



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-06563  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esq., Department Counsel  
For Applicant: *Pro se*

11/20/2015

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges one state tax debt for about \$21,000, a telecommunications debt for \$160, and a medical debt for \$56. Appellant paid the debts for \$21,000 and \$56. She successfully disputed the \$160 debt. All three SOR debts are resolved. Financial considerations concerns are mitigated. Access to classified information is granted.

**History of the Case**

On July 13, 2012, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Item 2) On March 4, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF made a preliminary decision to deny or revoke Applicant's eligibility for access to classified information. Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On March 19, 2015, Applicant responded to the SOR, and she waived her right to a hearing. (Item 2) On July 31, 2015, Department Counsel completed the File of

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Relevant Material (FORM). On September 28, 2015, Applicant received the FORM. Applicant provided an undated response to the FORM. On October 26, 2015, Department Counsel stated she had no objection to the Applicant's FORM response. On November 9, 2015, the case was assigned to me. The Government's case consisted of six exhibits. (Items 1-6)

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

In Applicant's SOR response, she admitted responsibility for the \$56 medical debt in SOR ¶ 1.b and the \$21,000 state tax debt in SOR ¶ 1.c. She denied responsibility for the \$160 telecommunications debt in SOR ¶ 1.a. She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is 51 years old, and she has been employed by a security firm since 2002. She is seeking a security clearance. In 1982, she received a high school diploma, and she did not disclose any college attendance or military service. She has never married, and she has four children, who were born in 1981, 1984, 1989, and 1991. There is no evidence of any security violations, alcohol abuse, use of illegal drugs, or criminal conduct.

### **Financial Considerations**

Applicant's history of delinquent debt is documented in her 2012 and 2015 credit reports, SF 86, August 28, 2012 Office of Personnel Management (OPM) personal subject interview (PSI), SOR response, and FORM response. Applicant disputed her responsibility for the \$160 telecommunications debt in SOR ¶ 1.a. Applicant denied that she ever had an account with the creditor. She contacted the creditor, and the creditor was unable to locate the account.

On March 18, 2015, Applicant paid the \$56 medical debt in SOR ¶ 1.b. She explained that she thought her medical insurance was going to pay the debt.

Applicant acknowledged responsibility for the \$21,000 state tax debt in SOR ¶ 1.c. Applicant said she timely filed her state tax returns. The cause of her state tax debt for \$21,000 was an error she made on her tax returns that was discovered through an audit. She did not explain further about the error she made, which tax years were involved, etc. The state obtained a judgment against Applicant in May 2013, and she satisfied the judgment in April 2015. (FORM response) The state formally filed a court document indicating the debt was satisfied in May 2015.

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<sup>1</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. Unless stated otherwise, the source for the information in this section is her August 28, 2012 Office of Personnel Management (OPM) personal subject interview (PSI), SOR response, and her July 13, 2012 Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Items 2-3, 6)

The FORM notes that Applicant's August 28, 2012 OPM PSI describes several non-SOR delinquent accounts and two judgments. (Item 6) She said she was behind on her adjustable rate mortgage, and was seeking renegotiation of her mortgage. (Item 6) Applicant's February 26, 2015 credit report shows the two judgments cited in the 2012 OPM PSI were satisfied in 2014, and she has no currently past due accounts. (Item 5) During her 2012 OPM PSI, she said she did not have any financial counseling.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It 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. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v.*

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*Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" "(c) a history of not meeting financial obligations;" and "(g) failure to file annual Federal, state, or local income tax returns as required . . . ." Applicant's history of delinquent debt is documented in her credit reports, SF 86, OPM PSI, SOR response, and FORM response. Applicant's SOR alleges, and the evidence establishes Applicant has a 2013 state tax judgment for \$21,000, indicating she did not pay taxes "as required," and two other debts totaling less than \$300. The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

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(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>2</sup> and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

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<sup>2</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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AG ¶¶ 20(a), 20(c), and 20(d) apply. Applicant paid the debt in SOR ¶ 1.b, and she had substantially paid the debt in SOR ¶ 1.c by the time the SOR was issued.

Applicant did not reveal any conditions largely beyond her control or any financial counseling. Applicant's current credit report shows no past due or currently negative accounts. Her negative financial situation "occurred under such circumstances that it is unlikely to recur and does not cast doubt on the [Applicant's] current reliability, trustworthiness, or good judgment." Her financial problem is under control.

Applicant successfully disputed the telecommunications debt for \$160 in SOR ¶ 1.a. AG ¶ 20(e) applies to the debt in SOR ¶ 1.a.

In sum, Applicant has resolved all three of the SOR debts and the negative accounts specified in the OPM PSI. Her actions show sufficient effort, good judgment, trustworthiness, and reliability to warrant mitigation of financial considerations concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

The rationale for approving Applicant's clearance is more substantial than the reasons for denying her clearance. Applicant is a 51-year-old security employee, who is seeking a security clearance. She has been employed by the same government contractor since 2002. There is no evidence of any security or violations, alcohol abuse, use of illegal drugs, or criminal conduct.

Applicant acted responsibly under the circumstances, when she resolved all of her debts. Her February 26, 2015 credit report indicates she has no currently delinquent

debts. She understands that she needs to pay her debts, and the conduct required to retain her security clearance.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant understands what she needs to do to establish and maintain her financial responsibility. Her efforts at debt resolution have established a "meaningful track record" of debt re-payment. I am confident she will maintain her financial responsibility.<sup>3</sup>

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and

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<sup>3</sup>The Government has the option of following-up with more questions about Applicant's finances. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems."). This footnote does not imply that this decision to grant Applicant's security clearance is conditional.

circumstances in the context of the whole person. I conclude financial considerations concerns are mitigated, and eligibility for access to classified information is granted.

### **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:           FOR APPLICANT

Subparagraphs 1.a through 1.c: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARK HARVEY  
Administrative Judge