



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



In the matter of: )  
)  
) ISCR Case No. 15-01314  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

02/07/2018

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to establish that she is financially responsible. Moreover, her failure to address her delinquent loan demonstrates questionable judgment, untrustworthiness, unreliability, and an unwillingness to comply with rules and regulations, all of which shows that she may not properly safeguard classified information. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 22, 2013. She was interviewed by government investigators on October 2009 and September 2014. She made corrections to and adopted the summarized interviews on October 14, 2015. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a statement of reasons (SOR) on November 3, 2015, alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR on November 17, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on February 14, 2017, and issued a notice of hearing that same day, setting the hearing for March 3, 2017. At the hearing, the Government offered three exhibits (GE 1 through 3). Applicant testified on her own behalf and submitted three exhibits (AE 1 through 3). All exhibits were admitted as evidence without objections. DOHA received the hearing transcript (Tr.) on March 10, 2017.

### **Findings of Fact**

Applicant admitted in part and denied in part the SOR allegations. She admitted the SOR factual allegations: that in 2006 she took a loan for over \$11,000 from a foreign bank, that she stopped paying it when she returned to the United States in 2007, and the bank obtained a judgment against her. She denied that those facts raise security concerns under Guidelines E and F. Her admissions to the SOR and at her hearing 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 49-year-old employee of a federal contractor. She graduated from high school, and received a bachelor's degree in May 1991. Applicant received a commission in the U.S. Army in January 1992 and served on active duty until February 1995, when she was honorably discharged. She joined the Army National Guard where she served between March 1995 and June 1997. She was in the Inactive Reserve between June 1997 and March 1999. She then served in the Active Reserve between March 1999 and April 2000, when she received an honorable discharge. While in the Army, Applicant possessed a secret clearance issued in 1991. She applied for and was granted a secret clearance in 2009.

Applicant married her first husband in 1991 and divorced in 2003. Applicant traveled to and stayed in a foreign country for six days to attend her best friend's wedding in March 2002. (GE 2, p. 59) Apparently, during the wedding she met her future husband (V). She returned to the foreign country to visit friends for 30 days between April and May 2002. She lived with V before they were married in the foreign country between September 2003 and March 2004. (GE 2, p 58) She married V in October 2004 in the United States. (GE 2)

Applicant lived with V and worked in the foreign country between August 2005 and August 2007. (GE 2, p. 58) She sponsored V for U.S. citizenship. (GE 3) In her 2009 SCA, she indicated V was a U.S. permanent resident and possessed a U.S. passport. (GE 2, p. 40; GE 2, p. 56) Applicant and V lived together in the United States at least between October 2007 and June 2009. (The day Applicant submitted her 2009 SCA.) Applicant and V separated in July 2009 and divorced in December 2010. (GE 3)

Applicant disclosed in her 2009 and 2013 SCAs the address and personal information for her mother-in-law, husband's two brothers, sister, and other family and friends in the foreign country. She stated in the 2013 SCA that she supported V during

their marriage and while separated pending the divorce. She estimated the financial support provided was about \$10,000.

Section 20 (Foreign Activities) of the 2009 and 2013 SCAs asked Applicant to disclose whether she had any foreign financial interests. She disclosed she had a bank account opened in June 2006 that was closed in August 2007. (GE 2, p. 52; GE 3, p. 35-36) Section 26 (Financial Record) of the 2009 SCA asked Applicant to disclose whether she had any financial problems, including defaulting on any type of loan, or had a judgment entered against her. Applicant answered "No" to all the financial questions. She failed to disclose she had defaulted on a loan and two credit card accounts and the creditor obtained a judgment against her. Applicant claimed she did not know she was delinquent on the loan and the creditor had secured a judgment against her at the time she submitted the 2009 SCA.

Section 26 (Financial Record) of the 2013 SCA asked Applicant to disclose whether she had any financial problems, including defaulting on any type of loan, or had had a judgment entered against her. Applicant disclosed some state tax issues resulting from disputed income taxes charged by two states for income from a foreign country. However, she answered "No" to all the other financial questions. She disclosed no other financial problems. She denied defaulting on any type of loans, or having a judgment entered against her.

Applicant's employment history indicates that she worked as a corporate recruiter between January 2002 and April 2002; was unemployed for the next two months; and worked as a lodge worker from June to September 2002. She was unemployed between September 2002 and August 2004; worked as a dog trainer between August 2004 and August 2005; and worked as a veterinary assistant from December 2004 to August 2005. Applicant was unemployed between August 2005 and November 2005. She worked for a private company between November 2005 and July 2006

Applicant worked for a U.S. federal contractor between August 2006 and August 2007. The federal contractor detailed her to work in a foreign country. She returned to the United States and worked for two different federal contractors between September 2007 and July 2011, and between July 2011 and November 2013. Applicant's current employer and clearance sponsor hired her in November 2013. She has been working for the same employer since.

Between September 2003 and sometime in 2006, Applicant opened two credit card accounts and took out a loan (solely in her name), from a foreign bank while she was working and living in the foreign country with her former husband. (GE 2) Applicant claimed the loan was for her mother-in-law. (GE 3) In her answer to the SOR, Applicant stated her former mother-in-law's home desperately needed repairs and V asked her to take out the loan because he had bad credit and did not qualify for it.

Applicant left the foreign country in September 2007 and returned to the United States to start a new job. She claimed she and V agreed that he would pay the loan and

credit card debt before following her into the United States. She further claimed she did not find out that V did not pay the credit cards or the loan, and that the bank obtained a judgment against her in the foreign country, until sometime around July 2009. Applicant stated during her interviews that she was working on resolving her debt with the assistance of a friend who lived in the foreign country. She indicated that all the accounts were closed by then, but stated her willingness to pay the loan if she could find a contact or communicate with the bank. (GE 3)

In her SOR answer, and at her hearing, Applicant claimed that after finding out about the judgment she tried to contact the bank, but by then she did not have any information about the credit cards or the loan account numbers. She averred her Spanish had deteriorated to the point she could no longer communicate. She asked for assistance from a friend who lived in the foreign country, but was not successful. The only documentary evidence Applicant submitted to show her efforts to contact the bank and resolve her debts was an email she allegedly attempted to send to a bank agent on February 18, 2016. (AE 2) Except for this undelivered email, Applicant submitted no documentary evidence to corroborate her claims of efforts to remain in contact with the bank or to otherwise resolve the judgment against her.

Applicant noted that her current financial situation is good. She lives within her financial means, has good credit ratings, and pays her bills on time. (AE 1) She believes she is a financially responsible person. She recently purchased a home and the mortgage is solely on her name. (AE 3)

## **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.

While the case was pending a decision, the Director of National Intelligence implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, which replaced the 2006 AG, and are applicable to all adjudicative decisions issued on or after June 8, 2017. I decided this case under the current AGs implemented by SEAD 4.

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 or sensitive 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 failure to satisfy her debt and to meet her financial obligations is documented in the record. Between 2003 and 2006, she took out an \$11,000 loan from a foreign bank while she was living there. In September 2007, she returned to the United States and stop paying the loan. The bank obtained a judgment against Applicant that remains unpaid. 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." This appears to be a case of Applicant's unwillingness to satisfy her debts. The record established the above disqualifying conditions, 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), 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;

(d) the individual initiated 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

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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. Jun. 4, 2001)).

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 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. Sep. 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 has not paid the judgment. Her financial problems are recent and ongoing. Applicant explained that she took out the loan, at the urging of her then husband, to help her mother-in-law repair her home. Nevertheless, her evidence is insufficient to establish her financial problems resulted from circumstances beyond her control. Even if they were, she presented no evidence of a good-faith effort to pay her loan or that she was financially responsible under her circumstances. There is no evidence she participated in financial counseling.

### **Guideline E, Personal Conduct**

AG ¶ 15 articulates the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Between 2003 and 2006, Applicant took out an \$11,000 loan from a foreign bank while she was living in a foreign country. In September 2007, she returned to the United States and stop paying the loan. The bank obtained a judgment against Applicant that remains unpaid. Although not alleged, I note that Applicant omitted relevant and material information from her 2009 and 2014 SCAs when she failed to disclose that she had an unpaid loan in collection by a foreign bank.

Nevertheless, Applicant demonstrated lack of judgment and subjected herself to possible exploitation when she became indebted to a foreign bank while working as an employee of a federal contractor in the foreign country. Applicant's deliberate failure to pay her loan would trigger the applicability the following disqualifying conditions under AG ¶ 16:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing . . . .

I find that the above disqualifying conditions are applicable. Additional inquiry about the possible applicability of mitigating conditions is required.

AG ¶ 17 lists two conditions that are somewhat raised by the facts and could potentially mitigate the personal conduct security concerns:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Considering the evidence as a whole, I find that Applicant's evidence is insufficient to mitigate the Guideline E security concerns. I considered Applicant's deliberate default of her loan as serious questionable behavior that is unmitigated by the passage of time. Moreover, her behavior continues to create doubts on her current reliability, trustworthiness, and good judgment. Also, she has not taken positive steps to reduce or eliminate her vulnerability to exploitation, manipulation, or duress.

In reaching my decision, I considered that Applicant travelled to the foreign country frequently and resided there for extended periods to visit friends. She lived in the foreign country with V before they were married between September 2003 and

March 2004. She married V in the United States in October 2004, and then went on to live with V and worked in the foreign country between August 2005 and August 2007. Applicant and V lived together in the United States at least between October 2007 and July 2009 when they separated. I also note that in her 2009 SCA, Applicant thoroughly documented her then husband's family in the foreign country, including his mother's personal information, and that of his siblings and friends.

Applicant's personal contacts and long-time immersion in the foreign country make it difficult to believe that she could not communicate with the bank to resolve her debt. I also find it incredible that she could not contact or communicate in English with the bank personnel.

Applicant claimed that she and V agreed that he would pay her loan and credit card debts after she returned to the United States and prior to him following her into the United States. She further claimed she did not know V failed to pay the loan until they separated in July 2009 and were pending a divorce. Considering the evidence as a whole, Applicant's claims of reliance on V to pay the loan are not credible. Applicant had to take out the loan in her name because V had bad credit. She stated in her 2014 SCA that she financially supported V during the whole period they were together and up until the divorce. She calculated she spent about \$10,000 supporting V. Thus, Applicant knew that V did not have the financial means to pay the \$11,000 loan in a couple of months. Considering the evidence as a whole, I find Applicant's testimony lacks credibility and her evidence in mitigation is questionable.

### **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 Guidelines F and E in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 49, has been employed with federal contractors since 2006. She failed to demonstrate financial responsibility. The financial considerations security concerns are not mitigated. Moreover, her deliberate default of her loan demonstrates questionable judgment, untrustworthiness, unreliability, and an unwillingness to comply with rules and regulations, all of which shows that she may not properly safeguard 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 E:

AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	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