<sup>6</sup> Tr. 36–37.

<sup>7</sup> Tr. 37.

<sup>8</sup> Tr. 38.

<sup>9</sup> Tr. 95.

<sup>10</sup> Tr. 39.

<sup>11</sup> Tr. 65–67.

that she is living paycheck to paycheck.<sup>12</sup> According to Applicant, she is in the process of attempting to buy a home near her place of work.<sup>13</sup> She entered into a contract to purchase a home for \$122,000, and she was waiting on financing and for her divorce to become final. She is making the purchase through a governmental program that allows 100% financing.

The SOR alleged 26 delinquent debts in various amounts for a total of approximately \$24,789. In her reply to the SOR, Applicant admits all the debts except for the debt alleged in ¶ 1.o, and she also provided explanations about the various debts. The current status of the debts, as best as can be determined, is described in the following table.

<b>Debts</b>	<b>Status</b>
SOR ¶¶ 1.a and 1.b—two medical accounts in collection with the same creditor for \$42 and \$156.	Admits the debts existed, but they were deleted from her credit report (Tr. 79–82, Exhibit 2 at pages 79–80).
SOR ¶ 1.c—\$168 medical account in collection.	Unpaid (Tr. 82).
SOR ¶ 1.d—\$1,103 collection account.	Settled for \$350 in Sep. 2009 (Tr. 82–83, Exhibit B).
SOR ¶ 1.e—\$117 collection account.	Unpaid (Tr. 83).
SOR ¶ 1.f—\$1,787 collection account.	Settled for \$1,072 in Sep. 2009 (Tr. 83–84, Exhibit C).
SOR ¶ 1.g—\$2,824 collection account.	Intends to settle (Tr. 84–85).
SOR ¶ 1.h—\$374 collection account.	Paid in full (Tr. 85, Exhibit D).
SOR ¶ 1.i—\$146 collection account.	Paid in full (Tr. 85, Exhibit E).
SOR ¶ 1.j—\$6,350 collection account.	Unresolved, but making \$100 monthly payments since about Mar. 2009; balance is about \$6350 as of Apr. 2009 (Tr. 85–87, Exhibit 2 at pages 112–113).
SOR ¶ 1.k—\$80 collection account.	Unpaid (Tr. 87).
SOR ¶ 1.l—\$717 collection account.	Unpaid and disputes amount paid; no documentation of dispute (Tr. 87–88).
SOR ¶ 1.m—\$359 collection account.	Unpaid (Tr. 88).

<sup>12</sup> Tr. 96.

<sup>13</sup> Tr. 55–56.

SOR ¶ 1.n—\$99 collection account.	Paid in full (Tr. 88, Exhibit F).
SOR ¶ 1.o—\$4,765 unpaid judgment.	Unresolved; denies because she believes she paid account off via a settlement; no documentation of dispute (Tr. 75–79).
SOR ¶ 1.p—\$1,294 collection account.	Unpaid (Tr. 88).
SOR ¶ 1.q—\$85 collection account.	Unpaid, but deleted from credit report (Tr. 88, Exhibit 3 at page 3 of 30).
SOR ¶ 1.r—\$119 collection account.	Unpaid (Tr. 88).
SOR ¶ 1.s—\$430 collection account.	Settled three accounts for \$190 each with same agent collecting for same creditor (Tr. 88-89, Exhibit G).
SOR ¶ 1.t—\$194 collection account.	Unpaid (Tr. 89).
SOR ¶ 1.u—\$158 collection account.	Unpaid (Tr. 89).
SOR ¶ 1.v—\$741 collection account.	Unpaid (Tr. 89).
SOR ¶ 1.w—\$93 collection account.	Unpaid, but disputing amount owed due to a broken apartment lease; no documentation provided.
SOR ¶ 1.x—\$141 collection account.	Unpaid (Tr. 90).
SOR ¶ 1.y—\$590 collection account.	Unpaid, but received offer to settle at an 85% discount (Tr. 90, Exhibit 2 at page 85).
SOR ¶ 1.z—\$1,018 medical account in collection.	Unpaid, but discussing payment with creditor (Tr. 90).

In summary, Applicant resolved six accounts by payment in full or settlement for a total of \$2,611, one account is in a repayment plan, and the other accounts are unresolved.

In addition to the debts in the SOR, she presented proof that she paid off two medical accounts for a total of about \$52.<sup>14</sup> Likewise, her financial history includes issuing NSF checks, which were not alleged in the SOR as they were satisfied.<sup>15</sup> One of the checks was written to a casino when Applicant provided money to her parents to

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<sup>14</sup> Exhibits H and I.

<sup>15</sup> Exhibit 2 at pages 81, 83, and 84 (the NSF checks were not alleged, but were considered under the whole-person concept).

gamble. She denies gambling, as her preference is to enjoy the dining opportunities at the casino.<sup>16</sup>

In about April 2009, Applicant obtained the services of a credit repair company.<sup>17</sup> She did so in an effort to improve her credit history so she could qualify to purchase a home. As a result, some debts, which she admits are otherwise valid, were deleted from her credit reports. She did not receive financial counseling from this company, and she is no longer using their services.

Applicant had about \$70 in cash accounts at the time of the hearing.<sup>18</sup> She agrees that she is living paycheck to paycheck, but she is now able to pay her bills on time.<sup>19</sup> Her most recent three-in-one credit report, dated September 2009, shows credit scores of 563, 542, and 660, which are described as poor, very poor, and fair.<sup>20</sup>

### **Policies**

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, the only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information.

It is well-established law that no one has a right to a security clearance.<sup>21</sup> As noted by the Supreme Court in the case of *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>22</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>23</sup> An

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<sup>16</sup> Tr. 71–75.

<sup>17</sup> Tr. 92–94.

<sup>18</sup> Tr. 96.

<sup>19</sup> Tr. 96.

<sup>20</sup> Exhibit A.

<sup>21</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>22</sup> 484 U.S. at 531.

<sup>23</sup> Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>24</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>25</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>26</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>27</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>28</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>29</sup> The Agency's appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>30</sup>

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>31</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

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<sup>24</sup> Directive, ¶ 3.2.

<sup>25</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>26</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>27</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>28</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>29</sup> *Egan*, 484 U.S. at 531.

<sup>30</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>31</sup> Executive Order 10865, § 7.

## Analysis

Under Guideline F for financial considerations,<sup>32</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness, financial problems or difficulties, or financial irresponsibility. A security concern typically exists due to significant unpaid debts. The overall concern under Guideline F is that:

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.<sup>33</sup>

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The record supports a conclusion that Applicant has a history of financial difficulties. This history raises concerns because it indicates inability or unwillingness to satisfy debts<sup>34</sup> and a history of not meeting financial obligations<sup>35</sup> within the meaning of Guideline F. The facts are more than sufficient to establish these two disqualifying conditions, and they suggest financial irresponsibility as well.

Under ¶ 20 of Guideline F, there are six conditions that may mitigate security concerns.<sup>36</sup> Of the six conditions, the record shows that three apply in Applicant's favor as follows:

(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;

(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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<sup>32</sup> Revised Guidelines, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>33</sup> Revised Guidelines, ¶ 18.

<sup>34</sup> Revised Guidelines, ¶ 19(a).

<sup>35</sup> Revised Guidelines, ¶ 19(c).

<sup>36</sup> Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).



(e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue.

Although Applicant deserves credit for her efforts, the credit in mitigation is insufficient to overcome the security concerns raised by her problematic credit history. It is apparent that Applicant's credit history suffered during her second marriage to a man—with limited education and medical issues—who was unable or unwilling to fulfill his obligation to support his family. Still, Applicant was employed full-time during the marriage, and she has the education and skills to manage her personal finances even on a teacher's income. She made some progress in resolving her indebtedness during 2008–2009, when she began her current job at a higher salary and withdrew about \$12,000 from a teachers retirement account. But as revealed in the findings, only about \$3,000 was accounted for in debt payments. What happened to the other \$9,000 was not accounted for at the hearing, and it militates against a favorable decision.

Looking forward, based on Applicant's problematic credit history (which is ongoing), her uneven efforts to address it, her limited means (\$70 in cash accounts), and a huge student loan obligation to honor (now deferred), it is too soon to rule out the likelihood of additional financial problems. What is missing here is a realistic plan to resolve the vast majority of the delinquent debts. Without such a plan, along with a well-established track record of adhering to the plan, the credit in mitigation is insufficient to overcome the security concerns.

To conclude, the facts and circumstances surrounding Applicant's history of financial difficulties create current doubts about her judgment, reliability, and trustworthiness. She did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. In reaching this conclusion, I gave due consideration to the nine-factor whole-person concept<sup>37</sup> and Applicant's favorable evidence. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

### **Formal Findings**

The formal findings on the SOR allegations, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.z:	Against Applicant

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<sup>37</sup> Revised Guidelines, ¶ 2(a)(1) – (9).

## **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard  
Administrative Judge