



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 17-00572
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

01/19/2018

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant’s financial situation was good until her late husband became terminally ill. She incurred credit card debt for his care. After her husband died, and notwithstanding the modest income she earns from her full-time job, Applicant responsibly paid most of the debts she incurred for his care, except for the credit cards. She pays her recurring financial obligations on time, including the mortgage on the home that she has lived in since 1979. She honestly reported the credit card debt on her security clearance application and has been candid about her financial situation throughout the security clearance process. She has held a security clearance without issue for over ten years. A conditional clearance is granted.

**Statement of the Case**

On April 3, 2017, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Applicant answered the SOR and requested a determination on the administrative (written) record.

On May 31, 2017, Department Counsel sent Applicant a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant six exhibits, pre-marked Items 1 – 6, 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 – 6 are admitted into the record.

On November 3, 2017, I was assigned the case. Subsequently, I received written confirmation that Applicant remains sponsored for a security clearance. (Appellate Exhibit II.) Accordingly, I have jurisdiction to issue a decision. ISCR Case No. 14-03753 (App. Bd. Sep. 23, 2016).

### **Findings of Fact**

Applicant, 69, is employed as a receptionist. She has worked as a federal contractor since 2005, and was first granted a security clearance in about 2006. She submitted a security clearance application in February 2016 in connection with her job. In response to questions on the application regarding her financial history, Applicant reported she had a number of delinquent credit card accounts. She later explained, during her security clearance interview and in her response to the SOR, that she incurred the debts caring for her late husband. He died in 2007. She paid other debts related to his care and for funeral-related expenses, but was financially unable to pay the credit card debt. She attempted to resolve the credit card debt in 2010 through a debt consolidation plan, but after a time was unable to make the monthly payments on her limited income. She earns less than \$15 per hour, and uses her income to pay her mortgage and other recurring debts. She has lived in her home since about 1979 and expects to pay off the mortgage in 2019.

### **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.

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 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; and

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.

Applicant's finances were in good order before her husband became terminally ill. She turned to credit cards to pay ever-increasing medical bills and other expenses for his care. After Applicant's husband died, she was left to pay the bills. She earns a modest income from her full-time position as a receptionist. Notwithstanding her limited financial means, Applicant has timely paid her recurring debts, including the mortgage on the home that she has lived in continuously since 1979. She tried to address and resolve the credit card debt, but was unable to because of her limited financial means. Her financial situation is not due to lack of self-control, irresponsibility, or unwillingness to abide by rules and regulations. In short, the record reflects that Applicant has responsibly managed her finances within her means. AG ¶ 20(b) applies.

### **Whole-Person Concept / Conditional Clearance**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. AG ¶ 2. An administrative judge should consider the whole-person factors listed at AG ¶¶ 2(d) and 2(f). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant was honest and candid about her financial situation from the outset of the security clearance process. She has held a security clearance without issue since 2006. The record reflects that the only delinquent debt Applicant has incurred in the past 10 years are for credit cards she used to pay for medical bills and funeral expenses for her late husband. The record does not reflect that Applicant incurred any other delinquent debt. At the same time, a large amount of credit card debt remains and the record evidence does not completely mitigate the security concerns raised by such debt.

Pursuant to the National Security Adjudicative Guidelines, an administrative judge is authorized to grant initial or continued eligibility for a security clearance, *despite the presence of an issue(s) that can be partially but not completely mitigated*, with the provision that additional security measures shall be required to mitigate the issue(s). See SEAD 4, Appendix C (emphasis added).<sup>1</sup> In light of the sizeable amount of credit card

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<sup>1</sup> See also Memorandum, Director for Defense Intelligence (Intelligence and Security), dated January 12, 2018 ("Appendix C identifies authorized exceptions that are to be utilized when making adjudicative decisions to grant initial or continued eligibility for access to classified information or to hold a sensitive position . . . Effective immediately, authority to grant clearance eligibility with one of the exceptions enumerated in Appendix C is granted to any adjudicative, hearing, or appeal official or entity now authorized to grant clearance eligibility when they have jurisdiction to render the eligibility determination.") In exercising this new discretionary authority, I have carefully considered and weighed the security concerns at issue,

debt at issue, I find that granting a conditional clearance will appropriately address any remaining concerns. Specifically, Applicant's continued eligibility for a security clearance is conditioned on the following:

- (1) Applicant will continue to pay her debts as they come due;
- (2) Applicant will not incur any new past-due debts;
- (3) Within six months of this decision, Applicant will obtain financial counseling from a legitimate and credible source, such as a non-profit credit counseling service or through an employer-provided assistance program;
- (4) Applicant will provide her facility security officer (FSO):
  - a. a copy of this decision or, at minimum, this page, so the FSO can be aware of the conditions imposed on her security clearance;<sup>2</sup>
  - b. documentation showing she obtained the required credit counseling; and
  - c. a credit report every six months for the next two years, so that the FSO can independently verify that Applicant remains financial stable. (Applicant can once a year request a free copy of her credit report from one of the three major credit reporting agencies.); and,
- (5) If Applicant becomes delinquent on any new debt, she will immediately report this information to her FSO.

Furthermore, Applicant is hereby warned that her failure to comply with these conditions or the receipt of other derogatory information raising a security concern under any of the adjudicative guidelines may result in the revocation of her clearance.

### **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):	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant

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the facts and circumstances giving rise to said issues, and other relevant factors. After doing so, I find that the grant of a conditional clearance is consistent with the national security interests of the United States.

<sup>2</sup> Although it is beyond the authority granted to me by the Directive and the Adjudicative Guidelines, to require a third party, such as Applicant's employer, to independently monitor Applicant's compliance with the conditions set forth herein, an FSO has an independent obligation to report any adverse information that comes to his or her attention to the Government (DoD Consolidated Adjudications Facility).

## **Conclusion**

In light of the record evidence, it is clearly consistent with the interests of national security to grant Applicant a conditional security clearance.

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Francisco Mendez  
Administrative Judge