



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



In the matter of:

ISCR Case No. 10-03004

Applicant for Security Clearance

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel

For Applicant: *Pro se*

March 22, 2011

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

On October 1, 2009, Applicant submitted An Electronic Questionnaire for Investigations Processing (e-QIP) as required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued an Interrogatory to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's responses to the Interrogatory, DOHA could not make the preliminary affirmative finding required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated August 13, 2010, to Applicant detailing security concerns for financial considerations under Guideline F, and criminal conduct under Guideline J. These actions were taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of

Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on August 17, 2010.

On August 30, 2010, Applicant answered the SOR admitting all factual allegations under Guideline F, and admitting five and denying two of the factual allegations under Guideline J. She requested a decision on the record for the allegations under Guideline F, but did not state a preference for disposition of the Guideline J allegations. Department Counsel timely requested a hearing pursuant to Paragraph E3.1.7, directive (Transcript at 10; Hearing Exhibit 1) Department Counsel was prepared to proceed on October 27, 2010, and the case was assigned to me on December 22, 2010. DOHA issued a Notice of Hearing on January 5, 2011, scheduling a hearing for January 20, 2011. I convened the hearing as scheduled. The Government offered seven exhibits marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 7. Applicant and one witness testified. Applicant offered five exhibits marked and admitted without objection as Applicant Exhibits (App. Ex.) A through E. I left the record open for Applicant to submit additional documents. Applicant timely submitted seven documents marked and received as App. Ex. F through L. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 8, e-mail, dated February 4, 2011) DOHA received the transcript of the hearing (Tr.) on February 4, 2011.

### **Findings of Fact**

Applicant admitted all of the financial factual allegations and five of the seven criminal conduct allegations in the SOR. I included Applicant's admissions in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 43 years old and has been employed by a defense contractor as an engineering technician for over three years. She was married in October 2001 and divorced in June 2003. She has two girls born when she was 19 years old and two boys born when she was 22 years old. None of the children live with her. She is a high school graduate. This is her first request for eligibility for access to classified information. Her monthly net pay is approximately \$2,100, with approximately \$1,700 in monthly expenses, leaving \$400 in monthly discretionary funds. She has \$4,000 to \$5,000 in a 401K savings account, and is current with her federal and state taxes. (Tr. 11-12, 21-30, 32-37, 68-70; Gov. Ex. 1, e-QIP, dated October 1, 2009)

A credit report (Gov. Ex. 7, dated June 29, 2010) shows approximately \$20,000 in 18 delinquent debts for Applicant from vehicle repossessions, breach of a lease, utility bills, medical bills, and unpaid phone bills. She admitted the debts both in an interview with a security investigator (Gov. Ex. 2, Response to Interrogatories, dated June 23, 2010), and in her response to the SOR. Criminal history reports show that from 1986 until 2009, Applicant was arrested and charged once with assault, twice with larceny, three times with criminal domestic violence, and once for fraudulent check. (Gov. Ex. 3, Criminal History report, dated October 19, 2009, Gov. Ex. 4, Criminal

History record, dated October 19, 2009; Gov. Ex. 5, Federal Bureau of Investigation Criminal Justice report, dated October 18, 2009; and Gov. Ex. 6, Court Record, undated) Applicant admits all of the criminal offenses except for the larceny and the fraudulent check under SOR 2.b and SOR 2.f. (Response to SOR)

The \$390 debt at SOR 1.a is for a loan Applicant received. The \$364 debt at SOR 1.b is for Applicant's former husband's telephone bill for which she was a joint account holder. The debts at SOR 1.c for \$234 and 1.d for \$40 are medical debts for Applicant's medical care. The \$385 debt at SOR 1.e is for unpaid rent for an apartment vacated early without payment of the last month's rent by Applicant. The \$140 debt at SOR 1.f is for unpaid utilities for the apartment. All of these debts are still outstanding. (Tr. 44-48)

SOR allegation 1.g is a \$4,426 deficiency remaining on a loan after her car was repossessed. The \$679 debt at SOR 1.h is an unpaid bill for Applicant's personal cell phone. The debt at SOR 1.i is for an initial \$1,500 personal loan acquired by Applicant using a car she paid off as collateral. She made payments on the loan but continued to draw funds on the loan so the debt is now over \$8,000. Some of the funds from this loan were used for debt consolidation. SOR allegation 1.j is a \$168 unpaid telephone bill. Applicant acknowledged the \$71 debt at SOR 1.k but does not recognize the reason for the debts. SOR allegation 1.l is a \$1,647 debt for another car repossession. SOR allegations 1.m for \$475 and 1.n for \$2,777 are both unpaid personal loans. SOR allegation 1.o for \$107 and 1.p for \$231 are unpaid medical bills. While Applicant did not recognize the \$92 debt listed at SOR 1.q and the \$222 debt at SOR 1.r, she did acknowledge they were her debts. (Tr. 48-52)

Applicant was interviewed by a security investigator in November 2009 and learned she had financial issues that would affect her eligibility for access to classified information. She obtained a copy of her credit report and sought help from friends and supervisors to determine the course of action she should take to resolve her credit issues. She called the creditors she could identify from the credit report in an attempt to establish repayment plans or programs. She received payment offers from some creditors but she was unable to make these payments. Most creditors wanted either full payment of the debt or larger payments than she could afford. She did not make any payments on her debts from the time of her interview until December 2010. (Tr. 37-43) After receiving the SOR, Applicant relinquished her car to the finance company in December 2010 to gain over \$300 in disposable income to apply to her debts. (Tr. 30-32)

In September 2010, Applicant arranged with a debt consolidation company to assist her in paying off and resolving some of her debts. The debts at SOR 1.e, 1.f, 1.g, 1.h, 1.j, 1.l, 1.o, and 1.p, are listed with the company for payment. (Tr. 52-55, 66-68; App. Ex. E, Letter, dated December 27, 2010; App. Ex. L, Letter, dated February 4, 2011) She pays the company \$219 monthly which is debited from her account. She has made five payments to the company. (Tr. 55; App. Ex. F, Initial Statement, dated September 20, 2010; App. Ex. G, Statement, dated October 20, 2010; App. Ex. H,

Additional Statement, dated October 20, 2010; App. Ex. I, Statement, dated November 20, 2010; App. Ex. J, Statement, dated December 20, 2010; and App. Ex. K, Statement, dated January 20, 2011)

In January 1986, Applicant was a 19 year old new single mother of twin girls without any support and living by herself. One of the girls rolled off a counter and started crying and would not stop. Applicant became frustrated and threw the girl against a wall. Her daughter received permanent injuries and the twin girls were taken from her. She was charged with injury to a child. She had two sons born when she was 22 years old that were taken from her. (Tr. 67-69)

Applicant denied a petty larceny charge from November 1988 because she did not remember it. The criminal domestic violence charges stem from altercations she had with her husband both before and after they were married. In these incidents, she was defending herself but used a weapon to do so. She was never ordered to undergo anger management counseling or training. Applicant stated that the theft of funds listed at SOR 1.f was a case of mistaken identity. The fraudulent check at SOR 1.g was caused by her writing a check on her account before the funds she deposited became available for withdrawal. She repaid the check as well as a fine and court costs. (Tr. 69-70, 78-81)

Applicant's supervisor testified that he has held a security clearance for over ten years. He has known Applicant for approximately two years. He considers her to be reliable, dependable, and very trustworthy. Applicant is the go-to-person in his unit. He is due to rate her performance shortly and he would rate her relatively high. Applicant takes over for him when he is not in the unit. (Tr. 72-78)

Applicant presented four letters of recommendation. A Coast Guard officer wrote that she has known Applicant for over 15 years. Applicant suffered abuse, abandonment, and betrayal by her husband who was the officer's relative. Applicant is loyal and dependable. It is her opinion that Applicant can be trusted with classified information. (App. Ex. A, Letter, undated) Applicant's supervisor wrote that he has known Applicant for over three years and considers her a dependable and devoted employee. She has excellent integrity and a strong work ethic. (App. Ex. B, Letter, dated January 19, 2011) One of Applicant's fellow employees wrote that Applicant is a dependable employee who should be granted access to classified information. (App. Ex. C, Letter, undated) A quality assurance inspector for Applicant's employer wrote that he considers Applicant to be dependable, reliable, hard-working, and honest. (App. Ex. D, Letter, undated)

## **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 must be considered 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, these guidelines are applied 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(c), 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.

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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Financial Considerations:**

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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified

information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant admitted, and a credit report confirms, that she has 18 delinquent debts totaling over \$20,000 which raises a security concern under Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts); and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Her finances show an inability and not an unwillingness to satisfy debt.

I considered Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) and FC MC AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions do not apply. Applicant has not established that her debts were incurred under circumstances unlikely to recur or were caused by reasons beyond her control. The debts appear to be incurred by Applicant willingly in the normal course of her everyday business affairs. Some debts may have been initiated by her former husband but she was also a willing cosigner of the debts. Under these circumstances, she could likely incur additional delinquent debt. It is noted that she has started to act responsibly towards her finances by contacting her creditors and recently establishing a payment plan for some of the debts.

I considered FC 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). This mitigating condition partly applies. While Applicant did not affirmatively testify that she received financial counseling, she has commenced a payment plan with a credit counseling agency to pay some of her debts. She undoubtedly received financial counseling to establish her payment plan. However, it is not clear that her financial problems are resolved and under control.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish

that she paid each and every debt listed. All that is required is that Applicant demonstrates an adequate plan to resolve her financial problems and show she has taken significant actions to implement that plan. Applicant recently started a debt repayment plan with a credit counseling agency. She has made approximately six \$219 monthly payments to the agency under this plan. The plan covers less than half of Applicant's delinquent debts and would resolve only about one-third of the total amount owed in delinquent debt. While Applicant has sufficient funds to make the payments under the payment plan, her actions are only recent and cover only a portion of her delinquent debts. These actions do not provide significant and credible information to establish a meaningful track record of debt payment and a good-faith effort to repay creditors or resolve debt. Her actions at this point do not show she is acting reasonably and responsibly to resolve her financial problems. Her continued delinquent debt adversely reflects on her trustworthiness, honesty, and good judgment.

### **Criminal Conduct**

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature it calls into question a person's ability or willingness to comply with laws, rules, and regulations (AG ¶ 30). Appellant was arrested and charged with assault, domestic violence, and larceny seven times from 1986 until 2009. These criminal acts raise Criminal Conduct Disqualifying Conditions (CC DC) AG ¶ 31(a) (a single serious crime or multiple lesser offenses), and CC DC AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted).

Applicant raised by her testimony Criminal Conduct Mitigating Condition (CC MC) AG ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment). Two of the offenses happened over 20 years ago in 1986 and 1988. These were unfortunate incidents that happened when Applicant was a young single mother trying to raise small children without any support. They happened long ago and under unusual circumstances. Applicant and her former husband were both equally responsible for the three incidents that led to her arrests for criminal domestic violence. These were minor criminal offenses, committed over 12 years ago, under the unusual circumstances of mutual action by both parties. This type of incident is not likely to happen again. As minor offenses, they do not cast doubt on her reliability, trustworthiness, or good judgment. While the fraudulent check and petty larceny charges are more recent, occurring 11 years and 3 years ago, they have been resolved and are more indicative of financial issues than criminal conduct. I find for Applicant under criminal conduct.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all

relevant circumstances. An 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant is considered a trusted and valued employee who does an excellent job. I consider the recommendations of her supervisors and fellow employees that she be granted access to classified information. I considered that Applicant's financial problems arose from ordinarily incurred debt and not by circumstances beyond her control. While Applicant has initiated a plan to repay some of her debts, the plan is only recent and covers only a limited part of her delinquent debts. The plan and some payments under the plan do not establish a "meaningful track record" of payment of her past-due obligations. Applicant did not present sufficient information to show she has now taken the necessary reasonable and responsible actions to resolve her financial liability. Applicant's criminal actions are mitigated since two were over 20 years ago, the domestic assault charges were minor mutually confrontational situations with her then husband, and the larceny charges are resolved. Applicant's lack of clear positive action to pay her past financial obligations indicate she will not be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated security concerns arising from financial considerations and should not be granted access to classified information. She has mitigated security concerns based on criminal conduct.

### **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 |
| Subparagraphs 1.a - 1.r:  | Against Applicant |



Paragraph 2, Guideline J:

FOR APPLICANT

Subparagraphs 2.a - 2.g:

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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THOMAS M. CREAN  
Administrative Judge