



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-08495
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

December 13, 2011

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern that arises from her outstanding delinquent debts. Clearance is denied.

On July 29, 2011, 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 10, 2011, in which she admitted all SOR allegations and requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on September 27, 2011, that was mailed to Applicant on September 28, 2011. 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

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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 (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

considered. Applicant acknowledged receipt of the FORM on October 3, 2011, 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 December 7, 2011.

### **Findings of Fact**

After a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 38 years old and has been employed as an executive administrative assistant by a defense contractor since October 2009. She was employed as an executive assistant-agent by her father's insurance agency from July 2008 until October 2009. She worked as an executive assistant-supervisor from September 2001 until July 2008.

Applicant obtained a bachelor's degree in an unidentified discipline in December 1997. She was first married in October 2000. That marriage ended by divorce in December 2001. She has been remarried since January 2003. Applicant has one nine-year-old child, and three stepchildren, ages 20, 19, and 17.

Applicant's credit reports disclose 12 delinquent accounts that have been submitted for collection, owed in the combined amount of \$5,984; four delinquent accounts that have been charged off as bad debts, owed in the combined amount of \$28,299; one account that is owed in the amount of \$17,000, and which is past due in the amount of \$2,000; and a judgment that was obtained against her in the amount of \$2,302.<sup>2</sup>

Applicant was interviewed about most of the delinquent debts listed in the SOR on July 9, 2010. At that time, she stated she did not recognize the creditors listed in subparagraphs 1.b, 1.c, 1.i, 1.n, 1.o, 1.p, 1.q, 1.r, and 1.s. However, she also stated she would contact each of those creditors to determine the nature of the alleged debt and make arrangements to satisfy them if they belonged to her. She also surmised that some of the debts may be medical bills from a procedure performed on her some years earlier. She has not submitted any documentation to indicate that she has done anything to resolve any of these debts.

Applicant attributed the debt alleged in subparagraph 1.d to a delinquent water bill. She stated she would make arrangements to satisfy this debt. She attributed the debt alleged in subparagraph 1.e to consolidated student loans on which she claimed to be making payments. She attributed the debt alleged in subparagraph 1.h to merchandise she purchased over the internet and indicated she would make arrangements to pay this debt. She attributed the debt alleged in subparagraph 1.j to a delinquent credit card and indicated she intended to establish a payment plan to satisfy this debt. She attributed the judgment alleged in subparagraph 1.m to a delinquent credit card on which she claimed to be making payments. She stated she could not understand why the debt alleged in

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<sup>2</sup> SOR subparagraph 1.l alleges a debt that appears to be a duplicate of the debt alleged in subparagraph 1.m. SOR subparagraph 1.n alleges a debt that was transferred to another undisclosed creditor. Neither of these debts are included in the totals listed herein and both of these subparagraphs will be found for Applicant without further discussion.

subparagraph 1.t would be listed as delinquent, but indicated she would contact the creditor and satisfy the debt if it actually was delinquent. Applicant failed to submit any documentation to indicate that she contacted any of the above creditors or that she was actually making any of the payments she claimed to have been making.

SOR subparagraphs 1.f and 1.g represent deficiencies that are owed following two voluntary repossession of automobiles. Applicant failed to submit any documentation to establish that she has done anything to resolve either of these accounts. Applicant was not questioned about the other alleged delinquent accounts listed in the SOR, and there is no record evidence to establish she has done anything to resolve any of those accounts.

During her interview, Applicant explained that she and her husband began falling behind on their debts in either 2004 or 2005 as a result of living beyond their means, rent increases, and child care expenses. In 2008, her financial problems increased when she left the job she had held since 2001 to go to work for her father, because the depressed economy negatively impacted his business, resulting in her being paid sporadically.

In her response to interrogatories, dated February 9, 2011, Applicant claimed she had consulted with a financial planner to resolve her financial problems and with her assistance had established a budget. She also claimed her brother was going to purchase a home where she and her family would be able to live rent free. Finally, she claimed her husband was in the process of retaining an attorney to seek a reduction in his \$800 monthly child support obligation. She did not submit any documentation with her response to the interrogatories or in response to the FORM to establish that she has actually accomplished any of these things.

### **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. Each clearance decision must be a fair and impartial 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>3</sup> The Government has the burden of proving controverted facts.<sup>4</sup> The burden of

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

proof in a security clearance case is something less than a preponderance of evidence,<sup>5</sup> although the Government is required to present substantial evidence to meet its burden of proof.<sup>6</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>7</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>8</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

No one has a right to a security clearance<sup>10</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</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>12</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 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 has 18 delinquent accounts, owed in the combined amount of \$38,585, that are past due, or which have been submitted for collection, charged off as bad debts, or that resulted in a judgment being entered against her. Most of those accounts have been delinquent for years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19C(c): *a history of not meeting financial obligations* apply.

Applicant attributes her financial problems to living beyond her means, rent increases, and child care expenses. She also claims to have experienced financial problems as a result of her decision to leave the job she had held since 2001 to go to work

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<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> *Id.* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

for her father in 2008. However, there is no documentary evidence to support her statement that she has made payments on any of her debts or that she followed through on her claims that she would investigate other debts and establish plans to satisfy them if they were determined to belong to her. Accepting her statements that some of her delinquent debts resulted from a medical procedure and that her financial problems were exacerbated by an economic downturn in her father's business, Applicant's inaction in doing anything to resolve her delinquent accounts since she gained full-time employment with a defense contractor in October 2009 allows for only minimal application of 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.*

In her response to interrogatories, Applicant claimed she had consulted with a financial planner and established a budget. She also claimed her brother was going to provide her family with a house on which they would not have to pay rent, and that her husband was retaining an attorney in an effort to reduce his child support obligation. She failed to provide any documentation in support of those claims in either her response to the interrogatories or in response to the FORM. Accordingly, the following mitigating conditions do not apply: MC 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*; MC 20(c): *the person has received 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.* The remaining mitigating conditions have no applicability to the facts of this case.

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, 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-k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o-t:	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

