



**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. 15-06842

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel

For Applicant: *Pro se*

05/17/2017

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke her eligibility for access to classified information. Applicant mitigated the security concern raised by her problematic financial history. 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 April 14, 2015. This document is commonly known as a security clearance application. On February, 24 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility 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>1</sup> The SOR is similar to a complaint.

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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, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG),

It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations. Applicant answered the SOR on March 2, 2016, and requested a decision based on the written record without a hearing.

On June 28, 2016, Department Counsel submitted a file of relevant material (FORM).<sup>2</sup> The FORM was mailed to Applicant on that same day. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on July 11, 2016.<sup>3</sup> Applicant responded to the FORM on August 13, 2016. Applicant's response to the FORM including its attached documents is marked as Applicant's Exhibit A. The case was assigned to me on April 7, 2017.

### **Procedural Matters**

Included in the FORM were three items of evidence, which are marked as Government Exhibits 1 through 3.<sup>4</sup> Exhibits 1 through 3 are admitted into evidence. Exhibit 2 is a report of investigation (ROI) summarizing Applicant's interview that took place during the May 2015 background investigation. The ROI is not authenticated as required under ¶ E3.1.20 of the Directive.<sup>5</sup> Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. The footnote is prominently prefaced with a bolded, upper-case notice to Applicant flagging the importance of the footnote, which then explains the concepts of authentication and waiver. In a case such as this, where Applicant has responded to the FORM, it is fair to conclude that Applicant read the footnote, understood it, and chose not to object to the ROI. The ROI is, therefore, admissible.

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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>2</sup> The file of relevant material consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits in this decision.

<sup>3</sup> The Defense Office of Hearings and Appeals' (DOHA) transmittal letter is dated July 30, 2016, and Applicant's receipt is dated July 11, 2016. The DOHA transmittal letter informed Applicant that she had 30 days after receiving it to submit information.

<sup>4</sup> The first, second, and third items in the FORM are the SOR, the SOR transmittal letter, and Applicant's Answer, respectively. Because the SOR and the Answer are the pleadings in this case, they are not marked as Exhibits. The transmittal letter has no evidentiary value and, therefore, is not marked as an exhibit. Items 4 through 6 are marked as Exhibits 1 through 3.

<sup>5</sup> See *generally* ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016). (In a concurring opinion in that case, Judge Ra'anani notes the historical concern about reports of investigation in that they were considered by some to present a heightened problem in providing due process in security clearance cases. Judge Ra'anani raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a *pro se* applicant.

## Findings of Fact

Applicant is 51 years old and has an associate's degree. She has never married and has an adult son and a daughter (17), who lives with Applicant.<sup>6</sup> Since October 2012 she has worked for a defense contractor.<sup>7</sup>

The SOR alleged 13 delinquent debts totaling approximately \$10,789. Ten of those are medical accounts.<sup>8</sup> Applicant admitted each of the debts but claimed she had paid seven of those debts.<sup>9</sup> Her answer included documents evidencing payment of four of the debts.<sup>10</sup> Applicant's response to the FORM provided proof of payment of five more debts and proof of payment plans for two more debts; Applicant claimed to be disputing two of the debts.<sup>11</sup>

The causes of Applicant's delinquencies were explored during her interview. Sometime in late 2014 or early 2015, she received a notice from the Internal Revenue Service (IRS) that she owed \$1,400 in back taxes for two tax years. She did not understand why she owed back taxes, because she had always timely filed her tax returns and paid any taxes due. Nonetheless, Applicant agreed at that time to pay \$200 to \$300 per month to pay those back taxes. Those unexpected monthly payments adversely affected her household finances. At about the same time, her car died, which also negatively impacted her finances. In addition, Applicant experienced medical problems that strained her budget. The combination of back tax payments, the loss of her car, and medical problems caused her bills to become "overwhelming," especially as a single parent. Applicant was unaware of those medical accounts, until her interview. She had medical insurance through her employer and believed that insurance covered her treatments.<sup>12</sup> Her health is now under control, and she plans to "stay on top of [her] finance[s]."<sup>13</sup>

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<sup>6</sup> Exhibits 1 and 2.

<sup>7</sup> Exhibit 1.

<sup>8</sup> SOR, pp. 1-2.

<sup>9</sup> Answer.

<sup>10</sup> Answer; Government Brief, p. 2, citing SOR ¶¶ 1.h, k, l, and m.

<sup>11</sup> Exhibit A. In all, the debts mitigated by Applicant's Answer and her response to the FORM are SOR ¶¶ 1.a through c, e through i, and k through m. Applicant has disputed SOR ¶¶ 1.d and j.

<sup>12</sup> Exhibits A and 2.

<sup>13</sup> Exhibit A.

## Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>14</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>15</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>16</sup> An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>17</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>18</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>19</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>20</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>21</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>22</sup> The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>23</sup>

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<sup>14</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 (no right to a security clearance).

<sup>15</sup> 484 U.S. at 531.

<sup>16</sup> Directive, ¶ 3.2.

<sup>17</sup> Directive, ¶ 3.2.

<sup>18</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>19</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>20</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>21</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>22</sup> *Egan*, 484 U.S. at 531.

<sup>23</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

## Discussion

Under Guideline F for financial considerations,<sup>24</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. 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 a [person's] reliability, trustworthiness, and ability to protect classified information.<sup>25</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.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

AG ¶ 19(a) inability or unwillingness to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

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 problems 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 [person] acted responsibly under the circumstances;

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

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

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<sup>24</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>25</sup> AG ¶ 18.

AG ¶ 20(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 evidence supports a conclusion that as of February 2016 Applicant had just over \$10,000 of delinquent debt. This raised security concerns under AG ¶¶ 19(a) and (c).

The next inquiry is whether any mitigating conditions apply. The genesis of Applicant's financial problems appears to be the notification she received from the IRS in late 2014 or early 2015 that she owed \$1,400 in back taxes. Even though she did not understand why she owed back taxes, she took responsible action by entering into a payment plan requiring \$200 to \$300 per month. Those payments were unanticipated and strained her household finances. Thereafter, to make her financial matters worse, Applicant's car died. Adding to her financial problems, Applicant developed medical problems, the bills for treatment which Applicant believed were covered by her medical insurance.<sup>26</sup> I find that the circumstances that caused Applicant's indebtedness were largely beyond her control and are unlikely to recur. Applicant's evidence shows that she has paid nine of the debts and that two debts are being resolved through payment plans.<sup>27</sup> I find that Applicant acted responsibly in the face of adverse circumstances, that she provided clear proof that her financial problems are being resolved or are under control, and that she made good-faith efforts to pay overdue creditors. Mitigating conditions AG ¶¶ 20(a) through (d) apply.<sup>28</sup>

The record does not raise doubts about Applicant's 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>29</sup> Accordingly, I conclude that Applicant 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.

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<sup>26</sup> As noted, ten of the SOR debts are for medical accounts. SOR ¶¶ 1.d-m.

<sup>27</sup> Applicant is disputing two of the debts which total \$2,022.

<sup>28</sup> An applicant is not required to show that every debt in the SOR has been paid. Rather, an applicant is required to demonstrate that he or she has "established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008). *See also* ISCR Case No. 14-00504 at 3 (Aug. 4, 2014). Applicant has shown an established plan to resolve her debts and significant actions to implement that plan.

<sup>29</sup> AG ¶ 2(a)(1)-(9).

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline F:                      For Applicant

Subparagraphs 1.a-1.m:                      For Applicant

### **Conclusion**

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

Philip J. Katauskas  
Administrative Judge