



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



In the matter of: )  
 )  
----- ) ISCR Case No. 15-00392  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

08/29/2016  
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**Decision**  
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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for access to classified information. The evidence is sufficient to explain and mitigate Applicant's financial problems and difficulties. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on August 22, 2014.<sup>1</sup> About one year later on September 27, 2015, after reviewing the application and information gathered during a background

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<sup>1</sup> Exhibit 1 (commonly known as a security clearance application).

investigation, the Department of Defense (DOD)<sup>2</sup> sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified information.<sup>3</sup> The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations. She answered the SOR on October 28, 2015, and requested a hearing.

The case was assigned to me on February 22, 2016. The hearing was held as scheduled on May 24, 2016. Department Counsel offered Exhibits 1–4, and they were admitted. Applicant testified on her own behalf and offered Exhibits A–D, and they were admitted. The transcript of the hearing (Tr.) was received on June 2, 2016.

### **Findings of Fact**

Applicant is a 47-year-old employee who is seeking to obtain a security clearance for the first time. She is employed as a civil engineer and project manager working on construction and design projects on a military installation. She has worked for her current employer since June 2014. Before that, she worked as a civil engineer for another company on the same military installation during 2013–2014. Before that, she worked as a project manager for another company on the same military installation during 2006–2013. And before that, she worked as a project engineer for another company during 1999–2006. Her education includes a master's degree in civil engineering.

Applicant's first marriage was brief (1989–1990) and ended in divorce. She married again in 1998. She and her husband have three children, ages 13, 14, and 17, in their household. She also has a 23-year-old married stepdaughter. She described her husband as dyslexic, unable to read, and not good with paperwork, and he is a self-employed handyman.

In her August 2014 security clearance application, Applicant disclosed that she had failed to file federal and state income tax returns for tax years 2011, 2012, and 2013.<sup>4</sup> She stated that she was working on getting the returns filed, she did not owe any back taxes, and she expected to receive refunds.

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<sup>2</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

<sup>3</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006).

<sup>4</sup> Exhibit 1.

A September 2014 credit report was obtained during Applicant's background investigation.<sup>5</sup> It lists six medical collection accounts, most for small or minor amounts, for a total of \$1,093. Otherwise, the credit report contains no delinquent, collection, charged-off, or past-due accounts, and no tax liens.

Applicant provided additional details about her financial record during her background interview in October 2014.<sup>6</sup> She confirmed that she had yet to file her state and federal tax returns for 2011, 2012, and 2013, but hoped to do so by the end of the month. She explained her failure to file the returns was due to the crash of her personal computer in which she used a financial software program to track and store her financial information. She also reported that she had been past due on medical bills, and she attributed the problem to changes in employment during 2013–2014 and several changes of health insurers.<sup>7</sup>

An additional credit report was obtained in August 2015, shortly before the SOR was issued.<sup>8</sup> It lists six medical collection accounts for a total of \$979. Four of the six accounts are also listed on the previous credit report. Otherwise, the credit report contains no delinquent, collection, charged-off, or past-due accounts, and no tax liens.

Under Guideline F, the SOR allegations fall into two groups: (1) Applicant failed to file state and federal income tax returns for tax years 2011, 2012, and 2013; and (2) based on the two credit reports, eight unpaid medical collection accounts for a total of \$1,414. The SOR allegations are established by Department Counsel's documentary evidence, Applicant's documentary evidence, and Applicant's admissions in her answer to the SOR and her hearing testimony.

At the hearing, Applicant explained the failure to file the tax returns was due to a combination of circumstances:

I was working with a man who was helping me with taxes. He wasn't - - he just helped, but I still signed them - - he wasn't a CPA or anything; he didn't submit them for me.

And I asked him if there was a reason to rush if the government owed me, and he said no, like there's no penalty if the government owes you. So I just didn't - - I just saved up my paperwork.

In 2011 we moved [to a house about one mile away], and I was busy remodeling our house, and then after that, when we unpacked everything,

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<sup>5</sup> Exhibit 3.

<sup>6</sup> Exhibit 2.

<sup>7</sup> Exhibit C.

<sup>8</sup> Exhibit 4.

finally I got all my paperwork. By then it was 2012. Then my computer crashed; I lost everything. I keep everything in Quicken.

And so I had to get a new computer, and then I had to recover the hard drive from the crashed computer to get my Quicken file. So I finally got that [done], and then at that point I was like, well, since the government owes me, I'll work it when I can. So that's kind of what happened there.<sup>9</sup>

She did not understand that the obligation to file a tax return was independent from whether she was due a refund.<sup>10</sup> She also conceded that procrastination was a factor, and she got behind and was overwhelmed by the situation.<sup>11</sup> Because of his dyslexia, her husband is of no assistance with the tax matters, and he has difficulty with the limited paperwork for his handyman business.<sup>12</sup>

Applicant filed state and federal income tax returns for tax years 2011, 2012, and 2013, in January and February 2015, which is several months before the SOR was issued to her.<sup>13</sup> She acknowledged she was prompted to do so by information she received during the October 2014 background investigation.<sup>14</sup> The IRS tax return transcripts for those three years show that she and her husband, with a filing status of married filing joint, received refunds for each year in the total amount of \$10,670. The state income tax returns for those three years show refunds of \$423 and \$418 for two years and tax due of \$172 for one year. In addition, she timely filed state and federal income tax returns for tax years 2014 and 2015 within an extension of time.<sup>15</sup> They received \$7,408 in refunds from the IRS for those two years and \$768 in refunds from the state for the last two tax years.

For tax year 2015, Applicant retained the services of a certified public accountant (CPA), and she intends to use those services going forward.<sup>16</sup> She believes using the CPA will be helpful in (1) timely filing tax returns, (2) dealing with her husband's self-employment income, and (3) dealing with income from two rental properties they bought

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<sup>9</sup> Tr. 29–30.

<sup>10</sup> Tr. 52–54.

<sup>11</sup> Tr. 54, 44.

<sup>12</sup> Tr. 45, 58–59.

<sup>13</sup> Exhibits A and B.

<sup>14</sup> Tr. 42–43.

<sup>15</sup> Exhibits A and B; Tr. 45.

<sup>16</sup> Tr. 45--46, 51–52.

in 2015, which are managed by her husband. She also believes using the CPA will help with her tendency to procrastinate.<sup>17</sup>

Concerning the medical collection accounts in SOR ¶¶ 1.c–1.h, she explained in her answer to the SOR that the creditor is representing the same healthcare service, and she paid the accounts in October 2015. She denied the validity of the accounts in SOR ¶¶ 1.i and 1.j for \$215 and \$220, because they did not appear on a recent credit report. Likewise, those two accounts do not appear on the Government’s most recent credit report from August 2015.<sup>18</sup>

At the hearing, Applicant’s documentation included proof of payment for five medical collection accounts to the same healthcare service for a total of \$1,161. Four of the accounts were paid in October 2015, and one account was paid in May 2016. She explained that the medical collection accounts came about because the healthcare service did not file a claim with her insurance or they filed with the wrong insurance, and it was difficult to keep up with the medical billing.<sup>19</sup>

Applicant was polite and respectful throughout the hearing. She answered questions in an open and honest way. Overall, I found her statements credible and worthy of belief.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>20</sup> As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>21</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>22</sup> An

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<sup>17</sup> Tr. 54.

<sup>18</sup> Exhibit 4.

<sup>19</sup> Tr. 35; Exhibit C.

<sup>20</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>21</sup> 484 U.S. at 531.

<sup>22</sup> Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>23</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>24</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>25</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>26</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>27</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>28</sup> The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>29</sup>

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>30</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

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<sup>23</sup> Directive, ¶ 3.2.

<sup>24</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>25</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>26</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>27</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>28</sup> *Egan*, 484 U.S. at 531.

<sup>29</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>30</sup> Executive Order 10865, § 7.

## Discussion

Under Guideline F for financial considerations,<sup>31</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.<sup>32</sup> The overall concern is:

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.<sup>33</sup>

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The evidence supports a conclusion that Applicant has had a history of financial problems and difficulties. Her failure to file state and federal income tax returns for 2011, 2012, and 2013, and multiple medical collection accounts are sufficient to raise a concern.<sup>34</sup> The tax matters deserve close examination because failure to timely file tax returns or pay taxes suggests that an applicant has a problem complying with well-established governmental rules and systems. And voluntary compliance with such rules and systems is essential for protecting classified information. With that said, I have given less weight to the medical collection accounts. They are for relatively small if not minor amounts of money. Moreover, medical debt is presumed to be incurred for necessary medical care and treatment as opposed to frivolous or irresponsible spending.

I considered the six mitigating conditions under Guideline F,<sup>35</sup> and the following are most pertinent in analyzing Applicant's case:

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<sup>31</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>32</sup> ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

<sup>33</sup> AG ¶ 18.

<sup>34</sup> AG ¶¶ 19(c) and (g).

<sup>35</sup> AG ¶ 20(a)–(f).

AG ¶ 20(c) [t]here are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The latter mitigating condition applies to Applicant's payment of the medical collection accounts. The former mitigating condition applies to her efforts to comply with tax laws by filing the state and federal income tax returns for the three years in question. In addition, she timely filed returns for the last two tax years. And for the most recent tax year (2015), she retained the services of a CPA to assist her with the returns for that year and in future tax years. Taken together, these circumstances show that her tax problems are resolved and are under control going forward.

In addition to the formal mitigating circumstances, I considered several other circumstances as follows:

I considered the nature, extent, and seriousness of Applicant's financial problems. The tax matters are serious while the medical collection accounts are of minor concern. The seriousness of the tax matters is lessened to some extent by the absence of tax liens and other collection actions.

I considered her reliance on the erroneous advice she received from a former tax preparer that she did not need to timely file a return if a refund was due. She now understands that advice was mistaken.

I considered the frequency of the conduct (three tax years) and the recency of the conduct (the untimely returns were filed in January and February 2015, several months before the SOR was issued).

I considered her age and maturity at the time. I note that she is a mother with three school-age children, a full-time job, and a spouse who is unable to assist her with managing financial and tax obligations.

I considered the presence of rehabilitation (she is now in compliance with state and federal tax authorities) and other behavioral changes (she is now using a CPA for the tax matters).

I considered her motivation in failing to timely file the tax returns. It was not an attempt to evade or avoid paying taxes. Indeed, she received large refunds upon filing the returns.

I considered the likelihood of recurrence. I assess the likelihood as acceptably low based on her decision to use a CPA for her tax matters.



I gave her favorable consideration for her full, frank, and candid disclosure of the unfiled tax returns on her security clearance application. She was also truthful and complete in responding to questions during the security-clearance process. Her actions are exactly what is expected of a person who is seeking access to classified information.

And I gave her favorable consideration for seeking professional assistance and using the services of a CPA for her tax matters.

These circumstances, combined with the mitigating conditions discussed above, persuade me that Applicant's financial problems are in the past and are unlikely to recur. She presented sufficient evidence to explain, extenuate, and mitigate the security concern.

Applicant's financial problems and difficulties do not create doubt about her current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>36</sup> Accordingly, I conclude that she met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

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| Paragraph 1, Guideline F: | For Applicant |
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| Subparagraphs 1.a–1.j: | For Applicant |
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### **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard  
Administrative Judge

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<sup>36</sup> AG ¶ 2(a)(1)–(9).