



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



In the matter of: )  
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----- ) ISCR Case No. 17-02629  
 )  
Applicant for Security Clearance )

**Appearances**

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

02/14/2018

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for access to classified information. Applicant failed to mitigate security concern raised by her problematic financial history. She did, however, mitigate the security concern raised by her personal conduct. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on December 31, 2015. This document is commonly known as a security clearance application. On August 24, 2017, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified information.<sup>1</sup> It detailed the factual reasons for

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<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In

the action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct. Applicant answered the SOR on September 29, 2017, and requested a decision based on the written record without a hearing.

On October 30, 2017, Department Counsel submitted a file of relevant material (FORM).<sup>2</sup> The FORM was mailed to Applicant on the same day. She was given thirty days to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on November 7, 2017. Applicant did not respond to the FORM. The case was assigned to me on January 18, 2018.

### **Procedural Matters**

Included in the FORM were eight items of evidence, which are marked as Government Exhibits (GE) 1 through 8. Exhibits 1 through 3, and 5 through 8 are admitted into evidence without objection. Exhibit 4 is a report of investigation (ROI) summarizing Applicant's interview that took place during the May 2017 background investigation. The ROI is not authenticated, as required under ¶ E3.1.20 of the Directive.<sup>3</sup> Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. Nevertheless, I am not persuaded that a *pro se* applicant's failure to respond to the FORM, which response is optional, equates to a knowing and voluntary waiver of the authentication requirement. The record does not demonstrate that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not demonstrate that she understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, GE 4 is inadmissible, and I have not considered the information in the ROI.

### **Findings of Fact**

Applicant is 25 years old, a high school graduate, who has never married and has no children. Since February 2015, she has worked for a defense contractor.<sup>4</sup>

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addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 8, 2017, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2016).

<sup>2</sup> The file of relevant material consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits in this decision.

<sup>3</sup> See *generally* ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016) (In a concurring opinion, Judge Ra'anani notes the historical concern about reports of investigation in that they were considered by some to present a heightened problem in providing due process in security clearance cases. Judge Ra'anani raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a *pro se* applicant.).

<sup>4</sup> GE 3.

Under Guideline F, the SOR alleged that Applicant has 25 delinquent debts totaling \$17,905, of which \$11,868 are medical accounts.<sup>5</sup> Applicant admitted all but seven of those debts.<sup>6</sup> There is, however, record support for those denied debts.<sup>7</sup> Many of these debts have been delinquent for several years and remain so today.<sup>8</sup>

Under Guideline E, the SOR alleged that Applicant deliberately failed to disclose the SOR debts in her security clearance application. Applicant denied that she deliberately failed to disclose her financial delinquencies. She claims that she told the investigator that she was not sure what was on her credit report but that she was in debt for breaking her lease and for unpaid emergency room bills. She also explained that in August 2013 her employer cut back on her hours, and her grandmother and other family members (unidentified) passed away. Applicant also stated that she has not had a good paying job to begin making payments on her indebtedness.<sup>9</sup>

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>10</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>12</sup> An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>13</sup>

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<sup>5</sup> GE 1.

<sup>6</sup> GE 2. Applicant denied SOR ¶¶ 1.c, f, j, r through t, and v.

<sup>7</sup> GE 5, pp. 5, 11; GE 6, p. 2; GE 8, pp. 3, 15.

<sup>8</sup> See, e.g., GE 6.

<sup>9</sup> GE 2, pp. 5, 10, 13.

<sup>10</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>11</sup> 484 U.S. at 531.

<sup>12</sup> Directive, ¶ 3.2.

<sup>13</sup> Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>14</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>15</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>16</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>17</sup>

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>18</sup> The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>19</sup>

## **Discussion**

### **Guideline F - Financial Considerations**

Under Guideline F for financial considerations,<sup>20</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is:

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.<sup>21</sup>

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

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<sup>14</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>15</sup> Directive, ¶ E3.1.14.

<sup>16</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>17</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>18</sup> *Egan*, 484 U.S. at 531.

<sup>19</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>20</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>21</sup> AG ¶ 18.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

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 (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; and

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

Facts admitted by an applicant in an answer to a SOR require no further proof by the Government.<sup>22</sup> The evidence supports a conclusion that Applicant has had a problematic financial history, as alleged. This raises security concerns under AG ¶¶ 19(a) and (c). The next inquiry is whether any potentially mitigating conditions apply.

Although Applicant's delinquencies go back several years, they persist as delinquencies today. Thus, AG ¶ 20(a) does not apply. The record shows no good-faith efforts by Applicant to repay her overdue creditors or otherwise resolve her debts. Thus, AG ¶ 20(d) does not apply.

Applicant claims that in 2013 her employer cut back on her hours and that her grandmother and other family members died, factors that led to her indebtedness. In addition, the vast majority of Applicant's delinquencies are for medical debts, which of their very nature are likely caused by circumstances largely, if not wholly, beyond her control. The Government has no evidence to rebut those circumstances. Thus, AG ¶ 20(b) partially applies, leaving open an inquiry into whether Applicant acted responsibly under those circumstances to address her indebtedness. Unfortunately, Applicant has not offered any evidence that she took any steps at all to address her indebtedness. Therefore, AG ¶ 20(b) does not fully apply.

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<sup>22</sup> ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) ("any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof"); ISCR Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) ("[a]n applicant's admissions, whether testimonial or written, can provide a legal basis for an Administrative Judge's findings").

## Guideline E - Personal Conduct

In assessing an allegation of deliberate falsification, I consider not only the allegation and applicant's answer but all relevant circumstances.<sup>23</sup> Under Guideline E for personal conduct, the concern is that "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information."<sup>24</sup> A statement is false or dishonest when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, reasonably did not know the information, or genuinely thought the information did not need to be reported.

In this case, the SOR alleged that Applicant falsified her security clearance application by deliberately failing to disclose the indebtedness alleged under Guideline F. In her answer to the SOR, Applicant denied that she deliberately failed to disclose her indebtedness in her security clearance application. She stated that was unsure of what was on her credit report. Thus, it appears that Applicant reasonably did not know what delinquencies were on her credit report. I conclude that Applicant's omission of her debts on the security clearance application was not deliberate.<sup>25</sup>

The evidence on Applicant's financial condition raises doubts about her reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>26</sup> Accordingly, I conclude that Applicant has not met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.y:	Against Applicant

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<sup>23</sup> AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors).

<sup>24</sup> AG ¶ 15.

<sup>25</sup> Moreover, the Government relies on GE 4 to support the allegation that the omission was deliberate. But I ruled that GE 4 is inadmissible.

<sup>26</sup> See note 23, *supra*.

Paragraph 2, Guideline E

For Applicant

Subparagraphs 2.a-2b:

For Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas  
Administrative Judge