



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. 14-03795

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

02/03/2016

**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 January 2, 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 February 5, 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) on August 12, 2015, and responded to the FORM within the time permitted with post-FORM submissions. The case was assigned to me on January 16, 2016. Her submissions consisted of explanations and clarifications of her alleged five delinquent accounts listed in the SOR with documented attachments addressing her accounts. Applicant's submissions were admitted as Item 8.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated five delinquent debts exceeding \$120,000. Allegedly, these debts remain outstanding.

In her response to the FORM, Applicant admitted each of the allegations with explanations. She claimed she was laid off by her former employer in July 2013 and most recently became employed again. She claimed she is working with her mortgage lender (creditor 1.a) to obtain a loan modification. She claimed she and her husband entered into a debt consolidation agreement, paid off one of the debts (creditor 1.c), and are making payments on another debt (creditor 1.b) She claimed she is unable to make any payments on the remaining two debts at this time due to her decrease in salary and her family's basic living expenses.

### **Findings of Fact**

Applicant is a 39-year-old senior business analyst 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 in August 1994 and has one child (age 7) from this marriage and one stepchild (age 22). She attended college classes between August 1995 and May 1999 and earned a bachelor's degree from a recognized university. (Item 3) She returned to college in January 2001 and earned a master's degree in August 2003. (Item 3) Applicant claimed no military service.

#### **Finances**

Applicant and her husband purchased a home in July 2006 and financed their purchase with a first mortgage of \$368,231 with creditor 1.a. (Items 5 and 7) When Applicant was laid off by her employer in July 2013, she could no longer make her mortgage payments on her loan balance at the time in the amount of \$380,819. (Items 5-7) Since returning to work with her new employer in September 2014, Applicant has worked with her lender to obtain a modification of her loan. (Items 2 and 8)

Included in Applicant's post-FORM submissions is an application for mortgage assistance from her lender. (Item 8) She provided supporting financial documentation

with her application. In the lender's December 2013 response, the lender confirmed its careful review of Applicant's request and found that based on the information furnished she is not eligible for mortgage assistance. (Item 8) One of the noted reasons was Applicant's pending bankruptcy petition. (Item 8) Applicant did not include her bankruptcy petition in her furnished materials, and as a result, nothing is known about the filing date, contents of the schedules, or status of the petition. In its December 2013 response to Applicant, creditor 1.a provided a number of options for Applicant. Whether Applicant has taken advantage of any of these suggested options is unclear.

In January 2014, creditor 1.a provided an updated response to the materials furnished by Applicant in support of her mortgage assistance application. Creditor 1.a suggested Applicant access the creditor's web-site to ascertain what additional documents the creditor needed to complete Applicant's application review. (Item 8) Creditor 1.a acknowledged its receipt of Applicant's previous submissions without validating her eligibility for mortgage assistance.

In February 2015 and March 2015, creditor 1.a affirmed again its receipt of Applicant's documentation supporting her mortgage assistance application. (Item 8) In April 2015, the lender offered Applicant an FHA affordable modified program trial plan, while declining her request for immediate loan modification and repayment assistance. (Item 8) Scheduled monthly trial program payments were to commence in May 2015 in the amount of \$2,237. (Item 8) To date, Applicant has not provided any documentation of her acceptance of creditor 1.a's trial plan or payments called for under the plan.

Satisfied with her payment progress, creditor 1.a approved a permanent modification of Applicant's mortgage in August 2015 with a new principal balance of \$351,245 and scheduled monthly payments of \$1,228. (Item 8) Since returning to work in September 2014, Applicant has provided no evidence of payments made to creditor 1.a on her modified mortgage.

Besides her mortgage debt with creditor 1.a, Applicant accumulated a number of delinquent consumer debts. Credit reports document debts with creditor 1.b (\$2,210); creditor 1.c (\$1,277), creditor 1.d (\$9,112); and creditor 1.e (\$23,266). (Items 5 and 7) Applicant documented her payment plans with creditor 1.d that called for monthly payments of \$688 and with creditor 1.e on a reduced amount of \$6,980, subject to payment of \$4,000 for the first month and bi-weekly payments of \$596 thereafter. (Item 8) Applicant completed her scheduled repayments of her creditor 1.e debt, and creditor 1.e confirmed her compliance with creditor 1.e's repayment terms in a November 2013 letter to Applicant. (Items 2 and 8)

In October 2010, Applicant engaged a debt consolidation firm to help her with her delinquent debts. (Item 8) In her debt information submission, she listed her mortgage balance of \$366,000 and additional debts of \$53,000. Monthly program payments were set at \$886 a month, beginning in October 2010. (Item 8) Applicant's budget analysis listed total monthly income of \$6,900. Included in her consolidation package was a list of her creditor 1.c, 1.d, and 1.e debts. She provided no record of any payments to the debt consolidation firm and provided no news articles claiming the firm

was under investigation for consumer fraud. While she assured she has been paying \$50 a month on her creditor 1.d debt, she furnished no documentation of her payments.

Applicant provided no additional documentation of her resolution of her remaining debts with creditors 1.b-1.c and creditor 1.e, and these debts remain outstanding. She claims she no longer uses credit cards and is living within her means. Without more documentation of her payment initiatives, including evidence of financial counseling, an updated credit report, and a personal financial statement covering her family income and expenses, her claims cannot be verified and credited to her.

### **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 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 the 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 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**

Applicant is a fully employed senior business analyst of a defense contractor who accumulated delinquent debts that she has failed to fully resolve. Applicant attributed her debt delinquencies to a major layoff in 2013 and her reduced income from her current employment. While she has since paid one of her listed debts and is making small monthly payments on another debt, she has failed to document any payment initiatives on her modified mortgage and remaining listed debt. Further, she has failed to provide any documented evidence of financial counseling or detailed plan for resolving her remaining debts.

Applicant’s accumulation of delinquent debts warrants 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 obligation,” apply to Applicant’s situation.

Applicant’s pleading admissions with respect to her listed mortgage and other consumer debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s debts are fully documented in her credit reports. Some judgment problems persist over Applicant’s demonstrated handling of her finances, highlighted by the five delinquent debts listed in the SOR. Since returning to full-time work in 2013, she has taken insufficient corrective steps to resolve her delinquencies, provide a financial statement covering her current income and expenses, utilize financial counseling, 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 period of unemployment and ensuing income shortages. Afforded an opportunity to supplement the record, she provided some documentation of her efforts in addressing her debts. Based on the developed record, however, it remains unclear what steps she is taking to resolve her remaining debts with the income sources available to her.

On the basis of the documented materials in the FORM, Applicant is entitled to the benefit of some extenuating circumstances associated with her inability to make

more payment progress with her debts. Partially available to Applicant is 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.”

What is not clear from this developed record are the specifics of what payment initiatives she has made to resolve her finances to stable levels. Whether she acted responsibly is directly contingent upon her providing documented evidence of how she addressed her finances. Without documentation of financial counseling and specific steps she has taken, and is taking, to address her remaining delinquent debts, mitigation credit is not available to Applicant based on the evidence developed in the record. Proof of payments to the remaining creditors listed in the SOR is potentially important to assess the progress she is making in resolving the listed debts in the SOR. Her failure to provide a meaningful track of a track record of payments prevents her from meeting her burden of establishing her financial responsibility.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by her failure to resolve her remaining delinquent debts. Resolution of her delinquent accounts is a critical prerequisite to her regaining control of her finances. While unemployment and income shortages might have played a considerable role in her failures to mount more concerted efforts to address her delinquent debts, Applicant failed to provide more specific post-layoff material for consideration.

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 lack of more concerted initiatives to address her remaining delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant’s lack of more specific explanations for her lack of more payment progress with her listed debts, 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 permit her access to classified information. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.d. Favorable conclusions are warranted with respect to the allegations covered by subparagraph 1.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): AGAINST APPLICANT

Subparas. 1.a through 1.d:

Against Applicant

Subpara. 1.e:

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

