



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-00092

**Appearances**

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

01/28/2016

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding her finances. Eligibility for access to classified information is denied.

**History of the Case**

On August 17, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 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 Adjudicative Guidelines (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on August 31, 2015, and elected to have her case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM), which contained five attachments (Items 1-5), on September 25, 2015, and responded to the FORM within the time permitted. She submitted a statement elaborating on her attempts to pay off her debts, citing various options she explored, including personal loans and payment plans, without success. She cited her chronic disorder that required immediate attention from time to time when she had either no insurance or poor insurance coverage. She attached two small checks made to creditors the past year to medical creditors. Applicant's submission is admitted as Item 6. The case was assigned to me on November 10, 2015.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 26 delinquent debts exceeding \$14,000. Allegedly all of these debts remain outstanding.

In her response to the FORM, Applicant admitted most of the alleged debts, all but one of which are medical accounts. She denied several of the listed debts, disputing them on various grounds. She claimed she is working on her admitted debts which are medically related and linked to one hospital facility that separated the bills amongst the different treating entities.

### **Findings of Fact**

Applicant is a 40-year-old security officer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married her first husband in December 1998 and divorced him in March 2010. (Item 3) She has two children from this marriage. She remarried in February 2011 and has no children from this marriage. (Item 3)

Between August 1993 and May 1995, Applicant attended a local community college and earned an associate's degree. (Item 3) She has been employed as a security officer since August 2014. (Item 3) She served in the Inactive Reserve of the Army National Guard of her state between September 1993 and May 2002, and received an honorable discharge. (Item 3)

#### **Finances**

Between November 2010 and March 2014, Applicant accumulated delinquent debts (mostly medical accounts) that are still outstanding. Credit reports reveal delinquent medical accounts exceeding \$2,500 that Applicant has admitted. (Item 2) Three of the listed debts (creditors 1.b, 1.s, and 1.t) are disputed by Applicant. She documented her dispute with creditor 1.b with letters of June 18, 2014 and May 17,

2015, disputing the charges on the grounds she returned the equipment to the creditor and is entitled to a credit and removal of the debt from her credit reports. (Item 2) Applicant's dispute with this creditor is reasonable and made in good faith, and is accepted.

Applicant disputed two other debts: the listed debts with creditors 1.s and 1.t for reasons she never received any hospital procedures that could justify these charges (both over \$4,000). Applicant's disputes of these charges from creditors 1.s and 1.t are not documented and cannot be verified for accuracy without additional documentation from Applicant.

Applicant attributes her admitted medical debts to divorce and chronic health issues at a time when she either had no medical insurance or her insurance was inadequate. (Items 2 and 6) She has since been working on cleaning up her credit, which was tarnished from her divorce and medical conditions. (Items 2 and 6) To that end, she has been making minimum payments on her smaller debts. She affirmed that all of her medical debts stem from medical procedures at one hospital in her community, along with visits to her treating physician. (Item 2) Efforts to enlist the pertinent insurance companies to lower her costs or to mount disputes of the charges were not successful. (Item 2)

Whether the documented payments Applicant made to her creditors represent payments to her listed creditors in the SOR, and whether they represent her best efforts, is unclear. Her post-FORM submissions contained no explanations of whether the recipients of her payments are in any way connected with the identified creditors in the SOR. Further, she provided no recent personal financial statement or evidence of financial counseling. Without more information from Applicant about her current financial status, assessments of her financial condition and ability to pay her delinquent debts in the foreseeable future cannot be fully evaluated.

### **Endorsements**

Applicant provided no endorsements or performance evaluations on her behalf. Nor did she provide any proof of community and civic contributions.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative

judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States v. Gaudin*, 515 U.S. 506, 509-511

(1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Executive Order 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is a fully employed security officer for a defense contractor who accumulated delinquent debts (mostly medical accounts) between November 2010 and March 2014. Applicant attributed her unresolved debt delinquencies to divorce and either no medical insurance or poor insurance. While she assured that she is working hard to repair her credit, she furnished little documentation to support her assurances. Applicant’s delinquent debt accruals warrant the application of two of the disqualifying conditions (DC) of the Guidelines. DC ¶ 19(a), “inability or unwillingness to satisfy debts;” and DC ¶ 19(c), “a history of not meeting financial obligations.”

Applicant’s pleading admissions with respect to her accrued delinquent debts covered in the SOR negate the need for any independent proof (*McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s listed debts are fully documented in her credit reports. Some judgment problems persist over Applicant’s insufficiently explained debt delinquencies and resolution initiatives. With knowledge of the status of her medical debts, she has taken insufficient corrective steps to pay or resolve her delinquencies and demonstrate she acted responsibly in addressing her listed debts. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder’s duties and access to classified information necessarily imposes important duties of

trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Inferentially, Applicant's accumulated delinquent debts are attributable for the most part to her divorce and lack of adequate medical insurance to cover her hospital procedures and physician fees. Afforded opportunities to provide more information and documentary support for her getting behind with her medical bills, she has been slow to provide payment documentation of her creditor payments. Most of the payments she did document involve creditors not identified as creditors listed in the SOR. Payments documented in both her SOR and FORM responses reflect very modest total payments (less than \$330).

Based on the developed record, it is unclear how either her divorce or insurance deficits played such an important role in her financial decision-making. From a review of the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve her debts. Partially available to Applicant is mitigating condition (MC) ¶ 20(b), "the conditions that resulted in the behavior 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."

Some partial application of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is available to Applicant. And MC ¶ 20(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," has some application to Applicant's situation. Applicant mounted a successful dispute of her creditor 1.b debt, for which she was credited with achieving with the creditor. By contrast, her disputes with creditors 1.s and 1.t are not sufficiently developed to permit favorable inferences of successful resolution.

What is not clear from this developed record are the specifics of what role Applicant's ex-husband and his medical conditions played in her accumulation of so many delinquent consumer debts. Whether she acted responsibility is directly contingent upon her providing documented evidence of how she addressed her finances. Without documentation of financial counseling and additional steps she has taken to address her medical debts, mitigation credit is not available to Applicant based on the developed evidence in the record.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by her accrual of so many medical debts and failure to resolve them. Resolution of her listed delinquent accounts is a critical prerequisite to her regaining control of her finances. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of her overall clearance eligibility, but were not provided.

Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable her to establish judgment and trust levels sufficient to overcome security concerns arising out of her lapses in judgment in managing her debts and resolving her delinquent medical accounts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations and her lack of more specific explanations for her debt accruals and corrective actions taken, it is still too soon to make safe predictive judgments about Applicant's ability to satisfactorily address her outstanding debts. More time is needed to facilitate Applicant's making the necessary progress with her debts to facilitate conclusions that her finances are sufficiently stabilized to permit her access to classified information. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a and 1.c through 1.aa. Favorable conclusions are warranted with respect to the allegations covered by subparagraph 1.b.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparas. 1.a and 1.c through 1.aa:	Against Applicant
Subpara. 1.b:	For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

