



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 11-05512
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

08/14/2012

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by her financial problems. Based upon a review of the pleadings and exhibits, Applicant’s request for a security clearance is denied.

**Statement of the Case**

On January 3, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew a security clearance required for her job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to find that it is clearly consistent with the national interest to allow Applicant access to classified information.<sup>1</sup> On April 4, 2012, DOHA issued to Applicant

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

a Statement of Reasons (SOR) alleging facts which raise security concerns addressed at Guideline F (Financial Considerations) of the adjudicative guidelines (AG).<sup>2</sup>

Applicant timely responded to the SOR and requested a decision without a hearing. On June 13, 2012, Department Counsel sent Applicant a File of Relevant Material (FORM)<sup>3</sup> in support of the Government's preliminary decision. Applicant received the FORM on June 25, 2012, and was given 30 days to respond. Applicant timely submitted a one-page memorandum and two enclosed documents. Applicant's response to the FORM was included in the record without objection. The case was assigned to me on August 8, 2012.

### **Findings of Fact**

The Government alleged that Applicant has 15 delinquent or past-due debts totaling \$60,710 (SOR 1.a - 1.o). In response to the SOR (FORM, Item 4), she admitted all of the allegations. In addition to the facts established by her admissions, I have made the following findings of fact.

Applicant is 50 years old and works for a defense contractor in a position that requires a security clearance. She has worked for her current employer since March 2000. She most recently received a security clearance in November 2005. (FORM, Item 6)

Applicant was married from October 2003 until her divorce in January 2007. In response to financial questions in her eQIP, Applicant disclosed she had debts that were in collection, and that her wages had been garnished to satisfy some of her debts. She specifically listed the judgment debts alleged at SOR 1.a and 1.b. She also disclosed that she was having trouble paying her mortgage. (*Id.*)

Credit reports obtained during her background investigation documented all of the debts listed in the SOR. During a subject interview in January 2011, she discussed the debts listed in her credit history. She was familiar with most of the debts, and she stated that her financial problems were a result of her divorce in 2007, and that her ex-husband was not paying his share of the marital debts. She also stated that her co-habitant boyfriend had lost his job. (FORM, Item 7)

The debt alleged at SOR 1.a was enforced through a civil judgment and Applicant is paying that debt at \$60 each month. (Response to FORM) The debt at SOR 1.b was also enforced through a civil judgment and satisfied through a subsequent garnishment of Applicant's pay. (FORM, Item 7; Response to FORM) Applicant is also making \$40 monthly payments for the delinquent credit card debts alleged at SOR 1.e and 1.f. (FORM, Item 7)

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<sup>2</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the Government's case.

Applicant has not received any financial counseling or other professional assistance in resolving her debts. A personal financial statement she provided in response to DOHA interrogatories reflected a negative cash flow each month. The aforementioned payments to the debts in SOR 1.a, 1.e and 1.f were not listed with her monthly expenses. (FORM, Item 7)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(1) The nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment,

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<sup>4</sup> Directive. 6.3.

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

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of the Government.<sup>7</sup>

## **Analysis**

### **Financial Considerations**

The Government presented information that showed Applicant has accrued delinquent debts in excess of \$60,000. She satisfied one debt, albeit through an involuntary wage garnishment. She is making monthly payments on three other debts, but the amounts paid will not satisfy those debts in the near future. She did not provide information showing that any of the remaining debts are being addressed, or that she is able to pay them. This information raises a security concern about Applicant’s finances addressed, in relevant part, at AG ¶ 18 as follows:

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.

More specifically, the Government’s information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19 (c) (*a history of not meeting financial obligations*). By contrast, Applicant’s information in responses to the Government’s interrogatories, the SOR, and the FORM do not support any of the mitigating conditions listed at AG ¶ 20. Her debts are ongoing and substantial when compared to her income and ability to pay. Although her debts may have arisen from her divorce, she has not addressed them in a timely or prudent manner in the five years since her marriage ended. Also, resolution of debts through wage garnishment does not constitute a good-faith effort to pay one’s debts, and Applicant has not sought help through debt counseling or other sources. On balance, she has not mitigated the security concerns raised by her financial problems.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 50 years old and presumed to be a mature, responsible adult. She has a masters degree she received in 2005, and she has been gainfully employed since at least March 2000. However, available information in support of the AG ¶ 2(a) factors is not sufficient to overcome reasonable doubts about Applicant’s suitability for access to classified information.

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<sup>7</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Because protection of the national interest is paramount in these determinations, those doubts must be resolved for the Government.

### **Formal Findings**

Formal findings 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.o:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge