



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



In the matter of: )  
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----- ) ISCR Case No. 15-08340  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esq., Department Counsel  
For Applicant: *Pro se*

04/26/2018  
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**Decision**  
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KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for access to classified information. Applicant mitigated the security concern raised by her criminal conduct. She failed, however, to mitigate the security concern raised by her problematic financial history. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on October 14, 2014. This document is commonly known as a security clearance application. On June 16, 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 his eligibility for access to classified information.<sup>1</sup> It detailed the factual reasons for

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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

the action under the security guidelines known as Guideline F for financial considerations and Guideline J for criminal conduct. Applicant answered the SOR on July 15, 2016, and requested a decision based on the written record without a hearing.

On June 26 2017, Department Counsel submitted a file of relevant material (FORM).<sup>2</sup> The FORM was mailed to Applicant on the same day. She was given 30 days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on June 28, 2017. She responded to the FORM on September 7, 2017. The case was assigned to me on December 18, 2017.

### **Procedural Matters**

Included in the FORM were seven items of evidence, which are marked as Government Exhibits (GE) 1 through 7. Exhibit 7 is a report of investigation (ROI) summarizing Applicant's interview that took place during the January 2015 background investigation. The ROI is not authenticated, as required under ¶ E3.1.20 of the Directive.<sup>3</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 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. GE 1 through 7 are admitted into evidence without objection.

Included with Applicant's response to the FORM were three documents, which I marked as Applicant's Exhibits (AE) A through C, and which are admitted into evidence without objection.

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addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 8, 2017, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2016). DOD CAF adjudicators reviewed this case using the previous version of the adjudicative guidelines, dated September 1, 2006, which were in effect at the time. My decision and formal findings under the revised Guidelines F and J would not be different under the 2006 Guidelines F and J.

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

<sup>3</sup> See *generally* ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016) (In a concurring opinion, 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 34 years old, a high school graduate who has just one class to complete to earn her degree in Mechanical Engineering. She has never married and has no children. Since July 2014, Applicant has worked for a defense contractor.<sup>4</sup>

Under Guideline F, the SOR alleges 14 delinquent debts totaling \$23,171.<sup>5</sup> Applicant denies the debts alleged in SOR ¶¶ 1.a, b, e, h through l and n, saying that they have zero balances.<sup>6</sup> Except for the debts alleged in SOR ¶¶ 1.h, 1.i, and 1.l, Applicant has not provided any documentation showing zero balances for those debts.<sup>7</sup> Moreover, the record still shows those debts as unresolved.<sup>8</sup> For each debt alleged in SOR ¶¶ 1.c, d, f, g, and m, Applicant stated that she was “trying to resolve” them.<sup>9</sup> In her response to the FORM, Applicant submitted a document showing monthly payments to the servicer of her two educational loans alleged in SOR ¶¶ 1.h and 1.i. This shows the resolution of those two debts.<sup>10</sup> In sum, Applicant has documented the resolution of three of the SOR debts totaling \$5,403. That leaves \$17,768 unresolved. During her background interview, Applicant referred to her employment hours being cut and receiving less student assistance in August 2012.<sup>11</sup>

Under Guideline J, the SOR alleged that in March 2013 Applicant was arrested and charged with driving on a suspended license, lack of insurance, failure to yield or stop, and was issued a bench warrant for failure to appear.<sup>12</sup> Applicant admitted those allegations.<sup>13</sup> In her response to the FORM, Applicant explained that she was in an automobile accident in 2007 and did not know until her 2013 arrest that she was driving on a suspended license. She further explained that she has hired an attorney to resolve her case and regain her driving privileges.<sup>14</sup> The record shows that the 2013 arrest was

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<sup>4</sup> GE 2 and GE 7.

<sup>5</sup> SOR ¶¶ 1.a -1.n.

<sup>6</sup> Answer ¶ 1.

<sup>7</sup> Applicant has documented the satisfaction of the judgment alleged in SOR ¶ 1.l. Answer and AE A.

<sup>8</sup> GE 3, pp. 3-4, 6, 9-11, 13. GE 4, pp. 3-4. GE 5.

<sup>9</sup> Answer ¶ 1.

<sup>10</sup> AE B.

<sup>11</sup> GE 7, p. 6.

<sup>12</sup> SOR ¶ 2.

<sup>13</sup> Answer ¶ 2.

<sup>14</sup> FORM response cover letter.

for Applicant's failure to come to a complete stop on the campus of the university she was attending at that time.<sup>15</sup>

### Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>16</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>17</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>18</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>19</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>20</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>21</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>22</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>23</sup>

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<sup>15</sup> GE 7, p. 4.

<sup>16</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 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>17</sup> 484 U.S. at 531

<sup>18</sup> Directive, ¶ 3.2.

<sup>19</sup> Directive, ¶ 3.2.

<sup>20</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>21</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>24</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>25</sup>

## Discussion

Under Guideline F for financial considerations,<sup>26</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 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 . . . .<sup>27</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 conditions:

AG ¶ 19(a) inability to satisfy debts; and

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

In analyzing the facts of this case, I considered the following mitigating conditions:

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 problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation,

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<sup>24</sup> *Egan*, 484 U.S. at 531.

<sup>25</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>26</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>27</sup> AG ¶ 18.

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

As noted, Applicant has admitted 11 unresolved debts totaling \$17,768. The evidence supports a conclusion that Applicant has had a problematic financial history which persists to this day. Security concerns are raised under AG ¶¶ 19(a) and (c). The next inquiry is whether any mitigating conditions apply.<sup>28</sup>

Since there are 11 unresolved debts that persist to this day, they are neither infrequent, nor are they aged. Thus, AG ¶ 20(a) does not apply.

I have reviewed the record thoroughly and could find little evidence of what caused Applicant's delinquencies. There is, however, a reference by Applicant during her background interview that in August 2012 her employer cut back on her hours, and she received less student aid. Even if I credit those circumstance as being largely beyond her control under AG ¶ 20(b), there remains the question whether Applicant acted responsibly under those circumstances. Unfortunately, Applicant has not documented what she has done to attempt to resolve those 11 debts. The Appeal Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the satisfaction or resolution of individual debts.<sup>29</sup> AG ¶ 20(b) does not apply. For the same reason, AG ¶ 20(d) does not apply.

### **Guideline J, Criminal Conduct**

Applicant's traffic arrest in March 2013 raises a criminal conduct security concern, which is detailed in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

I have considered the disqualifying conditions under AG ¶ 31, and the following applies:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct . . . .

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<sup>28</sup> Applicant has documented the resolution of SOR ¶¶ 1.h, i, and l. Those debts are mitigated under AG ¶ 20(d).

<sup>29</sup> See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008); ISCR Case No. 06-17520 at 2 (App. Bd. Sep. 20, 2007).

Applicant's admission of her arrest triggers AG ¶ 31(b). The question is whether Applicant has mitigated the security concern raised by her criminal conduct.

Under AG ¶ 32, the following mitigating condition is potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's arrest for a minor traffic violation occurred over five years ago. The arrest triggered a violation of driving while on a suspended license, a suspension caused by an accident Applicant had in 2007, 11 years ago, and a suspension Applicant was unaware of in 2013. She has hired an attorney to resolve this matter. Applicant's arrest in March 2013 is mitigated under AG ¶ 32(a).

The record raises 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>30</sup> Accordingly, I conclude that Applicant failed to meet 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.

### 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:	Against Applicant
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Subparagraphs 1.j-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.n:	Against Applicant
Paragraph 2, Guideline J:	For Applicant
Subparagraph 2.a:	For Applicant

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<sup>30</sup> AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6).

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas  
Administrative Judge