



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 11-13259

**Appearances**

For Government: Ray Blank, Esq., Department Counsel

For Applicant: *Pro se*

11/07/2013

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns regarding her finances. Eligibility for access to classified information is denied.

**Statement of Case**

On March 13, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by DOD on September 1, 2006.

Applicant responded to the SOR on April 16, 2013 (amended June 4, 2013, and June 10, 2013) , and requested a hearing. The case was assigned to me on September 6, 2013, and was scheduled for hearing on August 19, 2013. At hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (herself) and seven exhibits (AEs A-G). The transcript (Tr.) was received on October 4, 2013.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 28 delinquent medical and consumer debts. The alleged debts exceed \$28,000.

In her answer to the SOR, Applicant admitted five of the listed debts: creditors 1.b (\$459); creditor 1.c (\$454); creditor 1.t (\$634); creditor 1.w (\$6,533); and creditor 1.y (\$43). She denied the remaining allegations, claiming multiple removals from her creditor reports (creditors 1.e through 1.g, 1.l, 1.m, 1.n, and 1.x); duplication (creditors 1.z/1.aa are duplicates of creditors 1.e/1.f); and disputed (creditors 1.a, 1.e, and 1.f). In her amended response of June 4, 2013, she admitted 11 debts which she included in her debt consolidation plan. She elaborated on the status of three debts in her second amended response of June 10, 2013.

### **Findings of Fact**

Applicant is a 26-year-old administrative associate of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in April 2006 and has one child from this marriage, age two. (GE 1; Tr. 32-33) She earned an Associates of Arts degree from a state junior college in October 2007 and has earned additional credits from other junior colleges since 2007. (GE 1) She has also earned a real estate principles certificate in 2011. She claims no military service. (GE 1)

### **Applicant's finances**

Between 2006 and 2011 Applicant and her husband accumulated a number of delinquent debts. She attributes most of her debt issues to a short periods of unemployment in 2008 (partially the result of a traffic accident she experienced in November 2008) and 2010-2011. (GE 2; Tr. 33-34) For a number of months in 2011, her husband was also out of work and helped with the parenting responsibilities for their young son. (Tr. 34) Applicant and her husband accumulated over \$28,000 in delinquent medical and consumer debts that they have not been able to repay to date.

Applicant disputes many of the listed debts. She claims that several have been removed from her credit reports and have either been paid or do not belong to her. (AE C) Creditors 1.a (\$1,626), 1.e (\$548), creditor 1.f (\$386), creditor 1.g (\$735), creditor 1.l (\$259), creditor 1.m (\$1,800), creditor 1.n (\$374), and creditor 1.x (\$157) are no longer listed in Applicant's latest credit report. (AE C; Tr. 36) Whether these debts were paid or otherwise resolved, they are no longer reported as outstanding debts. (AEs C-E) Other debts covered in Applicant's credit reports (i.e., creditors 1.z/1.aa) are duplicates of creditors 1.e/1.f. (GEs 3 and 4 and AE C; Tr. 27-29) In an April 2013, she wrote the creditor asking for written proof of each of these duplicated debts. (AE G) She never received any response to her inquiry, and none of these disputed debts are considered proven. Addressing an education debt covered by subparagraph 1.v (\$1,858, Applicant claims the debt is current, and her claims are corroborated by her recent credit report. (AE C)

Altogether, Applicant disputes listed debts approximating \$9,000. She still admits more than \$19,000 of aggregated delinquent debts that remain outstanding and unaddressed. (GEs 3 and 4 and AE C; Tr. 43-44, 61-62)

For several months in 2013, Applicant explored debt consolidation with a debt consolidation firm. (AE F; Tr. 39-45) After reviewing Applicant's finances, this consolidation firm counseled her that her current income sources were insufficient to meet debt consolidation requirements and recommended she work with her creditors individually. (Tr. 39-45, 67) Since abandoning her debt consolidation efforts, Applicant and her husband have been unable to make any headway with their admitted debts.

Currently, Applicant earns approximately \$4,100 a month in net income, a considerable increase over her reported net monthly earnings in December 2012. (GE 2; Tr. 50-51) Her expenses exceed \$2,250 a month and include health care outlays of more than \$250 a month under her employer's new health insurance policy that includes a \$4,000 deductible. (GE 2; Tr. 47-49) As a result, she is left with a \$757 deficit every month. (Tr. 51) Because her husband continues to stay at home to care for their young son, Applicant remains her family's only source of income. (GE 2; Tr. 46)

While Applicant expects her finances to improve in January 2014 when she anticipates a \$300 raise, at this time she is not in a position to address her delinquent debts. (GE 2; Tr. 58-60) Applicant has no savings or investment accounts to draw upon in emergency situations and currently resides in her grandmother's home. (Tr. 71)

## **Endorsements**

Applicant is well regarded by her program and operations managers and her coworkers. Her program manager characterized her as a "highly professional, ethical and trustworthy individual." (AE A) He credited her with being an upstanding citizen and proactive member of her community. Another program manager described Applicant as professional, steady, a good financial steward, fair, attentive to detail, and empathetic.

(AE 4) Citing her superb work ethic, he expressed confidence and trust in her performance.

Applicant's operations manager praised her performance, integrity, and dedication. (AE A) Both co-workers who worked with Applicant for at least two years and friends described her as dedicated, dependable, and trustworthy. (AE A)

Besides her character references, Applicant furnished performance evaluations. (AE B) In her 2012 performance assessment, her raters credited her with "exceeds" and "far exceeds" performance assessments and described her as an outstanding administrative associate who possesses a wealth of administrative knowledge and experience. (AE B) They characterized her overall work performance as exceptional and credited her with being an invaluable asset to her employer's project. (AE B)

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. (AG ¶ 18)

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. *See United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

## Analysis

Security concerns are raised over Applicant's history of delinquent medical and consumer accounts. Several of her listed debts have been removed from her credit reports. She disputes others, which she claims are duplicate debts that do not belong to her. Still, she has no established plan to address her remaining delinquent debts, which exceed \$19,000. And she has since abandoned her debt consolidation initiatives in the hope she can achieve better repayment results with her individual creditors.

Historically, Applicant encountered considerable difficulties in addressing her delinquent medical and consumer obligations. Her financial issues raise potential security concerns about her judgment, reliability, and trustworthiness in managing her finances. Her actions warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶ 19(c) "a history of not meeting financial obligations."

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are explicit.

Applicant's identified short periods of unemployment in 2008 and 2010 adversely affected her ability to timely meet her financial obligations. Compounding her financial difficulties during these unemployment periods was her husband's loss of employment in 2010 and her birth of a child. Her situation entitles her to partial application of 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." Without more evidence of follow-up efforts to address her admitted debts once she returned to the work force, she is not able to satisfy the second prong of MC ¶ 20(b) that requires a showing of responsible actions after the hardship was removed. This Applicant has not been able to persuasively demonstrate.

Full mitigation is also lacking in Applicant's payment initiatives to date. While an applicant need not have paid every debt alleged in the SOR, the applicant needs to establish that there is a credible and realistic plan to resolve identified financial problems, accompanied by significant actions to implement the plan. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). While Applicant has taken documented corrective steps with several creditors associated with debts she disputes, and made promises to address her remaining debts when her finances improve, she has not produced a track record of payments of the debts she accepts as valid ones.

To her credit, Applicant pursued credit counseling after receiving the SOR and briefly explored debt consolidation. In recognition of these efforts she may claim some

benefit from 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.” Since abandoning her debt consolidation efforts, Applicant has failed to document her follow-up efforts with creditors holding admitted debts and failed to establish a workable and realistic plan to resolve her remaining debts. Minimal mitigation efforts necessary to meet Appeal Board requirements are not shown.

From a whole-person standpoint, the evidence reflects some unfortunate economic circumstances played a role in Applicant’s accumulation of delinquent debts. She is considered highly reliable by her supervisors, coworkers, and friends and has made tangible efforts to contact and work with her creditors. Still, she has made little progress in arranging concrete repayment plans with her individual creditors. She still owes in excess of \$19,000 on her debts with no established repayment plan and reported monthly expenses that exceed her disposable income. Moreover, she has abandoned other potential repayment options such as debt consolidation for lack of sufficient funding sources. Overall, Applicant demonstrates some progress in stabilizing her finances with successful disputes of several of her listed debts and in her exploring counseling and debt consolidation. Her efforts to date are insufficient, however, to meet mitigation requirements governing her finances.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

**GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

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| Subparas. 1.b through 1.d, 1.h through 1.k, 1.o through 1.u, 1.w, 1.y, and 1.bb: | Against Applicant |
| Subparas. 1.a, 1.e through 1.g, 1.i through 1.n, 1.v, 1.x, 1.z, and 1.aa:        | For Applicant     |

### **Conclusions**

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 Applicant’s security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge





