



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



In the matter of: )  
)  
) ISCR Case No. 11-06022  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

**12/18/2012**

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant’s financial problems resulted from an unexpected medical emergency. She is making reasonable efforts to resolve her delinquent debts. She mitigated the security concern that arose from her delinquent debts. Clearance is granted.

On April 30, 2012, 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 an undated response to the SOR in which she admitted all SOR allegations except those alleged in subparagraphs 1.a and 1.e. Applicant requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on September 10, 2012, that was mailed to Applicant on September 25, 2012. Applicant was informed she had 30 days from receipt of the FORM to submit her objections to any information

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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.

contained in the FORM or to submit any additional information she wished considered. Applicant acknowledged receipt of the FORM on October 1, 2012, and submitted a response to the FORM on October 17, 2012. On October 22, 2012, Department Counsel indicated he did not object to anything contained in Applicant's response to the FORM. The case was assigned to me on November 20, 2012.

### **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 50 years old and has been employed by a defense contractor since October 1985. She currently serves as her employer's facility security officer. Applicant has possessed a security clearance for more than 20 years, and no allegation is made in the FORM that she has ever compromised or risked the compromise of classified information. There is no indication any previous adverse action has been taken to revoke or downgrade her security clearance.

Applicant obtained a bachelor's degree in criminal science in May 1984. She obtained an esthetician license in February 2004. Applicant worked part time as a data entry clerk from July 2000 until December 2004. She has worked part time as an esthetician from June 2008 until the present. She has also worked part time as a cosmetic sales consultant from April 2008 until the present.

Applicant has never been married. She has cohabited with her fiance since about September 2005. Applicant's fiance is a self-employed tradesman. He began experiencing health issues in February 2008 and he underwent surgery in July 2008. Complications from the surgery caused him to be hospitalized again in August 2008. He did not fully recover from his medical problems until about February 2009. As a result of his medical conditions, Applicant's fiance was unemployed for an extended period of time and remained underemployed until about March 2010.

Applicant purchased a residence in 2005. Her fiance paid one-half of their combined household expenses until he became ill in February 2008 and no longer had an income from which to contribute to their joint living expenses. As a result, Applicant became solely responsible for their support. Applicant's credit reports disclose she was financially secure and paid her debts "As Agreed" before her fiance's illness.

Applicant submitted proof with her response to interrogatories that she satisfied the debt listed in SOR subparagraph 1.a in February 2012 by making a lump sum payment of \$2,729.68 in response to an offer from the creditor for a reduced settlement. She entered into a repayment plan with the assistance of a consumer credit counseling service in March 2012 to resolve the debts alleged in subparagraphs 1.b, 1.c, 1.d, 1.f, and 1.i. She submitted proof with her response to the FORM that she has made monthly payments of either \$337.61 or \$384.16 to the credit counseling service since March

2012. Information Applicant submitted with her response to the SOR indicates that if she continues to make the required payments she will complete the repayment plan in February 2016.

Applicant submitted a partial credit report, dated October 1, 2012, that discloses the delinquent account alleged in SOR subparagraph 1.e is a successor creditor to the account alleged in subparagraph 1.h. She submitted verification with her response to the FORM that she has been making nominal payments in the amount of \$50 per month toward this debt since October 2011. She submitted proof with her response to the FORM that she has been making \$200 monthly payments toward the debt alleged in SOR subparagraph 1.g since July 2010.

Applicant submitted letters or recommendation from co-workers and supervisors. Those people all indicate they have known Applicant for long periods of time and have had the ability to assess her character. They attest she is a patriotic, loyal, competent, dedicated, and reliable person. She displays good judgment, and they have found her to possess high moral character and integrity.

### **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

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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.

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>

## 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 a number of outstanding delinquent debts. Most of those debts have been delinquent for several years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant’s credit reports disclose she paid her debts “As Agreed” until after her fiance became seriously ill in February 2008. They resided together for several years before he became ill and they split their joint living expenses evenly. His illness resulted in him being unemployed and underemployed for an extended period of time. As a result, Applicant found herself solely responsible for their support, which resulted in her inability to remain current on the debts listed in the SOR.

Applicant has been making payments toward the largest alleged delinquent debt (SOR subparagraph 1.g) since July 2010. She fully satisfied another alleged delinquent debt (SOR subparagraph 1.a) by making a substantial lump sum payment in February 2012 in response to a reduced settlement offer. She has been making nominal payments toward another alleged delinquent debt (SOR subparagraphs 1.e and 1.h) since October 2011. Somewhat belatedly, Applicant entered into a debt repayment program with the assistance of a consumer credit counseling service in March 2012. She has made all required payments through that agency and, presuming she continues to make the required monthly payments, will satisfy her remaining delinquent debts by February 2016.

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<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.

The following Mitigating Conditions (MC) apply: MC 20(a): *the behavior happened . . . 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(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*; MC 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*; 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 mitigated the financial considerations security concern. She has overcome the case against her and satisfied her ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guideline F is decided for 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: FOR APPLICANT

Subparagraphs 1.a-i: For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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Henry Lazzaro  
Administrative Judge