



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



In the matter of:

ISCR Case No. 15-08694

Applicant for Security Clearance

**Appearances**

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

10/25/2016

**Decision**

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86)<sup>1</sup> on December 23, 2014. On June 7, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.<sup>2</sup>

<sup>1</sup> Also known as a Security Clearance Application (SCA).

<sup>2</sup> The action was taken 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.

Applicant responded to the SOR on June 21, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on July 26, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit documentary material to refute, extenuate, mitigate or explain the security concerns. Applicant returned the FORM with an undated, one-page written response waiving objections to the information in the file. The case was assigned to me on October 19, 2016. The Government's exhibits included in the FORM (Items 1 to 6) and Applicant's reply, marked as Applicant Exhibit (AE) A are admitted into evidence.

### **Findings of Fact**

The SOR alleges Applicant has five delinquent debts totaling approximately \$28,000, with the largest debt being a student loan. Applicant admitted the SOR allegations. The Government's evidence and Applicant's admissions support the SOR allegations.

Applicant is 27 years old and is employed as an administrative analyst for a defense contractor since 2014. She received her bachelor's degree in May 2011. After graduating from college, she was unemployed until July 2011. She also experienced a period of unemployment from October 2013 to March 2014. She is single and has never held a security clearance.<sup>3</sup> She noted that she has suffered from major depressive disorder since October 2014, but her counseling and medication regiment has stabilized her condition and she can work without restrictions.<sup>4</sup>

Debts included in the SOR detail a student loan from a bank that was charged off in May 2012, and four small medical accounts placed for collection. Applicant noted in her answer to the SOR, that her student loan became delinquent because she was unable to find employment after college "for years," and could not make payments because she did not have a steady income. She notified the bank in December 2014, of her willingness to begin paying on the loan. She claimed that bank policy prevented them from collecting on a charged-off debt, but the student loan department agreed to accept payments.<sup>5</sup> She noted her intent to make monthly payments with the desire to negotiate a settlement on the debt once she saved enough money. She provided documentary evidence of one payment by money order for \$100.<sup>6</sup> No other evidence of a payment plan or payment of monthly installments since the first payment has been

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<sup>3</sup> GE 2.

<sup>4</sup> GE 4.

<sup>5</sup> GE 1, 3 and 4.

<sup>6</sup> GE 4. The date of payment is not legible on the money order.

provided. Despite her stated intent to resolve the remaining debts, no evidence of payments or other resolution of the SOR debts has been submitted.<sup>7</sup>

Applicant noted that she contacted a credit counseling company online, but was not eligible for service because her debts were secured loans.<sup>8</sup> Her personal financial statement (PSI) shows a monthly net remainder of \$793 after paying expenses and debt installments. She did not report any savings or investment accounts. She stressed her personal honesty and trustworthiness, and her excellence as a student leader and life-long contributor to society. She noted the importance of obtaining a security clearance for her job, and her intent to fully pay her outstanding debts.<sup>9</sup>

### **Law and Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

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(a), 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.

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 clearance

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<sup>7</sup> In February 2015, she notified another lender not included in the SOR, of her willingness to begin making payments on another delinquent student loan, and provided documentary evidence that she made nine payments of \$160.10 from March 2015 to November 2015.

<sup>8</sup> GE 2 and 3. No evidence of her contact with a credit counselor was provided.

<sup>9</sup> GE 4 and AE 1.

decision.<sup>10</sup> The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>11</sup>

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.” It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” 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.<sup>12</sup>

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 the 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.

Section 7 of Exec. Or. (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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in 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.

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<sup>10</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>11</sup> *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. DOD*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>12</sup> *Egan*, 484 U.S. at 531.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (b) a history of not meeting financial obligations.

Applicant incurred delinquent debts, including a significant student loan that was charged off in 2012, which remain unresolved. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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), and the individual acted responsibly under the circumstances;
- (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
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant allowed her debts to remain unresolved until they became a security concern. Beside the documents noted above that were provided as part of her answer to interrogatories, she did not provide evidence with her answer to the SOR or in her response to the FORM to show a plan or a history of regular monthly payments toward resolution of her delinquent student loan debt since the \$100 payment. Additionally, she did not provide evidence of payment plans, installments or other resolution of the remaining SOR debts.

She has been steadily employed since 2014, but has not shown sufficient effort to resolve the SOR debts. Her financial issues have been long-standing and remain recent and ongoing. No documentary evidence of financial counseling or budgeting education was submitted. She discussed her attempt to consult with a credit counseling company, apparently in hopes of consolidating her debts, but the effort resulted in rejection because her significant debts were secured.

The extent of her efforts to resolve the non-student loan debts is unknown, and she failed to provide convincing evidence to show that she has made regular payments under a plan to address her student loan debt alleged in the SOR. Despite her significant net monthly remainder and continuous employment since 2014, her overall financial responsibility remains a concern, and her current financial condition casts doubt on her reliability, trustworthiness, and good judgment. Her efforts have been inadequate to demonstrate that her financial circumstances are under control, or that she is willing and able to meet her financial obligations. No mitigating condition fully applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered all of the potentially disqualifying and mitigating conditions in light of all the evidence in favor of and against Applicant, and the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Overall, the record leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

### **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.e:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, 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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Gregg A. Cervi  
Administrative Judge