



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 16-00149
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel  
For Applicant: *Pro se*

01/18/2018

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his financial situation. Clearance is denied.

**Statement of the Case**

On November 11, 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Applicant answered the SOR on December 26, 2016, and requested a determination on the administrative (written) record.

On March 13, 2017, Department Counsel sent Applicant a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant eight exhibits, pre-marked Items 1 – 8, which the Government offers for admission into the record. Applicant received the FORM on March 30, 2017. (Appellate Exhibit I.) She was given 30 days to raise any objection to the material offered by Department Counsel and submit her own evidence in support of her request for a security clearance. She did not file any objections or submit a response. Without objection, Items 1 – 8 are admitted into the record.

On November 3, 2017, I was assigned the matter for decision. After receiving written confirmation that Applicant remains sponsored for a security clearance (Appellate Exhibit II), I reopened the record to allow both sides to supply updated information. (Appellate Exhibit III.) Both sides submitted documentary evidence, which were marked

Items 9 and 10. Without objection, Items 9 and 10 are admitted into the record. The record closed on November 20, 2017.

### **Findings of Fact**

Applicant, 31, holds a high school diploma. She has been gainfully employed since 2006. Her past employments have included a job with a federal contractor and as an employee of a state correctional institution. In September 2015, Applicant submitted a security clearance application in connection with an offer letter for a job with a federal contractor. In response to questions on the application regarding her financial history, Applicant reported having over 20 delinquent accounts. She stated on the application that she would look into the debts and apply for a debt consolidation loan to resolve them. (Items 4, 8.)

Over a year after submitting the security clearance application and shortly before submitting her Answer, Applicant paid or made partial payments on some of the 23 delinquent debts listed on the SOR. Specifically, she resolved the debts listed in SOR 1.a, 1.g, 1.h, and 1.k. She made partial payments toward resolving the debts in SOR 1.c and 1.e. She charged some of these payments to her credit card. She promised to continue making monthly payments on those debts she had agreed to pay and provide documentation showing that other SOR debts had been resolved. (Item 2.) Subsequently, Applicant became unemployed and was financially unable to continue making her agreed-upon payments. (Item 9.) She provided no documentation to corroborate her assertions in her Answer that other SOR debts were resolved or that the dispute letters she filed were resolved in her favor. A recent credit report, Item 10, reflects that Applicant has 12 collection accounts and numerous other past-due debts.

### **Law, Policies, and Regulations**

This case is decided under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017. ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).<sup>1</sup>

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human

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<sup>1</sup> Nonetheless, I have considered the previous version of the adjudicative guidelines and my ultimate decision in this case would have been the same.

behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges must remain fair and impartial, and carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.<sup>2</sup>

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* Security Executive Agent Directive 4 (SEAD-4), ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. 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 an 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.

## **Analysis**

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

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

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<sup>2</sup> However, a judge's mere disbelief of an applicant's testimony, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on solely non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

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. (AG ¶ 18.)

The security concern here is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt cast doubt upon a person's judgment, self-control, and other qualities essential to protecting classified information. See *generally* ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

In assessing Applicant's case, I considered the applicable disqualifying and mitigating conditions, including:

AG ¶ 19(a): inability 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 problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem . . . and there are clear indications that the problem is being resolved or is under control;

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

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.

Individuals applying for a security clearance are not required to be debt free. They are also not required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present evidence to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they

manage their finances in a manner expected of those granted access to classified information.<sup>3</sup> Applicant failed to meet her burden of proof and persuasion.

Even before Applicant's recent unemployment, the record evidence reflects that she had a history of not paying her debts. She was aware of the extent of the problem when she submitted her security clearance application in September 2015. She promised then to take action to address and resolve her delinquent debts. However, she took no action for over a year and then only in response to the SOR. She then charged some of the payments to a credit card. Although, due to their age, some of the SOR debts are no longer listed on her credit report, the record evidence does not support a finding that Applicant's financial situation is under control. To the contrary, it appears that her financial situation has gotten worse. Accordingly, I find that the disqualifying conditions listed at AG ¶¶ 19(a) and 19(c) apply. None of the mitigating conditions fully apply. Overall, the record evidence regarding the manner in which Applicant handles her personal financial obligations leaves me with doubts and concerns about her ability and willingness to follow rules and regulations for the proper handling and safeguarding of classified information.<sup>4</sup>

### **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 (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a, 1.g, 1.h, and 1.k:	For Applicant
Subparagraphs 1.b – 1.f, 1.i, 1.j, 1.l – 1.w:	Against Applicant

### **Conclusion**

In light of the record evidence, it is not clearly consistent with the interests of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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<sup>3</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008). See also ISCR Case No. 15-02585 at 2 (App. Bd. Dec. 20, 2016) ("It is reasonable for Judges to expect applicants to present documentation about the satisfaction of individual debts.")

<sup>4</sup> In reaching this adverse decision, I considered the whole-person concept, including the honesty Applicant showed in reporting the adverse information. See generally AG ¶ 2. However, her honesty is insufficient to fully mitigate concerns raised by her financial circumstances. I also considered the exceptions listed in SEAD-4, Appendix C, but none are warranted in this case.