



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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[NAME REDACTED] ) ISCR Case No. 11-07049  
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Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

01/30/2013

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by significant delinquent debt, which she failed to address for nearly eight years. Her request for a security clearance is denied.

**Statement of the Case**

On September 2, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for her job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators issued Applicant interrogatories<sup>1</sup> seeking to clarify or augment the information contained therein. Based on her responses to the interrogatories and the results of the background investigation, it could not be

<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

determined that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>2</sup>

On July 10, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline F (Financial Considerations).<sup>3</sup> Applicant timely responded to the SOR and requested a decision without a hearing. Department Counsel issued a File of Relevant Material (FORM)<sup>4</sup>, dated November 2, 2012, in support of the SOR. Applicant received the FORM on October 23, 2012, and had 30 days to file a response to the FORM. On December 14, 2012, Applicant submitted additional information (Response to FORM) to which Department Counsel did not object. The record closed on December 31, 2012, and the case was assigned to me on January 4, 2013.

### **Findings of Fact**

Under Guideline F, it was alleged that Applicant owes approximately \$27,216 for three delinquent debts. SOR 1.a alleges a \$25,027 debt for a delinquent personal loan. SOR 1.b alleges a \$838 debt for a delinquent credit card account. SOR 1.c alleges a \$1,315 debt for a delinquent credit card account. Applicant admitted, with explanation, the debts at SOR 1.a and 1.b. She denied SOR 1.c, claiming that the debt has been paid. (FORM, Item 3) In addition to the facts established by Applicant's admissions, I have made the following findings of fact.

Applicant is 36 years old. Since December 2009, she has worked as a technical recruiter for a defense contractor. This appears to be her first request for a security clearance. Applicant was married from February 1985 until obtaining a divorce in January 2005.

When Applicant submitted her eQIP in 2010, she disclosed several delinquent accounts, including the debts alleged at SOR 1.a and 1.b. She cited, but did not otherwise define, "financial hardship" as the cause of her financial problems, and she stated the SOR 1.b debt would be paid by the end of the year. When Applicant was interviewed in October 2010, she discussed with the investigator at least nine different accounts, including the debts now alleged in the SOR, that were past due or delinquent. As to the debts at issue in this case, she averred that she would look into the accounts and take care of them.

In April 2012, Applicant responded to interrogatories from DOD adjudicators. She stated that she would make arrangements to pay the debt now alleged at SOR 1.a by May 2012, and that she was "working on" the debt at SOR 1.b.

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<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>3</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

<sup>4</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included seven documents (Items 1 - 7) proffered in support of the Government's case.

Also in response to DOD interrogatories, Applicant provided a personal financial statement (PFS) that showed she had about \$2,000 remaining each month after paying her expenses. Those expenses included payment on other accounts.

During her subject interview, and in her responses to interrogatories, the SOR, and the FORM, Applicant has stated that her financial problems were caused by her divorce in 2005. She averred that her ex-husband did not pay his share of marital debt remaining when the marriage ended. However, she did not show that she has approached her ex-husband about paying his share of their debt since the divorce.

When she responded to the SOR, Applicant stated that she had been unable to establish a repayment agreement with the SOR 1.a creditor. She also stated that she would pay off the SOR 1.b debt by October 2012. She claimed to have paid the SOR 1.c debt, but has not provided any supporting information (e.g., a cancelled check, a past bank statement entry, etc.).

In response to the FORM, Applicant established that she has paid off the SOR 1.b debt. She also stated that she has been unable to obtain any information about the SOR 1.c debt, which still appears on her most recent credit report.

As to SOR 1.a, Applicant established that she entered into a repayment agreement in December 2012. She paid \$200 down and will pay \$100 each month. No other details were provided, such as whether the interest and penalties on this debt will continue to accrue, or whether she is paying the same amount alleged in the SOR. Based on available information, it will take Applicant about 20 years to repay this debt.

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</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

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<sup>5</sup> Directive. 6.3.

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>6</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.<sup>7</sup> If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>8</sup>

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.<sup>9</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's 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>10</sup>

## **Analysis**

### **Financial Considerations**

Applicant accrued more than \$25,000 in unpaid debt after her marriage ended eight years ago. Despite having been interviewed about her financial problems in 2010, and after she responded to interrogatories in April 2012, she did not act to pay or otherwise resolve those debts until after she received the FORM in November 2012. These facts raise a security concern 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.

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<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> Directive, E3.1.14.

<sup>8</sup> Directive, E3.1.15.

<sup>9</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

More specifically, Applicant's conduct requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Mitigation of the security concerns raised by the Government's information is available if Applicant can produce information sufficient to establish one of the following AG ¶ 20 conditions:

- (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; or
- (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.

The debts at issue all arose around the time of her divorce. Applicant's claim that her financial problems arose from her divorce is plausible. However, she did not establish that she acted responsibly in the wake of her divorce. Indeed, even after she was interviewed about her debts more than two years ago, she failed to take any verifiable action to resolve her debts or support her claim that SOR 1.c was already paid. The PFS she submitted in early 2012 shows that she has had the means to pay most of her past-due obligations for at least the past year or so. Finally, Applicant has not sought any counseling or other assistance in resolving her past-due debts. On balance, I conclude none of the Guideline F mitigating conditions apply.

### **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 a 36-year-old employee of a defense contractor who has worked as a technical recruiter since 1998. Aside from her past-due debts, her recent history appears to be stable and uneventful. However, her failure to more timely act to resolve debts she has owed for about eight years undermines confidence in her judgment and reliability. It is understandable when debts accrue after a divorce. But failure to act is as much a concern as the debt itself. A fair and commonsense assessment of available information shows that doubts remain about Applicant's suitability because of her financial history. Because the Government has a compelling interest in protecting its sensitive information, these doubts must be resolved against granting access to classified information.

### **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.c :	Against Applicant

### **Conclusion**

In light of all available information, 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