



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



In the matter of: )  
)  
) ISCR Case No. 15-00885  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

05/05/2017

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance. While her financial problems may have been caused by events beyond her control, Applicant did not act responsibly to resolve her delinquent accounts. Clearance is denied.

**Statement of the Case**

On September 21, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended her case be submitted to an administrative judge for consideration.

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD 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 to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> The Government submitted its written case on January 28, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. She received the FORM on February 9, 2016, and did not respond. The case was assigned to me on May 10, 2016. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 2, and 4 through 5, without objection. GE 3, is excluded as explained below.

### **Procedural Matters**

GE 3 is a report of investigation (ROI) summarizing the interview Applicant had with an investigator during his October 2014 background investigation. The interview, which contains adverse information, is not authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions him that if he fails to object to the admission of the interview summary in his response to the FORM that his failure may be taken as a waiver of the authentication requirement. Applicant's failure to respond to the FORM or, specifically, to Footnote 1 does not demonstrate that he understands the concepts of authentication, waiver, and admissibility. It also does not establish that he understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 3 is inadmissible, and I have not considered it.

### **Findings of Fact**

Applicant, 56, has worked for a federal contractor since May 1984. She has held a security clearance for over 30 years. On her most recent security clearance application, dated October 2015, Applicant disclosed three delinquent debts along with an explanation of the circumstances causing her financial problems. Applicant's disclosures and the credit reports in the record, GE 4 and 5, are the basis of the SOR allegations.

Applicant blames her financial problems on a series of events between 2008 and 2009. In 2008, Applicant was in a car accident that totaled her car and caused her to be on medical leave for four months. Around the same time, Applicant's husband, a construction worker, lost almost half of his hours at work. The resulting decrease in household income caused Applicant to have trouble meeting all of her financial obligations. She contacted her mortgage company and creditors to disclose her financial hardship and negotiate more favorable repayment terms. Ultimately, Applicant successfully modified her mortgage, and it is now current. By the time she completed her security clearance application, Applicant had three bills that remained unresolved: a personal loan, a credit card (SOR ¶ 1.b), and a retail credit account for carpeting in her home. She debated whether to default on the accounts or declare bankruptcy. Deciding that defaulting would have a lesser negative impact on her finances, Applicant stopped paying the three accounts in September 2009. In accordance with her responsibilities as

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<sup>2</sup> GE 3.

a clearance holder, Applicant reported her decision to purposely default on the three accounts to her facility security officer (FSO).

The SOR alleges that Applicant is indebted to four creditors for approximately \$32,000. Applicant denied the debt alleged in SOR ¶ 1.a because the creditor is not listed on any of the credit reports she reviewed. However, the account appears on GE 4 and 5, which Applicant received with the FORM. The credit reports provide information about the original creditor (GE 5) as well as contact information for the collection agency holding the account (GE 4). Applicant admitted owing SOR ¶¶ 1.b through 1.d. In her answer, Applicant stated that she would resolve SOR ¶¶ 1.c and 1.d, two medical accounts totaling approximately \$300, by November 2015. However, she did not provide any documentation showing that these debts have been resolved. Applicant has not provided any information about the current state of her finances.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

### **Analysis**

Unresolved delinquent debt is a serious security concern because failure to "satisfy debts [or] 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>3</sup>

The SOR alleges Applicant owes over \$32,000 in delinquent accounts. The disclosures in Applicant's security clearance application, her answer to the SOR, and the two credit reports in the record establish the Government's *prima facie* case, that Applicant has a history of financial problems and that she has demonstrated an unwillingness to pay her debts.<sup>4</sup> While the origin of Applicant's financial problems were caused by events beyond her control, Applicant has not established that she has acted responsibly to resolve them. Despite given enough information to do so, Applicant provided no evidence that she investigated the origins of SOR ¶ 1.a to determine if she owed the account. Her failure to recognize the creditor holding the account does not constitute a reasonable basis to dispute its legitimacy as it is common for companies to sell delinquent accounts to collection agencies. Applicant's decision to purposely default on SOR ¶ 1.b is not reasonable as it the decision was based on the creditors unwillingness to give her more favorable repayment terms. Applicant has not demonstrated a good faith effort to resolve her delinquent accounts. All four debts alleged in the SOR remain unresolved.

The security concerns are not mitigated by Applicant's reporting the defaulted accounts to her FSO. A clearance holder is expected to self-report adverse information. However, doing so does not grant immunity from the consequences of the underlying conduct. While the debts in SOR ¶ 1.b and the other debts she disclosed in her security clearance application may not be a source of coercion or exploitation, her unwillingness to repay legitimate debts continues to reflect negatively on her continued security worthiness, in particular her reliability and trustworthiness.

Based on the record, doubts remain about Applicant's ongoing suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant's long history as a clearance holder does not outweigh the security concerns raised by her recent financial decisions. While these proceedings are not aimed toward collecting debts, an applicant's conduct toward her legitimate creditors can be predictive of her treatment of the rules, regulations, and responsibilities of a clearance holder as it does here. Accordingly, Applicant's request for ongoing access to classified information is denied.

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<sup>3</sup> AG ¶ 18.

<sup>4</sup> AG ¶¶ 19(a) and (c).

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.d: Against Applicant

### **Conclusion**

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge