



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-00443
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro se*

08/08/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by the delinquent debts she incurred during a bad marriage that ended in divorce. She started addressing her financial situation after separating from her former husband three years ago. She documented her action in addressing her debts. She paid some debts in full, is paying others through agreed-upon payment plans, and manages her present finances in a responsible manner. She met her burden of persuasion for continued access to classified information. Clearance is granted.

**History of the Case**

On September 14, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR and requested a hearing to establish her continued eligibility for access to classified information (Answer).

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<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial*

On March 21, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for April 26, 2016.<sup>2</sup> The hearing was convened as scheduled. Applicant testified and called two witnesses as references. I admitted, without objection, Government exhibits (Gx.) 1 – 4 and Applicant's exhibits (Ax.) A – O. The hearing transcript (Tr.) was received by DOHA on May 6, 2016.

### **Findings of Fact**

Applicant is in her early forties. She married in 1999, shortly after graduating from college. She went to graduate school, but did not complete the course of studies for a degree due to family commitments. She had two children during the marriage. She has been employed as a federal contractor since 2001, and held a clearance since 2004. She is a lead helpdesk technician and has been with her current employer since 2009.

Applicant and her former spouse had a tumultuous relationship, which was exacerbated in the final years of their marriage by long stretches of unemployment and underemployment that her former spouse experienced. Applicant left the marriage about three years ago, when her former spouse threatened her with physical violence.

After separating from her former husband, Applicant moved in with her parents to reduce her expenses. She stopped living off credit cards, stabilized her finances, and started addressing her past-due debts. During the course of the present security clearance reinvestigation, Applicant uncovered that her former spouse, who had been responsible for filing and paying their taxes, had failed to do so. She contacted the IRS, negotiated an installment agreement, and presented documentation of paying per the terms of the agreement. She is in the process of resolving her overdue tax filings. Applicant disclosed her adverse financial history on her security clearance application.

Applicant also presented evidence documenting the steps she has taken to resolve her largest outstanding SOR debts for student loans she incurred for graduate school. She did not have student loan debt for college, as she paid for her undergraduate degree through scholarships, part-time work, and financial assistance from her parents. She also documented paying other debts, both those alleged in the SOR and non-SOR debt. A large portion of her outstanding debt is related to medical care for herself and her children.

Applicant received financial counseling. She uses an excel spreadsheet to manage her finances. She presented documentation of timely paying her recurring monthly expenses and automatic deductions into a savings account. She recently started contributing to her employer-sponsored 401(k) account. She has approximately \$200 in monthly disposable income to pay unanticipated expenses.

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*Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

<sup>2</sup> Prehearing scheduling correspondence, the notice of hearing, and case management order are attached to the record as Hearing Exhibits (Hx.) I – III, respectively.

Applicant's divorce was finalized this past year. Following their separation, Applicant's former husband did not provide consistent financial support for their children. He was found liable for child support arrears totaling over \$10,000. Applicant filed the proper paperwork and is now receiving \$800 in child support through court-ordered garnishment.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline F, Financial Considerations

The security concern under this guideline is explained at AG ¶ 18:

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.

The financial considerations security concern is not limited to a consideration of whether an individual with financial problems might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which an individual's delinquent debts cast doubt upon their judgment, self-control, and other qualities essential to protecting classified information.<sup>3</sup>

The SOR alleges delinquent student loans (1.a – 1.d and 1.m); past-due medical accounts (1.e-1.i, 1.k, and 1.l), and an overdue phone and library account (1.j and 1.n). These debts total about \$60,000, with nearly \$55,000 of that amount attributable to the student loans Applicant incurred for graduate school. Applicant's accumulation of delinquent debt raises the financial considerations security concern and, specifically, the disqualifying conditions listed at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions are most relevant:

AG ¶ 20(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;

AG ¶ 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;

AG ¶ 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

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<sup>3</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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

Applicant's financial problems stem, in large part, from a bad marriage and lack of financial support while raising two children on her own over the past three years. Notwithstanding these circumstances, Applicant took responsible action to address her financial situation. After separating from her former husband three years ago, Applicant reduced her expenses and has methodically and systematically addressed her delinquent debts. Notably, she contacted the IRS, negotiated an installment agreement, and presented documentation of a track record of debt payments. She responsibly addressed her student loan debt by submitting the necessary paperwork to consolidate her loans and to establish a reasonable repayment plan.<sup>4</sup> She also satisfied or is paying other debts that she became aware of through the background investigation.

Although some debts remain, Applicant is living within her means and addressing her debts as her finances allow. The remaining SOR debts do not undercut the significant efforts she has made in the past three years to take control of her finances and satisfy her debts. Furthermore, Applicant's demonstrated track record of debt repayment and the manner in which she currently manages her finances provides a reasonable degree of certainty that she will continue to manage her finances in the manner expected of clearance holders.<sup>5</sup> AG ¶¶ 20(a) through 20(d) apply.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.<sup>6</sup> Applicant met her burden.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of all the relevant circumstances, to include the nine factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F, and note some additional whole-person factors. Applicant has been upfront and candid about her past financial trouble throughout the course of the current background investigation. Her financial situation was not the result of poor

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<sup>4</sup> ISCR Case 11-09258 (App. Bd. Sep. 3, 2013) (judge erred in relying on lack of results in resolving delinquent loan, instead of examining applicant's efforts in resolving indebtedness, which would provide meaningful context in assessing applicant's security clearance suitability).

<sup>5</sup> ISCR Case 14-00504 (App. Bd. Aug. 4, 2014) (adverse decision reversed because, notwithstanding the lack of corroboration regarding the resolution of some SOR debts, applicant removed concerns about her security clearance suitability by documented efforts to resolve her delinquent debts).

<sup>6</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

self-control, lack of judgment, or unwillingness to abide by rules and regulations. Rather, her financial situation grew out of poor personal choices she made when she was younger. However, she has matured greatly over the past three years and has taken control over of all aspects of her life, including her finances. She formulated a plan to resolve her financial situation and implemented it. In short, Applicant mitigated security concerns raised by the accumulation of past-due debts during her former marriage. Overall, the record evidence leaves me with no questions or doubts about Applicant's continued eligibility for access to classified information.

### **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 (Financial Considerations)      FOR APPLICANT

Subparagraphs 1.a – 1.n:      For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge