



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03405

**Appearances**

For Government: Philip Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

08/09/2017

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant presented insufficient information to establish that she is financially responsible and that her financial problems have been resolved or are under control. The financial considerations security concerns are not mitigated. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 31, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) on March 24, 2016, issued her a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on June 3, 2016, submitted comments, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), submitting the evidence prompting the security concerns, was provided to Applicant by letter dated July 29, 2016. Applicant received the FORM on August 10, 2016. She was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant timely responded to the FORM and submitted numerous documents (marked and admitted as Applicant Exhibit (AE) 1) addressing

some of the accounts alleged in the SOR. The case was assigned to me on August 1, 2017.

### **Procedural Issue**

In the FORM, Department Counsel advised Applicant that the FORM included her unauthenticated summary of interview with a government background investigator from October 3, 2014. (FORM, Item 6) Applicant was informed she could object to the summary of her interview, and it would not be admitted or considered by me, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be construed as a waiver and the proposed FORM evidence would be considered by me. Applicant responded to the FORM and raised no objections. I admitted the FORM with its proffered evidence, and considered it.

### **Findings of Fact**

Applicant admitted the 34 SOR factual allegations and submitted a two-page document explaining that she had established some payment agreements and paid some accounts. Her admissions to the SOR allegations and in her response to the FORM are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 51-year-old employee of a federal contractor. She married her first spouse in 1988 and divorced in 1991. She married her current spouse in 2005. She has two daughters, ages 17 and 11. Applicant has attended college on and off since 2007 (online), but has not completed a degree.

Applicant's employment history indicates that she has been fully employed from 2002 to present, except for the period between January 2005 and October 2006, when she was unemployed while having a child. A federal contractor hired Applicant in June 2014, and she submitted her first security clearance application. She has been working for her current employer since.

In her response to Section 26 (Financial Record) of her July 2014 SCA, Applicant disclosed one delinquent account that resulted in the filing of a judgment against her. She claimed that her then employer was late paying her salary, and she failed to pay her auto insurance three months in a row. She averred she contacted the creditor and established a payment plan.

A government background investigator interviewed Applicant under oath in October 2014. During the interview, Applicant denied having any delinquent accounts. The investigator confronted Applicant several times with the 34 delinquent accounts alleged in the SOR, totaling over \$20,000.

Applicant acquired the SOR delinquent accounts between 2009 and 2014. In her answer to the SOR and in her response to the FORM, Applicant claimed she had paid some of the alleged delinquent accounts and established payment plans for many other accounts. Applicant's documentary evidence is sketchy, difficult to understand, and she failed to connect most of the payment withdrawals from her bank account to the specific delinquent accounts alleged in the SOR.

Applicant's bank statements cover the period from April to July 2016. I note that she had 12 returned checks for insufficient funds during that period – eight of the returned checks occurred during the first 15 days in July 2016. After a thorough review of the evidence submitted, the status of the SOR debts follow:

SOR ¶¶ 1.a (\$1,761), 1.p (\$117), 1.q (\$114), and 1.ee (\$1,666) alleged the same delinquent account. Applicant's documentary evidence shows it was paid in September 2016.

SOR ¶ 1.b (\$7,030). Applicant claimed she made a \$2,000 payment on this debt and then established a monthly \$148.48 payment plan. The evidence submitted is insufficient to corroborate her claims. She presented no documentary evidence of the \$2,000 payment, that she established a payment plan, or the current status of the debt.

SOR ¶¶ 1.c (\$552) and 1.d (\$496) alleged the same delinquent account to a telephone provider. Applicant's evidence shows two payments made to the creditor in May 2016 (\$50) and June 2016 (\$242).

SOR ¶¶ 1.e (\$456), 1.j (\$270), 1.w (\$56), 1.aa (\$55), 1.cc (\$37), 1.dd (\$37), 1.gg (\$716), and 1.hh (\$1,126). Applicant claimed she paid these debts. She presented no documentary evidence to corroborate her claims.

SOR ¶¶ 1.f (\$396) and 1.g (\$396) alleged the same delinquent account to a telephone provider. Applicant's documentary evidence shows the account was paid.

SOR ¶¶ 1.h (\$320) and 1.ff (\$2,474). Applicant claimed she established payment plans to pay these debts. She presented no documentary evidence of the payment plans or of any payments made.

SOR ¶¶ 1.i (\$296), 1.t (\$105), 1.y (\$55), and 1.z (\$55). Applicant's documentary evidence shows she paid these debts.

SOR ¶¶ 1.k (\$193), 1.l (\$165), 1.m (\$160), 1.n (\$136), 1.o (\$128), 1.r (\$108), 1.s (\$106), 1.u (\$90), 1.v (\$60), 1.x (\$55), and 1.bb (\$454) alleged Applicant's medical debts. She claimed she consolidated these debts, entered into payment plans, and is current on her payments. Applicant's documentary evidence is insufficient to corroborate her claims.

During her October 2014 interview with a government investigator, Applicant indicated she brings home approximately \$2,100 a month and her husband brings in approximately \$4,000 a month. He only pays for the mortgage and his personal bills, but does not contribute to the household expenses. Applicant is responsible for the groceries, her daughters' expenses, car insurance, and the house utilities. (FORM, Item 6) Applicant presented little additional evidence about her current financial situation. It is not clear whether her income is sufficient to pay for her family's living expenses and debts, and whether her financial problems are resolved or under control.

Applicant blamed her prior employer for her inability to pay her debts. She worked for a foreign entity in the United States and averred that her paychecks were late sometimes for a couple of months, causing most of her accounts to be delinquent.

Applicant believes that she is an honest and trustworthy person. She noted that she has been employed in positions of trust working for her prior employers. She was born and raised by a religious family where hard work, trust, and honesty have been her core values. Applicant always wanted to serve the United States and her current job allows her to do so. It also provides her with the opportunity to improve herself both professionally and financially.

### **Policies**

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006. The case will be decided under Security Executive Agent Directive (SEAD) 4, National Security Adjudicative Guidelines (AG), effective 8 June 2017.

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Applicant's history of financial problems is documented in the file record. AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(b) unwillingness to satisfy debts regardless of the ability to do so"; and "(c) a history of not meeting financial obligations." The record established the disqualifying conditions in AG ¶¶ 19(a), 19(b), 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>1</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

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<sup>1</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)).

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).

None of the financial considerations mitigating conditions are fully raised by the facts in this case and they do not mitigate the security concerns. Applicant’s financial problems are ongoing and recent. Her evidence is insufficient to show that her financial problems occurred under circumstances unlikely to recur.

Applicant’s period of unemployment, the lack of financial support of her husband, and her salary being paid late likely contributed to or aggravated her financial situation. However, Applicant’s evidence is insufficient to establish that she was financially responsible under the circumstances. Some of her delinquent accounts date from at least 2009. She failed to disclose her financial problems in her 2014 SCA. She presented little evidence of payments made before her October 2014 interview, or of any efforts to contact her creditors to resolve her financial problems.

Applicant is commended for her recent payments and payment agreements. However, considering the period during which the debts have been delinquent, the number and amount of the payments being made, and that the agreements were established after she received the SOR, I cannot consider her actions as good-faith efforts to resolve her delinquent debts.

Applicant’s evidence is insufficient to establish that circumstances beyond her control prevented her from paying the debts, and that she was financially responsible. The record is not clear about Applicant’s current financial situation and whether her income is sufficient to pay for her family’s living expenses and current debts. In light of the recent number of returned checks for insufficient funds, the evidence fails to show that Applicant’s financial problems are resolved or under control.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 51-year-old employee of a federal contractor. She presented insufficient information to establish that she is financially responsible and that her financial problems have been resolved or are under control. The financial considerations security concerns are not mitigated.

## **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, 1.c, 1.d, 1.f, 1.g, 1.i, 1.p, 1.q, 1.t, 1.y, 1.z, and 1.ee:	For Applicant
Subparagraphs 1.b, 1.e, 1.h, 1.j-1.o, 1.r, 1.s, 1.u-1.x, 1.aa-1.dd, and 1.ff-1.hh:	Against Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge