



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. 15-00215

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel

For Applicant: *Pro se*

04/28/2016

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding her financial considerations, but did not mitigate personal conduct concerns. Eligibility for access to classified information is denied.

**Statement of Case**

On July 16, 2015, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for 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 DoD on September 1, 2006.

Applicant responded to the SOR on August 18, 2015, and requested a hearing. The case was assigned to me on October 6, 2015, and was scheduled for hearing on November 17, 2015. At hearing, the Government's case consisted of seven exhibits (GEs 1-7). Applicant relied on one witness (herself) and ten exhibits (AEs A-J). The transcript (Tr.) was received on November 25, 2015.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with documented payments of debts owed to creditor 1.j and creditors 1.l-1.p. For good cause shown, Applicant was granted 14 days to supplement the record. The Government was afforded 12 days to respond.

Within the time permitted to supplement the record, Applicant provided documentation of the following: a letter from Applicant explaining several of her open accounts, endorsements, an inquiry response and check payments from her debt consolidation lender, payable to Applicant; a letter from a collection agency covering creditor 1.e; a letter from a collection agency covering creditor 1.f; a letter from a collection agency covering creditor 1.g; a letter from a collection agency, with attached checks, covering creditor 1.m; a personal financial budget; and a letter from a collection agency acknowledging payments to creditor 1.p. Applicant's post-hearing submissions were admitted as AEs K-S.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 16 delinquent debts exceeding \$10,500. Allegedly, all of the debts remain outstanding.

Under Guideline E, Applicant allegedly falsified her September 12, 2012, Electronic Questionnaire for Investigation Processing (e-QIP), when she failed to disclose her delinquent accounts listed in subparagraphs 1.a through 1.p of the SOR. Allegedly, Applicant was aware of these accounts when she completed her 2012 e-QIP.

In her response to the SOR, Applicant admitted each of the listed debts. She claimed she established a debt consolidation agreement and paid in full the debts covered by subparagraphs 1.a through 1.h, using loan money from her debt consolidation lender. She claimed she is still researching debts listed for creditors 1.i and 1.k. She claimed she made a partial payment to creditor 1.j from debt consolidation loan funds and made payment arrangements for the remaining balance of \$100 a month. She claimed she paid off the listed debts owed to creditors 1.l through 1.o. And she claimed she applied to creditor 1.p for payment arrangements of \$100 a month.

Addressing the personal conduct claims of the SOR, Applicant admitted her omissions but denied any intention to provide false information. She claimed she was aware of her debts but believed her debts did not become delinquent within the past seven years. And she claimed she answered all of the questions in her e-QIP to the best of her knowledge.

## Findings of Fact

Applicant is a 43 year-old business operations analyst for a defense contractor who seeks a security clearance. The allegations covered in the SOR were denied by Applicant and placed in issue. Findings follow.

### Background

Applicant married in August 2004 and divorced her husband in September 2007. (GEs 1 and 2; Tr. 34-35) She has two children from prior relationships (ages 27 and 26) and three grandchildren. (Tr. 122) She claimed no education credits within the past ten years, and claimed no military service. (GEs 1 and 2)

Applicant has worked for her current employer since 2011 as a business operations analyst. (GEs 1 and 2) Previously, she was employed by a non-defense contractor as a support analyst between June 2010 and October 2011. She worked for a defense contractor as a supply clerk between August 2006 and June 2010. (GEs 1 and 2)

Between January 2006 and August 2006, Applicant was unemployed. (GE 1) She worked as a warehouse shipper for a non-defense contractor between December 2001 and January 2006. (GEs 1 and 2; Tr. 28-29) Since August 2006, she has had no breaks in employment. (GEs 1 and 2; Tr. 25)

### Applicant's finances

Applicant accumulated 16 delinquent debts between 2007 and 2013. Altogether, she accrued delinquent debts exceeding \$10,400. (GEs 3-7) She enjoyed full employment during this time frame, except for a brief period of unemployment in 2006 and cannot fully account for why she became delinquent with her accounts, or why she failed to take any actions on her debts until 2015. (GE 3; Tr. 52-56)

Applicant attributed most of her delinquent debts to medical issues associated with her son's outpatient surgery in 2008. (GE 3; Tr. 36-37) While she had medical insurance at the time, her insurance carrier did not pay the full amount of her claims and left her with \$900 worth of medical co-pays and other bills. (GE 3; Tr. 36-37, 89-90)

In November 2015, Applicant completed a consolidated loan agreement with a debt consolidation firm. (AEs A and F; Tr. 51-53) With loan funds from her debt consolidation firm (\$2,900 in total), she has addressed her listed debts. She documented paying off most of her listed delinquent debts with loan funds disbursed from her lender. (AEs A and G-H; Tr. 98-101) Her exhibits reveal payoffs of debts owed to creditors 1.a (\$492) (AEs A and H); creditor 1.b (\$371) (AEs A, G, and M); creditors 1.c and 1.h (\$274 and \$271, respectively) (AEs A and M); creditor 1.d (\$243) (AEs A and M); creditor 1.e (\$178) (AEs A and N); creditor 1.f (\$159) (AEs A and P); creditor 1.j (\$1,157) (AEs D and Q); and creditors 1.i-1.o (\$559). (AEs A and E) For hearing coverage of all of Applicant's addressed debts, see Tr. 58-103, and 127.

Applicant assured that she has satisfied her creditor 1.p debt (\$3,959) through her consolidated debt payment arrangement, but could not document her payments. Afforded a post-hearing opportunity to document her creditor 1.p payments, she validated her payment arrangement with creditor 1.p and her three \$100 payments to the creditor with post-hearing documentation. (AE S) She continues to dispute her creditor 1.i (\$1,726) and 1.k (\$85) debts. (Tr. 88)

Applicant filed her 2014 taxes and received a \$1,900 refund in 2015. (Tr. 103) She is current on her federal and state tax filings. (Tr. 104) She grosses \$50,000 a year and nets \$2,700 a month. (GE 3 and AE R; Tr. 24) Applicant reports monthly expenses of around \$1,608, which leaves her with a monthly remainder of about \$600 based on the information she provided. (GE 3 and AE Q; Tr. 112)

### **Applicant's E-QIP omissions**

Asked to complete an e-QIP in July 2010, Applicant omitted all of her delinquent debts covered in her credit reports and listed in the SOR. (GEs 1-7) She acknowledged omitting her debts, notwithstanding that she knew at the time she had delinquent debts, even if she could not identify them by name. (Tr. 42-45) In a follow-up interview with an agent from the Office of Personnel Management (OPM) in August 2010, she initially answered "no" to the inquiring OPM agent's inquiries about any delinquent debts accumulated by Applicant. (GEs 2 and 3) Only after she was confronted by the agent did she acknowledge her delinquent accounts. (GE 3)

In September 2012, Applicant was again asked to complete an e-QIP. (GE 1) This time she answered "no" to questions inquiring about her delinquent accounts without any included comments. When asked whether she had delinquent accounts to report in her follow-up OPM interview in November 2012, she again answered "no" to the agent's inquiries. (GE 3; Tr. 42-43) Afforded an opportunity at hearing to clarify her multiple omissions of her delinquent debts, she acknowledged her awareness of her delinquent debts and could not explain why she omitted them from both questionnaires and follow-up OPM interviews. (Tr. 42-50)

Considering all of the circumstances surrounding Applicant's multiple omissions of her delinquent debts in two e-QIPs and ensuing OPM interviews in 2010 and 2012, respectively, Applicant's explanations cannot be reconciled with her repeated omissions. Inferences of knowing and wilful omission cannot be averted.

### **Endorsements**

Applicant is well-regarded by her manager who has known and worked with Applicant for over four years and values her contributions. (AE I) She credited Applicant with the performance of multiple functions within their organization and trusts her with fulfilling her responsibilities. Applicant's manager characterized Applicant as very detail oriented, accountable, and one who maintains a great working relationship with her

customers. Her manager credited Applicant with doing everything asked of her, and more if needed. (AE I) She expressed her pleasure to have Applicant on their team her and held high expectations for Applicant's continued demonstration of excellence in her work within the organization's business operations branch. (AE I)

Colleagues and friends are equally praiseworthy of Applicant. (AE L) They describe her as hard working and highly responsible and dedicated to meeting her customers' needs. (AE L)

Applicant's endorsements do not include any awards from her employer recognizing her company contributions. (Tr. 122) Outside of work, she spends most of her time with her children and grandchildren, which leaves her with little time to devote to community and civic activities. (Tr. 122)

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance 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." Each of these conditions 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 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. The following AG ¶ 2(a) factors are pertinent: (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 guidelines are 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.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG, ¶ 15.

### **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 Exec. Or. 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**

Security concerns are raised over Applicant’s history of delinquent debts that Applicant accumulated between 2007 and 2013 and were not addressed until several months after she received the SOR in July 2015. Security concerns are also raised over Applicant’s recurrent omissions of her delinquent debts in the two e-QIPs she completed in 2010 and 2012, respectively, and in the OPM interviews that followed each e-QIP submission.<sup>1</sup>

### **Financial considerations**

Of the listed debts covered in the SOR, Applicant admitted all but two of the debts (creditors 1.i and 1.k), which she surmised were associated with her son’s surgery, but could not be sure. Based on the reported information supplied by Applicant and the credit reporting agencies, the evidence is sufficient to presumptively 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.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

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<sup>1</sup> While Applicant’s SOR does not allege falsification of her 2010 e-QIP, the e-QIP was admitted free of any Applicant objections and may be used to evaluate Applicant’s evidence of extenuation and credibility, and to complete a whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). Evidence of pattern e-QIP omissions is relevant in assessing Applicant’s overall honesty and state of mind in failing to disclose her delinquent debts on four separate occasions. (Tr. 131-132)

Applicant's delinquent debts were reported in a series of credit reports issued between July 2010 and July 2014. (GEs 4-6) Credit reports do create presumptions of authenticity and accuracy. The Appeal Board has explained that credit reports can "normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations." ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010). With the exception of the two debts (creditors 1.i and 1.k) that Applicant disputes, none of the listed debts are challenged.

Applicant has since addressed her listed delinquent debts and documented payoffs of most of the debts and payment plans with two of the creditors 1.j and 1.p. To be sure, she has not presented sufficient evidence of extenuating circumstances to entitle her to more than partial application of MC ¶ 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Based on her recent repayment efforts, she merit application of two mitigating conditions: MC ¶ 20(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," and MC ¶ 20(d), "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

Two of the listed debts in the SOR (creditors 1.i and 1.k) are disputed by Applicant. Based on Applicant's credible showing of good-faith in her questioning of the validity of the two debts, she meets the probative requirements for establishing a reasonable basis for her disputes. On the strength of the evidence presented, Applicant is entitled to the application of MC ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt [debts] 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." Applicant's evidence is probative of her disputes of the debts reported to be delinquent by creditors 1.i and 1.k and reflect satisfactory debt resolution in accordance with the criteria established by the Appeal Board for assessing an applicant's efforts to rectify her reported poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009).

From a whole-person standpoint, Applicant documents a meritorious record of civilian employment with her defense contractor employer. She has demonstrated impressive support from her business operations manager, colleagues, and friends who credit her with responsible and trusted performance with her business operations department. Addressing her finances, while late in paying them, Applicant has paid or otherwise resolved her listed debt, except for the two debts she disputes. Favorable conclusions are warranted with respect to the allegations covered by Guideline F.

### **Personal Conduct concerns**

Security concerns are raised as well over Applicant's failure to list her delinquent debts in her 2012 security clearance application. Such concerns are raised when an

applicant has committed conduct that reflects questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

Looking at the developed facts and circumstances in this case, two of the disqualifying conditions (DC) under the personal conduct guideline apply to Applicant's situation. DC ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts to any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," and DC ¶ 16(b), "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative." DC ¶ 16(a) applies to Applicant's 2012 e-QIP omissions; DC ¶ 16(b) applies to her 2012 OPM interviews.

Under the facts and circumstances of this case, Applicant's omissions of her listed debts are difficult to reconcile with her claims of uncertainty over whether her debts required disclosure in either her 2010 e-QIP or more recent 2012 e-QIP. Afforded an opportunity to correct her omissions in her follow-up OPM interviews in 2010 and 2012, respectively, she failed to provide any evidence of voluntary corrections before she was confronted with her listed delinquent accounts by the interviewing agents. Considering all of the circumstances, Applicant is not entitled to any of the benefits of the mitigating conditions of Guideline E.

From a whole-person perspective, Appellant's overall efforts are not sufficient to mitigate questions about her demonstrated honesty and integrity arising from her e-QIP omissions and ensuing OPM interviews before she was confronted. Unfavorable conclusions are warranted re: the allegations covered by Guideline E.

### **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): FOR APPLICANT**

Subparas. 1.a-1.p: For Applicant

**GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT**

Subpara. 2.a: Against 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

