



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-09072
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

September 31, 2011

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern caused by delinquent debt that has been placed for collection and that resulted in a judgment being entered against her. Clearance is denied.

On April 14, 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 that was received by DOHA on May 17, 2011. Applicant admitted SOR allegations 1.a, 1.e, 1.g, and 1h, denied allegations 1.b, 1.c, 1.d, 1.f, and 1.i, and she requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on May 27, 2011, that was mailed to Applicant on June 1, 2011. Applicant was informed she had 30 days

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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.

from receipt of the FORM to submit her objections to any information contained in the FORM or any additional information she wished to be considered. Applicant acknowledged receipt of the FORM on June 15, 2011. She submitted a response to the FORM that was received by DOHA on July 1, 2011. On July 12, 2011, Department Counsel executed a memorandum indicating she did not object to the admissibility into evidence of the materials submitted by Applicant. The case was assigned to me on July 25, 2011.

### **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 a 26-year-old single woman without any dependents. She graduated from high school in May 2003, and she obtained a bachelor's degree in criminal justice from a major university in June 2007. Applicant was employed as a part-time interviewer from December 2001 until May 2006, and as a customer service representative from May 2006 until September 2006. She worked as a business manager for a bus contractor from October 2006 until May 2009.

Applicant was employed by a defense contractor from May 2009 until July 2010. She was hired by the defense contractor as an administrative coordinator and promoted to the position of proposal coordinator. Applicant was also assigned to work as an assistant facility security officer by the defense contractor. Applicant resigned from her position with the defense contractor when she was not selected for the position of facility security officer when it became available.

Applicant has been employed as a proposal coordinator by a telecommunications company since July 2010. She submitted letters of recommendation from people who know her at her current place of employment and from friends who attest to her reputation for being an honest, trustworthy, reliable, and hardworking individual. Applicant has been offered a position as a facility security officer by a different employer contingent on her obtaining a security clearance.

Applicant submitted proof she satisfied the debts listed in SOR subparagraphs 1.b, 1.c, 1.d, 1.f, and 1.i between April and June 2008. Those debts were owed in the total amount of \$3,683. Applicant attributes those debts to credit card debt she obtained while a college student without having sufficient income to pay them at that time.

SOR subparagraph 1.a alleges a medical debt, owed in the amount of \$3,527, that resulted in a judgment being entered against Applicant. SOR subparagraphs 1.e, owed in the amount of \$479, 1.g, owed in the amount of \$541, and 1.h, owed in the amount of \$660, are medical debts that have been placed for collection. Applicant attributes each of these debts to treatment she received after she was bitten by a bat in 2008.

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) on April 14, 2010. At that time she informed the investigator she had established a payment plan to satisfy her delinquent debt under which she was making \$300 monthly payments that would satisfy the debts by December 2010. She was

interviewed again on July 8, 2010, and she reaffirmed that she was making \$300 monthly payments and the debt would be satisfied by December 2010.

On January 26, 2011, in response to interrogatories, Applicant stated she had not fully satisfied the medical debts because of a recent hospitalization and other medical treatment provided to her that had added to the amount owed to those creditors. She averred she was in the process of re-establishing a \$300 monthly payment plan under which she would continue to make payments until the debts were satisfied.

Applicant claims the three alleged medical debts that have been submitted for collection are included in the \$3,527 debt on which a judgment has been entered. However, the various medical bills she submitted with her response to the FORM do not confirm those are included debts.

In her response to the FORM, Applicant submitted a statement from the creditor listed in SOR subparagraph 1.a that discloses a zero balance owed for treatment provided to her on February 12, 2007. That treatment was paid for by medical insurance while she was a student and is not part of the debt alleged in SOR subparagraph 1.a.

Applicant submitted a statement from the creditor listed in SOR subparagraph 1.h that discloses she owed that creditor \$660 as of May 23, 2011. While Applicant claims the \$660 is the total balance owed on all the medical debts alleged in the SOR, the creditor listed in the statement she submitted is a different creditor than the one alleged in SOR subparagraph 1.a. Further, the statements from the creditor listed in SOR subparagraph 1.a do not appear to include the services owed under the debt alleged in SOR subparagraph 1.h.

In her response to the FORM, dated June 28, 2011, Applicant stated she had made significant progress in satisfying the medical debts alleged in the SOR. She also stated the accounts would be paid in full with 90 days, once again implying that all alleged medical debts are included in the debt alleged in SOR subparagraph 1.a. However, Applicant again failed to provide any documentation that indicates any payments have been made on any of the alleged delinquent medical debts.

Applicant submitted a personal financial statement with her response to interrogatories in which she listed her net monthly income as \$3,696.96. Included in that amount is \$500 that she wrote was "supplemental income from parents" without further explanation. She listed her monthly expenses as \$2,887, which included the \$300 payment she claims to be making to the creditor listed in SOR subparagraph 1.a. Her net monthly remainder is listed as \$809.96. When she was interviewed by the OPM investigator on July 8, 2010, Applicant informed him that while her finances are "tight" she was able to pay her bills on her own but she occasionally received financial assistance from her father in return for assisting him with administrative duties on an ad-hoc basis in connection with his business.

## 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>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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<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.

## 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)

As alleged in the SOR, Applicant allowed nine accounts to become delinquent that either resulted in judgments being entered against her or that were placed for collection. The total owed on those accounts was \$8,890. Applicant submitted proof she satisfied five accounts that were owed in the total amount of \$3,683. However, four other accounts remain delinquent that are owed in the total amount of \$5,207. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19C(c): *a history of not meeting financial obligations* apply.

Applicant satisfied her delinquent credit card debt shortly after she graduated from college. Mitigating Condition (MC) 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* applies to her conduct as to those debts.

She attributes the medical debts that remain delinquent to a medical emergency caused by a bat bite. However, three years has passed since she received the medical treatment during which she has been continuously employed full-time. On January 26, 2011, in response to interrogatories, Applicant included a personal financial statement in which she listed a net monthly remainder of \$809.96.

Applicant has repeatedly asserted that she has been making \$300 monthly payments on her delinquent medical debts. She initially claimed the medical debts would be fully satisfied by December 2010. She thereafter asserted she stopped making payments due to medical issues that increased the total amount she owed but that she was in the process of re-establishing a \$300 monthly repayment plan. In response to the FORM, Applicant averred she had made substantial progress in resolving the remaining delinquent debt and would have it fully satisfied within 90 days. Applicant repeatedly failed to submit any documentation in support of her assertions.

Applicant claims that all the alleged medical debts are included in the single debt alleged in SOR subparagraph 1.a. However, the documentation she submitted fails to confirm that assertion and seriously calls into question the accuracy of the assertion. Based on the above, I conclude Applicant has failed to act responsibly in connection with the medical debts she incurred and allowed to become delinquent. She is entitled to only minimal consideration under 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.*

The evidence fails to establish that Applicant's financial problems are resolved or that she has assumed a financially responsible lifestyle. 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*; and MC 20(c): . . . *there are clear indications that the problem is being resolved or is under control*. 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For 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

