



**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. 11-13428

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

11/15/2013

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists 20 delinquent, collection, or charged-off accounts totaling \$57,098. She failed to make sufficient progress resolving her financial problems. Applicant also presented forged letters she claimed were from creditors falsely indicating some of her debts were paid or in payment plans. Financial considerations and personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 19, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 4) On May 29, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an 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 Guidelines F (financial considerations) and E (personal conduct). (Item 1) The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On June 28 and July 3, 2013, Applicant responded to the SOR allegations. On November 7, 2013, Department Counsel indicated in an email that Applicant verified that she did not desire a hearing. (Item 2) A complete copy of the file of relevant material (FORM), dated September 5, 2013, was provided to her on September 24, 2013. She was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.<sup>1</sup> Applicant did not respond to the FORM. The case was assigned to me on November 7, 2013.

### **Findings of Fact<sup>2</sup>**

Applicant admitted responsibility for 20 delinquent, collection, or charged-off accounts. (SOR ¶¶ 1.a to 1.t) She also admitted that she provided fabricated letters from creditors to DOHA in an attempt to convince security officials that she was making progress addressing her delinquent debts. (SOR ¶ 2.a) She explained her husband left her and her family and did not provide financial support. Loss of her security clearance will adversely affect her financial situation. Applicant's admissions are accepted as findings of fact.

Applicant is 46 years old, and she was employed as a proprietary systems specialist in July 2011.<sup>3</sup> She was employed from February 2006 to July 2011 in information technology. (August 24, 2011 Office of Personnel Management (OPM) personal subject interview (PSI) at 13) From September 1991 to February 2006, she was employed as a "Special Assistant/Labor Rational" for a large urban school system. She has never served in the military. In 2002, she married, and in January 2006, she separated from her spouse. She has a son, who was born in 1991. (OPM PSI at 13) She attended several colleges; however, she was not awarded a degree. There is no evidence of arrests or convictions. There is no evidence of use of illegal drugs or alcohol abuse.

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<sup>1</sup>The DOHA transmittal letter is dated September 11, 2013, and Applicant's receipt is dated September 24, 2013. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to submit information.

<sup>2</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>3</sup>Unless stated otherwise, Applicant's July 19, 2011 SF 86 is the basis for the facts in this paragraph. (Item 4)

In Applicant's July 19, 2011 SF 86, she disclosed four delinquent collection accounts as follows: \$2,455; \$347; \$16,214; and \$8,109. She said she would have all four debts paid off in 2013.

Applicant's SOR lists 20 delinquent, collection, or charged-off accounts totaling \$57,098 as follows: ¶ 1.a (\$2,485); ¶ 1.b (\$1,668); ¶ 1.c (\$10,966); ¶ 1.d (\$677); ¶ 1.e (\$532); ¶ 1.f (\$254); ¶ 1.g (\$5,099); ¶ 1.h (\$1,362); ¶ 1.i (\$256); ¶ 1.j (\$17,358); ¶ 1.k (\$715); ¶ 1.l (\$9,739); ¶ 1.m (\$4,068); ¶ 1.n (\$586); ¶ 1.o (\$121); ¶ 1.p (\$109); ¶ 1.q (\$100); ¶ 1.r (\$699); ¶ 1.s (\$197); and ¶ 1.t (\$107). Her three largest debts resulted from two vehicle repossessions and a lease on an apartment. (FORM at 5) Applicant's credit reports, August 24, 2011 OPM PSI, and SOR response, consistently describe her financial problems and delinquent debts.

In her February 2013 response to DOHA interrogatories, Applicant submitted documents that appeared to be letters from her creditors indicating payment plans were established, debts were paid, or debts were in the process of being paid through payment plans. (Item 8) DOHA was suspicious about the authenticity of the letters from creditors that Applicant provided. DOHA sent the letters to Applicant's creditors for verification. (Item 8 at 7-38; FORM at 9-10) Six creditors indicated the letters Applicant submitted to DOHA were not issued by the creditors. (Items 10-15; FORM at 10) Applicant admitted that she knew the letters she submitted were fabricated to falsely reflect that she had paid some of her SOR debts and made payments on others. (SOR response) Applicant did not submit any documentary evidence, independently verified by DOHA as authentic, such as payments to SOR creditors, correspondence to or from creditors, debt disputes, or other evidence of progress showing resolution of her SOR debts.

Applicant's personal financial statement (PFS) shows her monthly gross salary is \$5,125; her monthly net salary is \$3,229; and her monthly net remainder after subtracting expenses is \$404.<sup>4</sup> She shows monthly debt payments of \$250 for a \$5,228 bank debt, \$295 for a \$1,495 bank debt, \$160 for a \$4,200 student loan, and \$324 for a \$3,318 car payment. None of her PFS debt payments are to SOR creditors.

The September 11, 2013 DOHA letter conveying the FORM to Applicant invited her to "submit any material you wish the Administrative Judge to consider or to make any objections you may have as to the information in the file." Applicant did not provide any response to the FORM.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the

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<sup>4</sup>Applicant's undated personal financial statement, submitted on February 12, 2013, is the source for the facts in this paragraph. (Item 8)

authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## 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.

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, OPM PSI, and SOR response. Applicant's SOR response indicates she admitted responsibility for 20 delinquent, collection, or charged-off accounts totaling \$57,098. The Government established 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;<sup>5</sup> 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving her delinquent debt does not warrant full application of any mitigating conditions to all SOR debts. Applicant's low income and separation from her spouse are financial conditions largely beyond her control; however, she did not act responsibly under the circumstances. She did not describe any unemployment or changes in her income after July 2011, when she received her current employment. In light of her false letters from creditors and false information about paying debts and making payments to creditors, the documentation she submitted cannot be accepted at face value.

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<sup>5</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Under the circumstances of her submission of forged documents, there is no credible documented evidence of the following financial components: (1) her maintenance of contact with her SOR creditors;<sup>6</sup> (2) her attempts to negotiate payment plans with her SOR creditors; (3) her disputes of her debts; (4) her payments to SOR creditors; (5) her financial counseling; or (6) her financial responsibility. Financial considerations concerns are not mitigated.

## Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16(b) provides one disqualifying condition that is particularly applicable as follows, "(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."<sup>7</sup> Applicant admitted in her SOR response that SOR ¶ 2.a was correct. She knowingly submitted false documents to DOHA indicating she had paid some of her creditors, and that she had established payment plans with some of her other SOR creditors.

Seven mitigating conditions under AG ¶ 17 are potentially applicable:

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<sup>6</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

<sup>7</sup>The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions fully apply. Applicant engaged in a calculated and deliberate attempt to portray herself as financially responsible by submitting fabricated documents to DOHA. The fabricated documents are complicated and required generation of spreadsheets and false signatures. She is credited with admitting her attempt to deceive; however, admitting her conduct is only the first step on the road to rehabilitation. More time without any serious breaches of integrity must elapse before Applicant can be entrusted with access to classified information. Personal conduct concerns are not mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):



(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant's finances were adversely affected by low income and separation from her spouse. These were circumstances beyond her control. She has been employed by the same defense contractor since July 2011, and for the last two years, she had stable employment. There is no evidence of abuse of alcohol or drugs. She contributes to her company and the Department of Defense. There is no evidence of disloyalty or that she would intentionally violate national security.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. She failed to mitigate 20 delinquent, collection, or charged-off accounts totaling \$57,098. She could have made greater progress resolving and documenting resolution of her delinquent SOR debts. She presented forged letters to DOHA that she claimed were from creditors. The forged letters purportedly from her creditors falsely indicated numerous payments to some creditors, and other creditors were paid. The false documents were relatively elaborate and required calculation and deliberation to generate. She did not provide documentary proof with established authenticity that she made any payments to any of her SOR creditors. Her failure to establish her financial responsibility and her submission of forged documents to DOHA shows lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶¶ 15 and 18.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations and personal conduct concerns are not mitigated. For the reasons stated, I conclude Applicant is not eligible for access to classified information at this time.

### **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
Subparagraphs 1.a to 1.t:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

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

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Mark Harvey  
Administrative Judge