



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-00255
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

05/12/2016

**Decision**

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86) on July 14, 2014.<sup>1</sup> On June 4, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.<sup>2</sup> The action was taken under Executive Order (EO) 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 (AG) implemented by the DOD on September 1, 2006.

<sup>1</sup> Item 5.

<sup>2</sup> Item 1.

Applicant answered the SOR on September 22, 2015 (Answer), and in follow-up e-mails on November 2, and December 1 and 2, 2015.<sup>3</sup> She elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on December 9, 2015.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 22, 2016, and replied with a written response (marked AE A) and various letters and records (marked AE B-M). She did not assert any objections to the Government's evidence. The case was assigned to me on March 23, 2016. Government exhibits (Items 1 to 7) and Applicant exhibits (AE A-M) are admitted into evidence without objections.

### **Findings of Fact**

The SOR alleged nine delinquent debts, including failure to pay taxes owed for 2010, and failure to file an income tax return for tax year 2012 when required. Applicant admitted all of the SOR allegations, and provided explanations with her Answer to the SOR. After a careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 32 years old and has been employed as an aircraft mechanic by a government contractor since 2012, however, in 2015 she was placed on administrative leave for six months while waiting for action on her security clearance. She is a high school graduate, and honorably served on active duty in the U.S. Navy until she was discharged in 2011. She has previously held a DOD security clearance and is requesting that it be renewed. Applicant is a single mother, with a six-year-old child.

Some of Applicant's financial problems were incurred while she was on active duty and pregnant. She described herself as financially irresponsible and careless at the time, but always a good worker and never with any disciplinary problems. After leaving active duty, she was unemployed for eight months and incurred additional financial delinquencies until she found employment with a government contractor. Her last W-2 form shows she earned a significant salary in 2014 and has a sizable employer retirement account.<sup>4</sup> She is now considered by her employer as the only female employee who is qualified and certified for various aircraft positions and leads her male colleagues. She holds technical qualifications and certifications no female has ever achieved on the site, and was selected for her position based on her military performance and recommendations by others. Her manager described her motivation, attitude, maturity, focus, and ability to deliver positive results under arduous conditions;

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<sup>3</sup> Items 3-4.

<sup>4</sup> AE M. Her 2015 W-2 was substantially reduced because she was on administrative leave while awaiting her security clearance.

equal, if not superior to her peers and supervisors.<sup>5</sup> Her pastor since 2012 also speaks glowingly about her and her reliability during her service to the church.<sup>6</sup>

In response to the SOR and FORM, Applicant provided documents showing how she has addressed her financial issues. Two important SOR allegations assert tax issues; failure to file a 2012 federal tax return (SOR ¶ 1.a) and failure to pay 2010 federal taxes (SOR ¶ 1.b), totaling \$1,300. Applicant claims she did not file her 2012 federal tax return because she did not receive a W-2, and then allowed it to lapse. She subsequently obtained the W-2 from her employer and in September 2015, had a tax service prepare and file her return. She was due a refund of \$58 for this return. All other federal tax returns have been filed and she is up to date. Applicant owed federal taxes from her 2010 tax return. She claimed that she was unable to pay because of increased expenses due to her pregnancy; essentially expenses of a single parent. She proposed a payment plan to the IRS but before it could be processed, she paid the entire tax obligation in 2015 through an IRS-approved online tax payment service, and provided a confirmation number.<sup>7</sup>

SOR ¶ 1.c alleges the largest debt; a charged-off debt from an auto financing company. Applicant presumably received a 1099-C for this account as she included an amount for a canceled debt in her 2012 tax return, and asserted that the canceled amount corresponded to this debt.<sup>8</sup> SOR ¶¶ 1.d-j are small collection accounts or charge-offs that Applicant has noted are currently paid. She provided documentation of paid accounts for SOR ¶¶ 1.d, f, and h. She noted in an e-mail with her Answer that the debt in SOR ¶ 1.e was paid-in-full and provided a phone contact and contract number for verification. She also noted in the same e-mail that the small medical debt in SOR ¶ 1.j was paid in full and provided verification information. The debt alleged in SOR ¶¶ 1.i and 1.g are also small debts to a public utility and insurance company that Applicant notes are now paid-in-full, but did not provide documentation or verification of her claim.<sup>9</sup>

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<sup>5</sup> AE B.

<sup>6</sup> AE C.

<sup>7</sup> Item 3. Applicant did not provide other evidence of this payment except a personal e-mail of December 1, 2015, wherein she provided the web site and confirmation number of the account, stating that while she was awaiting approval of an installment plan from the IRS, she was able to pay the amount in full.

<sup>8</sup> Item 3. Applicant stated in her answer that the canceled debt was included in her 2013 tax return, however, her 2012 income tax return is the only indication of a cancellation of debt, totaling \$1,285. Her 2013 tax return was not provided, but the 2013 IRS account transcript provided in her response to the FORM does not show cancellations of debt. However, her 2013 tax account balance is zero. No copy of the 1099-C was provided.

<sup>9</sup> Item 3. Applicant provided her insurance statements showing a history of payments in her response to the FORM, but did not provide evidence that the insurance debt alleged in the SOR was paid (a different company). At the time she completed her Answer to the SOR, she stated that the insurance debt was cut in half and the remainder was set to be paid in two weeks. Presumably that has occurred.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.<sup>10</sup> In *Department of Navy v. Egan*<sup>11</sup>, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>12</sup>

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.<sup>13</sup>

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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

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<sup>10</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>11</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>12</sup> *Egan*, 484 U.S. at 531.

<sup>13</sup> *Egan*, 484 U.S. at 531.

permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable 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 or the fraudulent filing of the same.

Applicant failed to file her 2012 federal tax return when due, and was indebted to the IRS for her 2010 federal taxes. In addition, she accumulated delinquent consumer debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; 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.

Applicant attributes her past financial difficulties to struggles as a single mother, a period of unemployment after separating from the military, and a reduction in pay in 2015 while on administrative leave. She filed her delinquent tax return and paid the tax delinquency in full. Applicant claims to have resolved all of the remaining debts, although all paid accounts have not been verified through independent documentation. Based on the documents available and Applicant's written assertions, I am convinced she has made significant efforts to correct her tax arrears and pay all remaining debts as detailed in my findings of fact.

Although she has not presented a perfect case in mitigation, there is sufficient evidence to determine that all or a majority of Applicant's financial obligations have been resolved. I am persuaded that she acted responsibly under the circumstances to take action to address her debts within her means once the issues were raised through her investigation. She filed her delinquent tax return and paid her tax obligations. She addressed her increased maturity since she was in the Navy and since becoming a mother, and appears sincere and dedicated. She has presented documentation that she is current on her insurance payments and auto loan, and that she is highly regarded by her employer and pastor. I am convinced that she will continue her efforts to stay financially solvent and will address her future financial obligations in a responsible manner. Financial concerns are mitigated under AG ¶¶ 20(a), 20(b), 20(c), and 20(d).

### **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 relevant 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.

Although Applicant did not provide additional evidence of payment of all of the debts besides her written assertions, she has provided sufficient evidence to document her tax status and resolution of most of the consumer debts. She has a steady and successful work history, earns a significant salary, and has access to an employer retirement account. I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my findings of fact and comments under Guideline F in this whole-person analysis. I have also considered Applicant's stable work history, positive references, and her efforts to resolve her tax issues and debts. Although Applicant did not present a perfect case in mitigation, she presented enough to convince me of her sincere efforts to address her financial situation within her ability and budget.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

### **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 – 1.j:	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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Gregg A. Cervi  
Administrative Judge