



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



In the matter of: )  
)  
) ISCR Case No. 10-00342  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

November 21, 2011

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a security clearance to work in the defense industry. After receiving Chapter 7 bankruptcy protection in 2001, Applicant has accumulated over \$50,000 in delinquent debt, which remains unresolved. She did not falsify her security clearance application. Clearance is denied.

## Statement of the Case

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on September 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the factual bases for the action under the security guidelines known as Guideline F, financial considerations, and Guideline E, personal conduct.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on November 30, 2010. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 16, 2010. She did not object to the items appended to the Government's brief. These items are admitted as Government's Exhibits (GE) 1 through 9. Applicant did not submit a response. The case was assigned to me on November 1, 2011.

## Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. In 2005, she retired from active duty military service after a 22-year career. She currently holds a security clearance.<sup>2</sup>

She married her current husband in 1997. In 2001, Applicant and her husband filed for Chapter 7 bankruptcy protection, under which \$192,017 in debt was discharged. Since then, the couple has accumulated over \$50,000 in delinquent debt, including a voluntary car repossession with an \$11,520 deficit balance. Applicant claims that since 2005, she and her husband have been victims of credit fraud. According to her credit report, in August 2009, just before submitting her security clearance application, Applicant filed an alert with one of the credit reporting agencies indicating that someone may have tried to fraudulently obtain credit in her name. She also requested that no credit be extended without first confirming her identity. In October 2010, two days before she answered the SOR, she retained a credit consultant to assist her in correcting and removing derogatory items from her credit report. In her Answer, she claimed to be waiting for the return of supporting documentation, but did not provide any such

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> GE 4 - 5.

documentation in response to the FORM. To date, Applicant has not provided evidence that the delinquent debts alleged in the SOR have been resolved.<sup>3</sup>

On her personal financial statement, Applicant reports an annual income of approximately \$95,000, after taxes. She has a monthly net remainder of \$3,200 and reports having \$485,000 in total assets.<sup>4</sup>

On her security clearance application, submitted in August 2009, she disclosed a voluntary vehicle repossession in response to Section 26: Financial Record. She did not disclose in response to questions 26m and 26n<sup>5</sup>, respectively, any debts that had been more than 180 days past due within the last seven years of her application or any debts that were more than 90 days past due when she completed the application. She claims that she did not intend to falsify the application, but that she answered the questions based on what she believed to be true when she completed it. She did not note anywhere in the security clearance application that she was the victim of credit fraud.<sup>6</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to

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<sup>3</sup> GE 4 - 5, GE 7 - 8.

<sup>4</sup> GE 6.

<sup>5</sup> Electronic Questionnaires for Investigations Processing (e-QIP), Section 26: Financial Record: For the following answer for the last 7 years unless otherwise specified in the question. Disclose all financial obligations, including those for which you are a cosigner or guarantor.

m. Have you been over 180 days delinquent on any debt(s)?

n. Are you currently over 90 days delinquent in any debt(s)?

<sup>6</sup> GE 4- 5.

classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18:

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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Both disqualifying conditions apply. Applicant has a history of financial problems as evidenced by her seeking bankruptcy protection in 2001. After having \$192,000 in debt discharged, Applicant again accumulated over \$50,000 in delinquent debt by September 2010.

None of the mitigating conditions available under AG ¶ 20<sup>7</sup> apply. Applicant claims that the alleged delinquent debt is not hers, but that she is the victim of credit fraud. In 2009, she requested a fraud alert with one of the credit reporting agencies. However, she has not provided any other evidence to substantiate her claims, let alone explain the circumstances of the fraud. Nor has she provided sufficient evidence to indicate that she has acted responsibly in light of the circumstances. An applicant is reasonably expected to have or be able to get documentation concerning her financial interests.<sup>8</sup> In this case Applicant suggested in her Answer that such documentation exists, however, she did not submit it.

Applicant has not established that she is the victim of credit fraud. The record supports a finding that Applicant has a history of financial problems with no track record of financial reform or rehabilitation. She is not making any effort to reduce her delinquent debt despite her high income, substantial monthly net remainder, and her reported assets. She has not received financial counseling. Applicant's financial problems are recent, ongoing, and continue to cast doubt on her current reliability, trustworthiness, and good judgment.

### **Guideline E, Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern:

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<sup>7</sup> 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;

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;

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;

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

20(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 to resolve the issue; and

20(f) The affluence resulted from a legal source of income.

<sup>8</sup> ISCR Case No. 00-0104 (App. Bd. Mar. 21, 2001).

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The SOR alleges that Applicant falsified her security clearance application because she did not list all of her delinquent accounts in response to Sections 26m and 26n. It is clear that Applicant omitted all but one of her financial delinquencies from her security clearance application. She states, however, that her omissions were not intentional. Proof of omission, standing alone, does not establish or prove an applicant's intent or state of mind when she completed the application. Viewing the record as a whole, there is not sufficient evidence, direct or circumstantial, to draw any conclusions on her state of mind when she completed the security clearance application.<sup>9</sup> Because Applicant's actions do not invoke any of the Personal Conduct Disqualifying Conditions, a discussion of the mitigating conditions is not necessary.

To conclude, the evidence as a whole justifies current doubts about Applicant's judgment, reliability, and trustworthiness. Following *Egan*<sup>10</sup> and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept. Nevertheless, Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. This case 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-1.i.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a.-2.b.:	For Applicant

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<sup>9</sup> See, ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004).

<sup>10</sup> *Navy v. Egan*, 484 U.S. 518 (1988).

## **Conclusion**

In light of all of the circumstances, 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.

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Nichole L. Noel  
Administrative Judge