



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 16-01469
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

02/09/2018

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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 her financial situation. Clearance is denied.

**Statement of the Case**

On September 23, 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the personal conduct and financial considerations guidelines. Applicant answered the SOR and requested a hearing.

Applicant's hearing was held on September 28, 2017. She appeared at the hearing and testified, and the exhibits offered by the parties were admitted into the administrative record without objection. (Government's Exhibits (Gx.) 1 and 2; Applicant's Exhibits (Ax.) A and B.) Applicant's request to submit additional evidence post-hearing was granted. She timely submitted Post-Hearing Exhibits (Px.) A – H, which were also admitted into the record without objection. The transcript (Tr.) of the hearing was received on October 6, 2017, and the record closed on November 13, 2017.<sup>1</sup>

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<sup>1</sup> Department Counsel's demonstrative aid was marked as Appellate Exhibit (App. Exh.) I. Scheduling correspondence through August 31, 2017, email correspondence from September 27, 2017, ruling extending deadline for submitting post-hearing matters, Department Counsel's position on post-hearing matters, and Applicant's position on post-hearing matters are attached to the record as App. Exh. II – VI, respectively.

## Findings of Fact

Applicant is a 40-year-old divorced mother of three. She has been gainfully employed since 2002, primarily as a federal contractor. She was hired by her current employer in approximately September 2013. On March 18, 2015, Applicant submitted a security clearance application (SCA) for her job. In response to questions on the SCA about her financial record, Applicant did not report having any delinquent debts. A credit report from March 26, 2015 reflects 20 delinquent accounts, including a judgment collection accounts, and charged debts.<sup>2</sup>

The delinquent debts taken from the March 2015 credit report and one additional collection account referenced in a later credit report are listed on the SOR. Applicant paid one of the SOR debts, a \$55 traffic ticket referenced in SOR 1.u. As of the hearing, she had not paid, entered into payment arrangements, or settled any of the other SOR debts.<sup>3</sup>

Shortly after receiving the SOR in late 2016, Applicant filed disputes contesting the validity of the 20 unpaid SOR debts. Some of these SOR debts were verified by the creditor or the credit bureaus, but Applicant took no action to address and resolve them.<sup>4</sup> Instead, she waited until shortly before the hearing to retain a credit repair firm to assist her in once again disputing the debts, including, the debts referenced in SOR 1.h, 1.k, and 1.l, for which she had previously received correspondence verifying the debts.<sup>5</sup>

Applicant testified at hearing that she had past-due federal taxes and had not filed her federal or state tax returns that were due in April 2017.<sup>6</sup> (The record is silent as to whether Applicant reported her past-due tax debt to her security manager.) As of the September 2017 hearing, Applicant had not received financial or credit counseling.

Applicant attributes her current financial problems to several matters that occurred in or around 2013, including her divorce, grandmother's death, and the premature birth of one of her children.<sup>7</sup> She testified at hearing that her monthly net income is approximately \$6,000, but is uncertain as to how much, if anything, she has left over each month to pay her past-due debts. After the hearing, she obtained financial counseling.<sup>8</sup> The more than \$18,000 in debts referenced in SOR 1.a – 1.t remain unresolved.

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<sup>2</sup> Tr. 25; Gx. 1; Gx. 2.

<sup>3</sup> Tr. 30.

<sup>4</sup> Tr. 44-62; Ax. A, Ax. B; App. Exh. I; App. Exh. III; Px. H.

<sup>5</sup> Tr. 31, 42, 53-55, 57-59; Gx. 1; Gx. 2; Ax. A, Ax. B; Px. G.

<sup>6</sup> Tr. 67-72. *See infra* n. 9 (limited purpose for which unalleged matters can be used).

<sup>7</sup> Tr. 29-36.

<sup>8</sup> Tr. 38; Px. A – F.

## 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).

“[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 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>9</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,

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<sup>9</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 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).

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 E, Personal Conduct

The security clearance process relies on the honesty and candor of all applicants, and starts with the answers provided in the security clearance application. The deliberate falsification of a clearance application raises a serious concern about the suitability of an applicant. See *generally* AG ¶¶ 15, 16(a).<sup>10</sup>

However, an omission standing alone is not enough to establish that an applicant deliberately falsified their response to a question asked on the security clearance application. Instead, in assessing intent, an administrative judge must examine the relevant facts and circumstances surrounding the omission, including the person’s age, level of education, work experience, and familiarity (or lack thereof) with the security clearance process. An omission is not deliberate if the person genuinely forgot the information, was unaware of the facts, inadvertently overlooked or misunderstood the question, or earnestly thought the matter did not need to be reported.<sup>11</sup>

Applicant’s responses on her SCA denying that she had any reportable delinquent debts seems highly suspect in light of the fact that *eight days after she submitted her SCA* a credit report, Gx. 2, reflects twenty delinquent accounts. The sheer number of delinquent debts and the nature of some them, a judgment and several collection accounts, raises doubts as to Applicant’s claim that she was unaware she had any delinquent debts which needed to be reported on her SCA. However, Department Counsel conceded at hearing that the Government had not met its burden of proof and persuasion. (Tr. 75)<sup>12</sup> Accordingly, the Guideline E allegation is decided for Applicant.

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<sup>10</sup> See *also* SEAD-4, Appendix A, ¶ 2(i) (falsifications and misrepresentations during the investigative or adjudicative stages of the clearance process raise heightened concerns about a person’s judgment, reliability, and trustworthiness); ISCR Case No. 09-01652 at 7 (App. Bd. Aug. 8, 2011) (describing falsifications as “an offense that strikes at the heart of the security clearance process”).

<sup>11</sup> ISCR Case No. 15-06990 (App. Bd. Jan. 11, 2018); ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

<sup>12</sup> “[W]ith respect to Guideline E . . . the fact that [Applicant] didn’t provide or list these debts on her e-QIP, she stated that she didn’t know about any of the debts, the Government finds her credible and has no contrary evidence.”

## 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 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.<sup>13</sup>

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

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

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

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

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.

Persons applying for a security clearance are not required to be debt free, or have unblemished financial records, or a certain credit score. However, they are expected to present evidence mitigating security concerns raised by delinquent debt. They are also

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<sup>13</sup> See *generally* ISCR Case 12-09719 at 2 (App. Bd. April 6, 2016) (delinquent debt raises a security concern, because the "failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant's ability to protect classified information.")

required to show that they manage their personal financial obligations in a manner consistent with the expectations for those granted access to classified information.<sup>14</sup>

Applicant failed to meet her burden of proof and persuasion. Her financial problems are, in part, attributable to matters beyond her control. However, Applicant did not provide sufficient evidence to undermine the reliability of the 20 unpaid SOR debts. She has been gainfully employed since 2002 and has been working for her current employer since 2013. Yet, she has not paid, entered into payment plans, or settled any of the remaining SOR debts, including those for which she received written confirmation as to their validity. Instead, she waited until shortly before the hearing to hire a credit repair firm to again challenge the debts. Under these circumstances, I can only extend limited consideration to mitigating conditions AG ¶¶ 20(b) and 20(e).

Also, Applicant's current financial situation appears to be far worse than the unresolved delinquent consumer debt referenced in the SOR. Notably, she has past-due federal taxes and, as of the hearing, had not filed her federal and state tax returns, which were due in April 2017. Although Applicant obtained financial counseling after the hearing, I am unable to find on this record that her financial situation is under control.

Additionally, Applicant appears to rest her case in large measure on the absence of a few of the SOR debts from later credit reports. Negative information appearing on a credit report constitutes sufficient evidence in a security clearance case to shift the burden to an applicant to mitigate security concerns raised by such negative entries or to rebut the validity of the information. ISCR Case No. 14-03910 at 2 (App. Bd. June 24, 2015). The DOHA Appeal Board has never set forth the amount or quantum of evidence an applicant needs to show to refute or mitigate security concerns raised by negative information appearing in a credit report. Instead, the Board has left it to each individual judge to weigh the evidence in a given case on its own merits.

At the same time, though, the Appeal Board has consistently held that the fact an SOR debt is no longer being reported on a subsequent credit report may be insufficient, *by itself*, to meet an applicant's burden of proof and persuasion. See ISCR Case No. 16-02941 at 2 (App. Bd. Dec. 29, 2017) ("Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not legitimate or that they have been satisfactorily resolved.") Applicant was advised, both before the hearing and at hearing, about the limited evidentiary value that could be afforded to the absence of an SOR debt on a later credit report, and the need to provide evidence demonstrating that she handled her past financial problems and handles her present finances in a manner expected of all clearance holders. Over counsel's objection, Applicant was given over a month after the hearing to present additional evidence in support of her position. (Tr. 49-50; App. Exh. II – IV.) The evidence she did provide was insufficient to overcome the security concerns raised by her financial situation.

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<sup>14</sup> See generally ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) ("[A]n applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has " . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.") (internal citations omitted). 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.")

In summary, seventeen months ago Applicant was made aware that over \$18,000 in delinquent debts appearing on her credit reports raised a security concerns and her efforts to date are not enough to mitigate those concerns. Accordingly, I find that the disqualifying conditions listed at AG ¶¶ 19(a) through 19(c) apply. None of the mitigating conditions fully apply. Overall, the record evidence leaves me with doubts about Applicant's present eligibility for a security clearance.<sup>15</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.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For 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>15</sup> In reaching this conclusion, I considered the whole-person concept. See AG ¶ 2. I also considered the exceptions listed in SEAD 4, Appendix C, but none are warranted in this case.