



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 16-01627

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

11/06/2017

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant has not yet established a sufficient record of corrective action and financial stability in response to her financial problems. Accordingly, she has not mitigated the security concerns about her debts, and her request for a security clearance is denied.

**Statement of the Case**

On July 22, 2015, Applicant submitted a Questionnaire for National Security Positions (QNSP) to obtain a security clearance required for her employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly

consistent with the interests of national security for Applicant to have a security clearance.<sup>1</sup>

On October 7, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline<sup>2</sup> for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. I received the case on March 21, 2017, and I convened the requested hearing on June 14, 2017. Department Counsel proffered three items identified as Government Exhibits (Gx.) 1 – 3. Applicant and one witness testified. Applicant also proffered two items identified as Applicant Exhibits (Ax.) A and B.<sup>3</sup> I also held the record open after the hearing to allow Applicant to submit additional information. The record closed on June 30, 2017, when I received documents identified as Ax. C – F.<sup>4</sup> I admitted into evidence all of the proffered exhibits from both parties, without objection. I received a transcript of the hearing (Tr.) on June 26, 2017.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$18,030 for nine delinquent or past-due debts (SOR 1.a - 1.i). The debts alleged at SOR 1.c – 1.f are for student loans. Applicant admitted all of the SOR allegations. (Answer) In addition to any facts thus established, I make the following additional findings of fact.

Applicant is 45 years old and works as an executive secretary for the military customer of a defense contractor. She has held that position since July 2014 and has a superb reputation in the workplace. Her superiors and peers provided letters of recommendation that extol Applicant's work ethic, trustworthiness, and reliability. A close friend of the past two years regards her as honest and frugal. (Gx. 1; Ax. A; Ax. F; Tr. 63 - 68)

Applicant grew up in State A. After graduating from high school in 1990, she went to college for a few years, and then worked a variety of jobs before finding a good-

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

<sup>2</sup> At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

<sup>3</sup> A copy of Department Counsel's "discovery letter" and a list of the Government's exhibits also are included as Hearing Exhibits (Hx.) I and II, respectively.

<sup>4</sup> Ax. C consists of four pages of information from the financial counseling service used by Applicant; Ax. D consists of six pages of information related to the debt alleged at SOR 1.b; Ax. E consists of three pages of information pertaining to an unalleged tax debt; Ax. F consists of eight pages of character references and job performance information.

paying job at a local factory from 2000 until April 2009. At that time, she left the factory job and was eligible for a two-year re-education program, whereby the state agreed to pay unemployment benefits for two years as long as she studied in a qualified program. In August 2009, Applicant moved to State B, her current state of residence, and returned to school in January 2010 to obtain her associate's degree in business management. She completed her studies in May 2012. She supported herself and her son<sup>5</sup> through State A unemployment benefits and personal savings. Applicant's unemployment benefits expired in November 2011, much earlier than she expected. (Gx. 1; Tr. 30, 57 - 61)

Applicant began to use credit cards to make ends meet. In 2012, she also withdrew funds from her 401(k) account to make ends meet. By doing so, she incurred a tax penalty which resulted in a tax bill in 2013 she could not afford. Applicant established a repayment plan with federal and state authorities, and completed paying off a state tax debt of about \$1,000 in late 2016. She has been paying the IRS \$70 monthly since October 2015. As of the hearing, Applicant had not yet filed her federal and state income tax returns for the 2015 and 2016 tax years because she knows she will be unable to pay the anticipated tax bills. Those obligations have arisen through a combination of additional 401(k) withdrawals since 2012 and Applicant's tax status as a single taxpayer with no deductions or other downward adjustments in her gross income. (Ax. E; Tr. 37 - 45)

Applicant is repaying the debt alleged at SOR 1.b through an agreement with the law firm hired to collect the debt. Applicant consented to a plan to pay \$100 each month, starting in November 2016. She took that action in response to an aggressive collection effort by the law firm. (Answer; Ax. D; Tr. 29, 33)

Applicant attended a four-year college for a few semesters after graduating from high school in 1990. She obtained the student loan debts alleged in SOR 1.c – 1.f between 1990 and 1992. She paid those loans as required until 2012. Applicant has not contacted the creditors holding those accounts. (Gx. 1 – 3; Tr. 30, 34 – 35, 57)

The debts alleged at SOR 1.a and 1.i are for credit card accounts on which Applicant relied to make ends meet. They have been delinquent since 2013 and 2012, respectively. The debt at SOR 1.g was incurred for dental work in 2011 and has been delinquent since 2013. The debt at SOR 1.h represents an unpaid cable television account from 2015. Applicant has not contacted any of the creditors to try to resolve these accounts, despite being interviewed about them by a government investigator in early 2016. (Gx. 1 – 3; Tr. 28 – 29, 35 - 36)

When Applicant moved to State B in 2009, her rent was about \$750 a month. The following year it increased to about \$1,000. Applicant has moved twice since 2014

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<sup>5</sup> Applicant is a single mother of a now 22-year-old son.

to cheaper housing. Since 2015, her monthly rent has been about \$650. (Gx. 1; Tr. 24, 52 – 53)

Applicant is able to meet her current monthly obligations (e.g., rent, car note, utilities, etc.), as well as the monthly payments to the IRS and the SOR 1.b creditor. Applicant also has a medical condition that requires constant medications, but her medical insurance only covers 80 percent of those expenses. A friend occasionally helps pay for Applicant's food and medications. Applicant has also held a part-time job to supplement her income since July 2013. Applicant estimates she has about \$100 remaining each month. At the time of her hearing, Applicant was making \$12.42 an hour at her full-time job, but had just received a raise to \$16.44 an hour, which will provide her about \$640 more each month in gross pay. (Tr. 24, 27, 45 – 53)

Applicant started working with a financial counselor just before her hearing. That person is providing assistance in budgeting, establishing a plan for contacting creditors, and setting up a savings account. (Ax. B; Ax. C; Tr. 56 - 57)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>6</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>7</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of

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<sup>6</sup> See Directive. 6.3.

<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>8</sup>

A person who has access to classified information enters 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 one who will protect the national interests as his or her 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.<sup>9</sup>

## **Analysis**

### **Financial Considerations**

The Government's information reasonably raised a security concern about Applicant's finances. That concern appears at AG ¶ 18, as follows:

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. 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, the record as a whole requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). Available information documented the SOR allegations that Applicant owes a significant level of past-due or delinquent debt. As of the hearing, Applicant had not addressed most of those debts.

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<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; AG ¶ 2(b).

I have also considered the following pertinent AG ¶ 20 mitigating conditions:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

The mitigating condition at AG ¶ 20(a) does not apply. Applicant's debts are recent and ongoing.

The mitigating condition at AG ¶ 20(b) only partially applies. Applicant's debts arose from circumstances beyond her control. The benefits on which she relied ceased unexpectedly and Applicant had to make decisions she thought necessary to support her and her son. Nonetheless, AG ¶ 20(b) also requires a demonstration that Applicant acted responsibly under the circumstances. Here, the only action Applicant has taken was responsive; that is, she was obliged to respond to a law firm's aggressive collection efforts and started a monthly payment plan. In addition, the IRS presented Applicant with a non-negotiable requirement to pay her back taxes. As of the hearing, Applicant had not yet contacted any of her other creditors despite having discussed her debts with an investigator in early 2016. At that point, she was reasonably on notice that the government was concerned about her finances. Applicant did not satisfy the second prong of AG ¶ 20(b).

As to the mitigating condition at AG ¶ 20(c), Applicant has begun working on a plan of actions and milestones with a financial counselor. However, this nascent effort has yet to show results. AG ¶ 20(c) does not apply here.

The mitigating condition at AG ¶ 20(d) also does not apply. As noted in my discussion of AG ¶ 20(b), the only payments Applicant has made regarding the debts listed in the SOR have been in response to IRS and law firm collection efforts. Applicant had not contacted any of her other creditors as of the hearing, and she has yet to

establish a reliable record of action to resolve her financial problems. On balance, Applicant did not mitigate the security concerns raised by the Government's information.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's actions to resolve her debts are not yet sufficient to resolve the doubts about her suitability for access to classified information that have been raised by her financial problems. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved against the Applicant.

### **Formal Findings**

Formal findings 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
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Subparagraphs 1.a - 1.i:	Against Applicant
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### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE  
Administrative Judge