



**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. 14-05760

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

07/14/2015

**Decision**

HARVEY, Mark, Administrative Judge:

In 1990, Applicant was arrested and charged with fiduciary misappropriation of \$200 to \$10,000, and in 2013, her employer fired her for misconduct. The allegations of fiduciary misappropriation are not recent, and the misconduct in 2013 is not sufficiently aggravated to independently establish a personal conduct security concern. Applicant's statement of reasons (SOR) alleges 14 delinquent, charged-off, or collection accounts totaling \$8,593. There is insufficient evidence of progress addressing Applicant's financial problems. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 20, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 2) On December 5, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order 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 alleged security concerns under Guidelines F (financial considerations) and E (personal conduct). (Item 1) The SOR detailed reasons why DOD could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On December 22, 2014, Applicant responded to the SOR allegations, and she waived her right to a hearing. (Item 1) A complete copy of the file of relevant material (FORM), dated April 30, 2015, was provided to her on May 15, 2015. Applicant did not respond to the FORM. The case was assigned to me on June 24, 2015.

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

In her Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.e through 1.m, and 2.a and 2.b. She denied the remaining SOR financial allegations. (Item 1) She also provided extenuating and mitigating information. (Item 1) Her admissions are accepted as findings of fact.

Applicant is a 52-year-old business analyst, manager, human-resource supervisor, self-employment verifier, and cleaning services business owner.<sup>2</sup> In 1981, she graduated from high school; in 2002, she received a bachelor's degree; and in 2010, she was awarded a master's degree. She has never served in the military. In 1998, she married, and in 2010, she divorced. In 1989, her daughter was born, and in 1995, her son was born. There is no evidence of drug abuse, alcohol abuse, or criminal offenses in more than 20 years.

### **Financial Considerations**

Applicant's history of delinquent debt is documented in the following exhibits: her June 20, 2014 SF 86; her July 1, 2014, and April 9, 2015 credit reports; and her SOR response. (Items 1, 4, 5) Applicant's SOR alleges 14 delinquent, charged-off, or collection accounts totaling \$8,593. The status of her SOR financial allegations is as follows: 10 delinquent medical accounts totaling \$1,340 in ¶ 1.a for \$64, ¶ 1.b for \$79, ¶ 1.e for \$167, ¶ 1.g for \$261, ¶ 1.h for \$62, ¶ 1.i for \$60, ¶ 1.j for \$160, ¶ 1.k for \$130, ¶ 1.l for \$130, and ¶ 1.m for \$226; collection bank account in ¶ 1.c for \$456; collection vehicle account in ¶ 1.d for \$4,172; charged-off account in ¶ 1.f for \$1,459; and credit-union collection account in ¶ 1.n for \$1,166. (Item 1)

On December 22, 2014, Applicant signed her SOR response, and she said she had made payment arrangements on the debts in SOR ¶¶ 1.a, 1.b, 1.c, 1.f, 1.g, 1.i, 1.k,

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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.

<sup>2</sup>The source for the information in this paragraph is Applicant's June 20, 2014 Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 2)

1.i, and 1.m. (Item 1) She said the debt in SOR ¶ 1.h was paid; she was unable to identify the debts in SOR ¶¶ 1.e and 1.j; and she received an Internal Revenue Service (IRS) Form 1099C for the debt in SOR ¶ 1.n. (Item 1) The debt in SOR ¶ 1.e for \$167 does not appear in her 2015 credit report. (Item 4)

Applicant disputed her responsibility for the debt in SOR ¶ 1.d, indicating this debt was allocated to her former husband in their divorce. (Item 1) She provided a copy of her June 2010 divorce decree, which corroborates her claim that the debt was allocated to her husband by the family court judge in her divorce. (Item 1)

Applicant did not describe any financial counseling, provide a budget, or disclose any unemployment, except for unemployment for 40 days in 2013. (Item 3) She did not provide copies of any payment plans, documents showing payments to SOR creditors, IRS Form 1099Cs, copies of disputes sent to creditors or credit reporting companies, or other correspondence to or from creditors.

Applicant's FORM states that she had 30 days after receipt "to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate."

## **Personal Conduct**

In 1990, Applicant was charged with fiduciary misappropriation. (Item 2)<sup>3</sup> She received deferred adjudication with two years of probation. (Item 2) She believed her record was cleared after the two years of probation elapsed. (Item 2) In her Office of Personnel Management (OPM) personal subject interview (PSI) Applicant said she diverted insurance payments from one insured's account to another without the consent of the policyholders. (Item 3) She did not admit to taking any funds for her own use. (Item 3) The file does not contain court records or any police report concerning the offense.

Applicant's June 20, 2014 SF 86 notes that in 2013, she "quit [her] job after being told that [she] would be fired." (Item 2) She said she quit due to "unfair treatment." (Item 2) Her SOR response states, "I was terminated for Misconduct, however I have never been terminated in the past. This termination was due to hearsay; I attempted to clear my name, unfortunately I was not successful." (Item 1) In her OPM PSI, she said she received a thumb drive from a coworker, who wanted her to review his resume. (Item 3) She told someone about the content of a personal letter she found on the coworker's thumb drive, and she was reported to her supervisor. (Item 3) The file does not contain any interviews of her coworkers. (Item 3) There is no evidence contradicting her statement about why she was terminated from employment in 2013.

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<sup>3</sup>SOR ¶ 1.o cross-alleges the 1990 misappropriation of funds as a financial considerations concern.

## 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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, 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. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> 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.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply. (internal citation omitted).

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s SF 86, credit reports, SOR response, and hearing record establish AG ¶¶ 19(a) and 19(c). Her SOR alleges 14 delinquent, charged-off, or collection accounts totaling \$8,593. Further inquiry about the applicability of mitigating conditions is required.

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;

(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>4</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).

None of the mitigating conditions fully apply to all debts. Applicant was unemployed for 40 days in 2013. She was divorced in 2010. These are circumstances that adversely affected her finances, and they were largely beyond her control.

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<sup>4</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)).

Applicant said she was unable to locate the debt in SOR ¶ 1.e for \$167, and it does not appear in her 2015 credit report. I have credited her with mitigating the allegation in SOR ¶ 1.e. Applicant receives partial, not full mitigation for the debt in SOR ¶ 1.d for \$4,172 because she has a legal responsibility to pay this debt, if her husband fails to do so. Her remedy is to either seek enforcement in family court of the divorce decree, or to seek a release or settlement from the creditor. She is credited with having a good-faith belief that she is not responsible for this debt because of her divorce decree.

Applicant did not provide documentation showing her income and expenses, and she did not submit a budget. She presented insufficient evidence about what she has done over the last two years to pay her SOR debts or her other debts. She did not provide the following documentation relating to the SOR creditors: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact with the creditor;<sup>5</sup> (3) a credible debt dispute; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these SOR debts; (5) evidence of financial counseling; or (6) other evidence of progress or resolution of her SOR debts. She failed to pay four medical debts of less than \$100.

Applicant's failure to prove that she has made more substantial steps to resolve her debts shows a lack of judgment and responsibility that weighs against approval of her security clearance. There is insufficient evidence that she was unable to make greater progress resolving her delinquent debts, or that her financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, she failed to establish that financial consideration concerns are mitigated.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, 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.

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<sup>5</sup>Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

AG ¶ 16 depicts two conditions that could raise a security concern and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;
- (2) disruptive, violent, or other inappropriate behavior in the workplace;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

In 1990, Applicant misappropriated funds, and in 2013, she quit in lieu of being terminated by her employer for viewing private information on a coworker's flash drive. AG ¶¶ 16(c) and 16(d) apply.

AG ¶ 17 describes two conditions that could mitigate security concerns in this case as follows:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

In 1990, Applicant misappropriated funds. The 1990 criminal offense is not recent, and she has not engaged in criminal offenses after 1990. In 2013, Applicant

viewed personal information on a flash drive she said her coworker provided to her. She discussed the private information with another person. This offense is noncriminal, and she has been sensitized about the importance of privacy. Violation of a coworker's privacy is unlikely to recur. AG ¶¶ 17(c) and 17(d) apply, and personal conduct concerns are mitigated.

### **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.

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. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant is a 52-year-old business analyst, manager, human-resource supervisor, self-employment verifier, and cleaning services business owner. In 2010, she was awarded a master's degree. In 2010, she divorced. She was unemployed for 40 days in 2013. Her unemployment and divorce are circumstances beyond her control that contributed to her financial problems. She disclosed some of her financial problems on her June 20, 2014 SF 86. There is no evidence of use of illegal drugs, alcohol abuse, or criminal offenses in more than 20 years.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. Her SOR alleges 14 delinquent, charged-off, or collection accounts totaling \$8,593. The debt in SOR ¶ 1.e for \$167 is mitigated; however, she failed to provide sufficient documentation of progress resolving her other SOR debts. Her failure to provide more corroborating documentation shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that grant or reinstatement of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards resolving her past-due debts, additional corroborating documentation of debt resolution, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her worthiness for access to classified information.

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 circumstances in the context of the whole person. I conclude personal conduct security concerns are mitigated; however, financial considerations concerns are not mitigated. Access to classified information is denied.

### **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:	AGAINST APPLICANT
Subparagraph 1.a through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge