



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



In the matter of: )  
 )  
XXXXXXXXXX, XXXXX ) ISCR Case No. 11-05970  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

06/26/2013

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On February 5, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 28, 2012, the Department of Defense (DOD) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F. The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended that her

case be submitted to an administrative judge for a determination whether her clearance should be continued or revoked.

Applicant answered the SOR on October 11, 2012, and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated January 16, 2013, was provided to her by letter dated January 16, 2013. Applicant received the FORM on January 28, 2013. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation.

In response to the FORM, Applicant submitted a letter dated January 30, 2013, in which she requested that a decision based on her FORM be delayed until she had an opportunity to submit additional material. On April 18, 2013, Department Counsel indicated that as of that date, he had not received any additional material from the Applicant and forwarded her FORM. The case was assigned to me on April 23, 2013.<sup>1</sup>

### **Findings of Fact**

The SOR under Guideline F consists of two separate allegations. Applicant denied SOR ¶ 1.a stating that this account was paid in full, and denied SOR ¶ 1.b stating that she had been making monthly \$250 payments on this account to a law firm. Applicant's admissions and explanations are incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

### **Background Information**

Applicant is a 52-year-old custodian, who has been employed by a defense contractor since October 2000. She attended a technical school from 1986 to 1987. Applicant has been married since 1989 and has two adult children. She did not serve in the armed forces nor has she previously held a security clearance. (Item 5.)

### **Financial Considerations**

The debt in SOR ¶ 1.a incorrectly alleges a federal tax lien for \$1,147. The allegation should have alleged a state tax lien, which is supported by Applicant's credit report. (Item 9.) Applicant's SOR answer stated that this lien was paid in 1993 – 1994. The Government has provided a separate exhibit which verified that a state tax lien in the amount in question was released on January 27, 1994. (Item 12.) SOR ¶ 1.a apparently was incorrectly alleged as a federal tax lien when it was in fact a state tax lien, and the state tax lien has been satisfied. This debt is no longer a concern.

With regard to SOR ¶ 1.b, which is a charged-off \$15,000 debt to a credit card company, Applicant stated that she was making \$250 monthly payments for this debt to

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<sup>1</sup> On June 24, 2013, I confirmed with Department Counsel by e-mail that he had not received any additional documentation from the Applicant.

a law office, with an unpaid balance of \$1,941. (Item 4.) Applicant did not provide documentation corroborating her statement. (Items 8 and 12.)

Applicant disclosed several adverse areas regarding her financial history during her Office of Personnel Management (OPM) December 2010 interview. She noted debts not previously disclosed in her e-QIP. She disclosed a 2010 foreclosure, and explained that her home went into foreclosure after she and her spouse were unable to make full house payments in 2008 to 2009 as a result of reduced income. Applicant stated that her spouse unsuccessfully attempted to negotiate a reduced mortgage payment. She moved out of her home in February 2010 and the bank foreclosed. Applicant has no intention to contact the bank to make deficiency payments since she does not live there anymore. Her January 2013 credit report indicates the bank charged-off the home equity debt after foreclosure. (Item 6.)

Additionally, when Applicant was confronted by the OPM investigator, she was not familiar with the \$15,000 credit card debt alleged in SOR ¶ 1.b., but was going to check with her spouse. (Item 6.) In her later response to financial interrogatories, she did not provide any information regarding this debt. (Item 7.) Her current credit report indicated this account, in the amount of \$15,057, was charged-off. As noted above, Applicant claimed in her SOR answer that this account was being paid off to a law firm, but provided no documentation that the law firm was collecting for this particular debt and that consistent payments were being made as claimed. Lastly, Applicant and her spouse filed chapter 7 bankruptcy in October 1993, which was discharged in February 1994. (Item 13.)

Applicant's personal financial statement (PFS) indicates that she and her spouse have a net monthly remainder of \$552; however, her PFS does not show payments toward the law firm as she claimed in her SOR answer. (Item 13.) Applicant presented no evidence that she has participated in financial counseling or that she is following a viable budget.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the AGs. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied 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 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 contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”<sup>2</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>3</sup>

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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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* Executive Order 12968 (Aug. 2, 1995), Section 3.

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<sup>2</sup> See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>3</sup> “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

## Analysis

### Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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 Government substantiated its security concern under this Guideline through the evidence submitted. The debt alleged in SOR ¶ 1.a appears paid or resolved. However, the debt alleged in SOR ¶ 1.b is unresolved.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in her credit reports and in her OPM interview.

The evidence establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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;

(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;

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

(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.

Considering the record evidence as a whole,<sup>4</sup> I conclude none of the five financial considerations mitigating conditions above are applicable or partially applicable except for the debt alleged in SOR ¶¶ 1.a. With regard to that debt, application of ¶ 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, is appropriate. Applicant presented no evidence before or after receipt of her FORM documenting efforts taken to contact creditors, or to resolve any of her other outstanding debts since she acquired them.

To conclude, Applicant presented little or no evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In fairness to the Applicant, this decision should not be construed as a determination that the Applicant cannot or will not attain the state of financial stability necessary to justify the award of a DoD security clearance. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, she may well demonstrate persuasive evidence of her security worthiness.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole-person factors”<sup>5</sup> and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the Government’s case. For the reasons stated, I conclude she is not eligible for access to classified information.

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<sup>4</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

<sup>5</sup> See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

### **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:	For Applicant
Subparagraph 1.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

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ROBERT J. TUIDER  
Administrative Judge