



**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. 16-02833

**Appearances**

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

10/30/2017

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about her debts. Applicant's request for a security clearance is denied.

**Statement of the Case**

On September 22, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his 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>

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

On November 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. The parties appeared as scheduled. Department Counsel proffered three items identified as Government Exhibits (Gx.) 1 - 3. Applicant testified and produced six documents identified as Applicant Exhibits (Ax.) A - F. I admitted each party's exhibits without objection.<sup>3</sup> I received a transcript of the hearing (Tr.) on June 26, 2017.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$70,772 for 11 delinquent or past-due debts (SOR 1.a - 1.k). In response, Applicant denied, with explanations and supporting documents (Tr. 17 – 19), the debts alleged at SOR 1.f and 1.j. She admitted the remaining allegations, also with explanations. When Applicant submitted her e-QIP, she did not disclose any specific debts, but stated that she was “working to bring [her] debts down.” She also disclosed she was using a credit repair firm to resolve her debts. Credit reports obtained during the ensuing background investigation document all of the delinquent debts alleged in the SOR. In addition to the facts established by Applicant's admissions and Gx. 1 - 3, I make the following findings of fact.

Applicant is 67 years old. Since September 2012, she has worked for a defense contractor in a position for which she needs a security clearance. She previously worked for the federal government doing similar work at the same job site. In 2012, Applicant retired from federal service after 35 years. Her retirement was voluntary, but by her own admission, not well planned. (Gx. 1; Tr. 12, 69 – 71)

Applicant has two adult daughters, the older of whom is now 50 years old and a career federal employee with severe financial problems. Starting in about 2007, Applicant began financially supporting that daughter because her daughter (Applicant's granddaughter) had become pregnant. From 2007 until she retired in September 2012, Applicant gave her daughter and granddaughter about \$500 a month in cash, and provided the granddaughter about \$7,000 to buy a used car. However, most of

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<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.

Applicant's financial support occurred through use of credit cards and other forms of her personal credit. (Tr. 38, 42 – 43, 63 – 65, 71 – 72)

Applicant was able to provide cash and keep up with payments on her credit accounts while she was still a full-time federal employee. Before she retired, Applicant brought home about \$3,500 each month. After she retired in 2012, her income dropped by about \$2,000 and she stopped fully supporting her daughter. Unfortunately, she also struggled to pay her credit cards and other financial obligations. Those accounts became delinquent starting in early 2013. (Gx. 2; Gx. 3; Tr. 43 – 44)

In late 2012, Applicant enlisted the services of a credit repair firm to start resolving her debts. Over the next four years, she paid that firm \$571 each month to negotiate settlements with her various creditors. Some of the monthly fee was to be set aside to accumulate amounts that could be used to negotiate settlements. Applicant stopped paying that firm in 2016 after the service failed to address any of her debts. (Gx. 1; Tr. 44 – 47, 65)

For the past year, Applicant has relied on a nationally-known financial expert whose guidance she accesses through radio and internet programs. Based on his advice, Applicant has embarked on her own five-year plan for resolving her debts. Starting in May 2017, Applicant started making payments to the creditors listed at SOR 1.a, 1.c, 1.e, 1.g, and 1.h. In May and June 2017, Applicant contacted the creditors at SOR 1.b, 1.d, and 1.k to negotiate similar repayment agreements. (Answer; Ax. C – F; Tr. 47 - 54)

The civil judgment alleged at SOR 1.f has been in repayment since November 2014. Applicant did not present documentation that addressed a different debt to the same creditor that is alleged at SOR 1.j. (Answer; Ax. B; Ax. F)

Applicant is current on all of her current obligations (e.g., mortgage, car loan, insurance, taxes, etc.). She has not incurred any new delinquencies and has a positive net monthly cash flow, after expenses including over \$700 in debt payments, of between \$500 and \$1,000. (Ax. F; Tr. 40 – 42, 57 – 60, 67 – 69)

Applicant's associates, family and close friends hold her in high regard. Letters of reference and recommendation extol Applicant's generosity, character, and professionalism. (Ax. A)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative

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<sup>4</sup> See Directive. 6.3.

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 resolves only whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of 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>6</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>7</sup>

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<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; AG ¶ 2(b).

## Analysis

### Financial Considerations

The Government's information reasonably raised a security concern about Applicant's finances. That concern is stated 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 or owed a significant level of past-due or delinquent debt. Most of that debt remains unresolved.

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.

AG ¶ 20(a) does not apply because Applicant's financial problems are recent and continuing. As to AG ¶ 20(b), Applicant did not establish that her debts arose from circumstances beyond her control. She decided to live beyond her means by abusing her personal credit to help her daughter. Even when she was still a full-time federal employee, Applicant did not have the means to support her daughter and granddaughter to the extent she did. When Applicant retired without proper planning, she lost her already slim margin for error and could not keep up with the debts reflected in the SOR.

AG ¶ 20(c) is not available because the assistance she sought turned out to be wholly ineffective. Although she may not have known that to be the case at the time she hired the credit repair firm, at some point during the next few years she should have realized she needed to change course.

Finally, AG ¶ 20(d) does not apply. In May 2017, Applicant embarked on a plan that should eventually resolve her debts. Nonetheless, except for the debt at SOR 1.f, she has not yet established a record of steady payments that shows she will adhere to that plan until completion. Her debts have been delinquent for several years, but the only reliable actions she has taken began about a month before the hearing. This does not constitute a prompt, good-faith effort.

Applicant has not established a reliable record of fiscal responsibility that inspires confidence that her financial problems are under control and will not recur. On balance, Applicant has failed to 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). I am mindful of the positive information provided by her references. Nonetheless, Applicant's actions to resolve her debts, sound as they may be, are too recent to alleviate the doubts raised by the adverse information about her finances. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against granting eligibility for a security clearance.

### **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
Subparagraphs 1.a - 1.k:	Against Applicant

### **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