



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-02780  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

05/09/2018  
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**Decision**  
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HEINTZELMAN, Caroline E., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant failed to mitigate security concerns raised by her delinquent debts, including a substantial tax lien. Eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on June 7, 2016. On August 18, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all decisions on or after June 8, 2017.

Applicant answered the SOR on October 9, 2017, and requested a decision on the record without a hearing. On November 21, 2017, a complete copy of the File of Relevant

Material (FORM), containing six Items, was mailed to Applicant and received by her on December 9, 2017. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant did not object to the Government's Items. Hence, Items 1 through 6 are admitted into evidence without objection. She submitted additional evidence, which was admitted without objection as Applicant's Exhibit (AX) A. The case was assigned to me on March 1, 2018.

### **Findings of Fact<sup>1</sup>**

Applicant is 44 years old and works as an operations manager for a defense contractor. She has worked for her employer since May 2017, and requires a clearance for her employment. She has held a DOD security clearance for approximately 15 years. Applicant was married between 2001 and 2012, and has two children. She served in the United States Army National Guard from 1997 to 2006 (Item 3 at 3). She received her bachelor's degree in 1997. She attributes her financial problems to her three periods of unemployment between August and November 2011, August 2012 to January 2014, and May to March 2017 (Item 2 at 17-19 and Item 3 at 2).

#### **SOR ¶ 1.a. BANKRUPTCY**

Applicant filed for Chapter 13 bankruptcy protection in 2003. One year later, her bankruptcy was converted into a Chapter 7, and her debts were discharged (Item 6). In her Answer to the SOR, she disclosed she filed for bankruptcy due to unemployment and underemployment, but did not provide specifics as to the dates of her unemployment or what if any payments she made in her Chapter 13 bankruptcy (Item 1).

#### **SOR ¶ 1.b. TAX LIEN \$117,000**

In 2014, the Internal Revenue Service (IRS) filed an \$117,000 tax lien against Applicant. In 2015, the IRS filed a \$38,055 tax lien, which was released in 2016, and was not alleged in the SOR (Item 5 at 4). She has made various claims regarding which tax years were included in the outstanding lien.<sup>2</sup> Applicant asserted she did not file or pay her taxes because she was overseas and knew she would owe a large amount of money.<sup>3</sup> She has also claimed that when she has been working overseas in a combat zone, she was not required to make payments. She attributes this to an undated notice sent to her

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<sup>1</sup> Applicant's personal information is extracted from her security application (Item 2) unless otherwise indicated by a parenthetical citation to the record.

<sup>2</sup> In her 2016 SCA, she disclosed she owed state and federal taxes for tax years 2009, 2010, 2014 and 2015 (Item 2 at 40-42). In her May 2017 interview, she claimed she did not file or pay her 2010 and 2011 state and federal tax returns (Item 3).

<sup>3</sup> Applicant worked overseas in Kuwait from September 2006 to May 2007 and from November 2011 to August 2012. She worked in Afghanistan from August 2009 to August 2011 and from May 2014 to March 2017 (Item 3 at 1 and 3-4).

by the IRS, but did not provide letters, statements, or other documentation from the IRS addressed to her, substantiating these claims (AX A at 1-3).

In her Response to the FORM, Applicant provided proof of eleven payments to the IRS between September 2015 and March 2016, totaling \$29,500 (AX A at 4-18). She claimed the IRS told her in December 2017 that the outstanding balance on her lien is \$61,937.56 and she is not required to make payments. However, she provided no documentation from the IRS establishing the status of her lien, proof she has filed her tax returns, or proof of any payments in the past 18 months.<sup>4</sup> This debt has not been resolved.

In addition to her federal tax lien, Applicant has eight delinquent debts totaling \$30,433 (SOR ¶ 1.c. through 1.j.). These debts appear in her credit reports (Items 4 and 5).

SOR ¶ 1.c. CAPONEAUTO \$13,289

This account was for a vehicle. Applicant stopped making payments in 2011, and the debt was charged off in approximately 2012 (Item 4 at 2 and Item 5 at 6). Applicant claimed in her SCA that she would start making payments in May 2016. After 36 payments of \$105, this debt would be settled (Item 2 at 45). In her Answer, Applicant denied this debt and claimed that since June 2016, she had been making \$102 payments per month, but did not provide documentary proof. In her Response to the FORM, she provided proof of \$102.23 payments in May 2016, June 2016, and November 2017 (AX A at 22, 26, and 32). This debt has not been resolved.

SOR ¶ 1.d. TOWER LOAN \$5,115

This account was for a personal loan. Applicant stopped making payments 2012, and the debt was charged off (Item 4 at 2). In her Answer, Applicant admitted to this debt. She made a payment on December 13, 2017, in the amount of \$5,169.95 (AX A at 31). This debt has been resolved.

SOR ¶ 1.e. MERRICK \$4,629

This account was for a credit card. Applicant stopped making payments in 2012, and the debt was charged off. In her Answer, Applicant admitted to this debt, and it has not paid (AX A at 1). This debt has not been resolved.

SOR ¶ 1.f. CAP ONE \$3,718

Applicant stopped making payments for this account in 2012, and the debt was charged off. Applicant disclosed this debt in her SCA, and indicated that in May 2016

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<sup>4</sup> Applicant has asserted she is not required to make payments to the IRS while she is working in a combat zone. She included in her Response to the FORM an IRS Notice 1052. The notice was revised in April 2003, but it is undated as to when it was sent to Applicant. Additionally, it is no longer available on the IRS website.

should would start making payments; however, in her Answer, Applicant admitted to this debt, and it has not paid (Item 2 at 44 and AX A at 1). This debt has not been resolved.

SOR ¶ 1.g. CAVALRY PORT/CAPITAL ONE \$3,084

In her Answer, Applicant denied this debt and claimed it was paid in July 2016. She made three payments of \$532.92 and claims she settled the debt for \$1,598.76. She provided documentation of the payments in May June, and July 2016, but did not provide documentation from the creditor that the debt was settled and resolved (AX A at 23, 26-27, and 30). This debt has not been resolved.

SOR ¶ 1.h. CENTERPOINT \$146

This account was for a utility bill. In her Answer, Applicant denied this debt and claimed it was paid in November 2015. She did not provide documentation from the account holder, but claimed she has an active account with this company, and provided proof of several monthly payments (AX A at 1 and 23, 25, 29). This debt has been resolved.

SOR ¶ 1.i. CENTRAL FINCL \$228

This account was for a medical bill. In her Answer, Applicant denied this debt and claimed it was paid in July 2016. She provided documentation that this balance is no longer outstanding (AX A at 19-20). This debt has been resolved.

SOR ¶ 1.j. MERC ADJ BUR/AMERICAN ELECTRIC POWER \$224

This account was for a utility bill. In her Answer, Applicant denied this debt and claimed it was paid in July 2016. She provided proof of a \$224 payment in June 2016 (AX A at 25). This debt has been resolved.

### **Policies**

“[N]o one has a ‘right’ to a security clearance.”<sup>5</sup> As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.”<sup>6</sup> The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>7</sup>

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<sup>5</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>6</sup> *Egan* at 527.

<sup>7</sup> EO 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>8</sup> Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR.<sup>9</sup> "Substantial evidence" is "more than a scintilla but less than a preponderance."<sup>10</sup> The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.<sup>11</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>12</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>13</sup>

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<sup>8</sup> EO 10865 § 7.

<sup>9</sup> See *Egan*, 484 U.S. at 531.

<sup>10</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>11</sup> ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

<sup>12</sup> Directive ¶ E3.1.15.

<sup>13</sup> ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>14</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>15</sup>

## **Analysis**

### **Guideline F: Financial Considerations**

The concern under Guideline F (Financial Considerations) is set out in AG ¶ 18:

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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>16</sup>

Applicant's admissions and her credit reports establish three disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(f) (“failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required”).

AG ¶ 20 describes conditions that could mitigate security concerns. Two are potentially applicable in this case:

(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; and

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<sup>14</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>15</sup> *Egan*, 484 U.S. at 531; *See also* AG ¶ 2(b).

<sup>16</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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.

I considered that Applicant is not required to be debt-free in order to qualify for a security clearance.<sup>17</sup> However, Applicant has a significant outstanding IRS tax lien and several other unpaid debts. Applicant went through a divorce and periods of unemployment; however, she did not meet her burden to establish that she acted responsibly to address her unpaid debts in a timely manner. Her bankruptcy indicates she has a lengthy history of financial issues, which continues to the present day. AG ¶ 20(a) and 20(b) are not established.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the security concerns at issue. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the interests of national security of the United States to grant her eligibility for access to classified information.

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<sup>17</sup> ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.-1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraphs 1.e.-1.g.:	Against Applicant
Subparagraphs 1.h.-1.j.:	For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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Caroline E. Heintzelman  
Administrative Judge