



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 06-20054
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: Pro Se

January 28, 2008

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant had six past due accounts totaling \$11,000. When completing a security clearance application, SF 86, she failed to indicate she had debts which had been more than 180 days delinquent or were currently 90 days delinquent incorrect answers were not intentional falsifications. Applicant has successfully mitigated financial considerations, personal conduct, and criminal conduct security concerns. Clearance is granted.

**Statement of the Case**

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a

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<sup>1</sup> 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Statement of Reasons (SOR) on August 15, 2007, detailing the security concerns under Guideline F, for financial considerations based on a history of financial problems as evidenced by delinquent debts, Guideline E, for personal conduct for falsified material on a Security Clearance Application, Standard Form (SF)86, and Guideline H, criminal conduct for making a false statement on her SF 86.

On June 14, 2007, Applicant answered the SOR, and requested a hearing before an Administrative Judge. On October 16, 2007, I was assigned the case. On October 18, 2007, DOHA issued a notice of hearing for a hearing held on November 16, 2007. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibit A, which was admitted into evidence. On November 28, 2007, the transcript (Tr.) was received. The record was kept open to allow Applicant to submit additional matters. An additional document was received on December 3, 2007. Department Counsel did not object to the material and it was admitted into evidence as Ex. B.

### **Findings of Fact**

In her Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in ¶ 1.a of the SOR, with explanations. She denied the remaining allegations. The admission is incorporated herein as a finding of fact. After a thorough review of the record, I make the following findings of fact.

Applicant is a 50-year-old transport manager who has worked for a defense contractor since August 2004, and is seeking to maintain a security clearance.

In the mid-1990's, when an air base closed, Applicant relocated to New Mexico. In July 2000, Applicant relocated from New Mexico to her current location. In November 2000, a credit card company charged off a \$1,794 debt (SOR ¶ 1.a). Applicant asserts she has not heard from this company for a very long time and it is beyond the state statute of limitations. Texas has a four year statute of limitations.<sup>2</sup> Applicant was

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<sup>2</sup> See Tex. Civ. Prac. & Rem. Code §§ 16.004(c) and 16.051 (statute of limitations for contracts); 16.004(a)(3) (statute of limitations for debts); *Cont'l Casualty Co. v. Dr. Pepper Bottling Co. of Tex.*, 416 F.Supp. 2d 497, 505-507 (W.D. Tex. 2006); *Facility Ins. Corp. v. Employers Ins. of Wausau*, 357 F.3d 508, 513-514 (5<sup>th</sup> Cir. 2004) (discussing statute of limitations for open or revolving accounts). Debts barred by the Texas statute of limitations are legally uncollectible. However, Applicant's payments on his debts have reinstated them, ending the statute of limitations defense to collection. See *Stine v. Stewart*, 80 S.W.3d 586, 591, 45 Tex. Sup.J. 966 (Tex. 2002).

The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations

unemployed or underemployed caring for a sick daughter prior to the time the debt was written off. Following her relocation, even though Applicant had two jobs, she was barely able to pay the rent. (Tr. 27)

At that time, her daughter had complications with her pregnancy. Applicant's daughter and granddaughter—now age 5—lived with her, but have now moved out. She was severely depressed because of family and marital distress. (Ex. 3) She was separated and the sole provider for her family. Applicant and her husband separated in 1996 (Tr. 26) and moved back together in 2005. He has no job, but is taking classes working on his teaching certificate. (Tr. 62)

Applicant was unemployed from October 2001 through January 2002, June 2002 through January 2003, July 2003 through January 2004, and June 2004 through August 2004, when she obtained her current job. (Ex. B) For her first period of unemployment, she received \$330 every two weeks. For the other periods of unemployment, she received \$260 every two weeks.

Applicant's credit reports list a second debt with the previously mentioned credit card company and four additional debts from various collection agencies. In April 2006, she was interviewed about her debts, at that time she stated she did not recognize the accounts, and would look into the debts. (Ex. 2) In December 2006, Applicant answered written interrogatories (EX 3) saying she had not done business with the listed creditors or the companies for whom they were attempting to collect. She sent letters to the creditors (Ex 3, Attachments A—E) asking them to validate the debts. In June 2007, Applicant answered written interrogatories (EX 2) stating she had not done business with the listed creditors and sent letters to the creditors asking them to validate the debts.

In her August 2007 answer to the SOR, Applicant stated she does not recognize the collection agencies and had written to companies to verify the debts. One company (SOR ¶ 1.c) sent her a computer generated statement, but no additional documents to validate the claim. Two of the companies (SOR ¶¶ 1.d, and 1.e) could not provide her with documents validating the debt. The fourth company (SOR ¶ 1.e) failed to respond to her inquiry. (Tr. 53)

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periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

*Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). The reduction in the magnitude and number of debts that creditors can legally enforce because of the application of the Texas statute of limitations reduces the potential vulnerability to improper financial inducements, and the degree that a debtor is "financially overextended," is also reduced. However, it does not negate the debtor's past conduct, which failed to take more aggressive actions to resolve the financial jeopardy.

In November 2004, Applicant completed a security clearance application, Standard Form (SF) 86. Question 38 asked if she had been 180 days delinquent on any debt in the prior seven years. She answered "no." She also answered "no" to question 39, which asked if she was currently 90 days delinquent on any debt. At the time she completed the SF 86, she was not receiving calls from creditors, although she is currently getting calls from the collection agency listed in SOR ¶ 1.c. (Tr.36) At the time she completed her SF 86, she did not remember the debts. (Tr. 72)

The delinquent account in SOR ¶ 1.a was charged off in November 2000, the delinquent account in SOR ¶ 1.b was charged off in April 2001, the delinquent account in SOR ¶ 1.c was referred to a collection agency for a VISA account in October 2001, the delinquent account in SOR ¶ 1.d was referred to a collection agency in June 2001, and the delinquent account in SOR ¶ 1.e was referred for collection in October 2003.

The \$398 delinquent account listed in SOR ¶ 1.f is a telephone bill referred for collection in October 2005. Applicant currently has a telephone account with this company. (Tr. 32)

Since obtaining her current employment in August 2004, Applicant has not incurred any debt that has not been paid. In February 2003, she purchased a \$20,000 vehicle. (Ex 5) She pays \$374 per month on the vehicle and the account is in good standing. Applicant is also current on her first and second mortgages that were obtained in September 2006. (Ex 4) Her mortgages total \$980 per month. (Tr. 33) She purchased the house for \$97,000 and believes the fair market value to be \$100,000. (Tr. 61)

She currently has no credit cards. (Tr. 33) She either saves before making a purchase or uses lay-a-way to make purchases. (Tr. 58) She has recently purchased a refrigerator by these means. Applicant's August 2006 performance review listed her overall performance as superior. (Ex. A) She currently takes home \$1,129 twice a month. (Tr. 59)

## **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 protect or 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.

Section 7 of Executive Order 10865 provides that 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**

Under Guideline F (financial considerations) a security concern typically exists due to significant unpaid debts. 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.<sup>3</sup>

An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an

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<sup>3</sup> Revised adjudicative guidelines (AG) ¶ 18.

individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owes approximately \$11,000 on 6 debts. Disqualifying Conditions (DC) ¶ 19 a "inability or unwillingness to satisfy debts" and 19 c "a history of not meeting financial obligations," apply.

The debts are beyond the state statute of limitations. As such, the debts are no longer enforceable in a court of law. This negates any risk Applicant will engage in illegal or unethical acts to generate funds to meet these obligations. However, the statute of limitation does not address the concern that someone who can not manage their finances may also be irresponsible, unconcerned, negligent, or careless in handling or safeguarding classified information.

Applicant acknowledges the \$1,794 debt listed in SOR ¶ 1.a. She did not acknowledge SOR debts ¶ 1.b – 1.e, and the creditors have not substantiated those debts. She maintains telephone service with the creditor listed in SOR ¶ 1.f. It would be unlikely her current provider would continue service if she had a delinquent account.

When faced with allegations of debt of unknown origins she acted reasonably. She sent letters to the creditors in an attempt to verify the debts. One failed to respond and the others failed to produce documents verifying the debt. Individuals are expected to pay their past due obligations, but it is not reasonable to require a person to pay obligations creditors fail to validate simply because they appear on a credit bureau report.

The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20 a, the disqualifying condition may be mitigated where "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." Applicant's financial problems were contributed to by changes of location caused by her job, periods of unemployment and underemployment, and caring for her children.

Her daughter no longer lives with her, and she has been steadily employed since August 2004. Since obtaining her current job, she had paid all debts incurred thereafter. Her periods of unemployment and underemployment are no longer extant. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about her current reliability, trustworthiness, or good judgment. The evidence establishes AG ¶¶ 20 a.

Under AG ¶ 20 b, it may be mitigating where “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.” As noted above, unemployment and underemployment contributed to her financial problems. I find the evidence establishes this mitigating condition.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Applicant no longer has credit cards. She is current on her mortgage payment and her vehicle payment. She is not living beyond her means and saves for future contingencies. Although she did not receive financial counseling, the problem is under control. I conclude this potentially mitigating condition applies.

#### **Guideline E, Personal Conduct**

The allegations under Guideline E, (Personal Conduct) are refuted. The Government has shown Applicant's answers to questions 38 and 39 were incorrect, but this does not prove the Applicant deliberately failed to disclose information about her finances. The Applicant has denied intentional falsification. In November 2004, when completing her SF 86, Applicant did not list any debts as having ever been more than 180 days delinquent or were currently more than 90 days delinquent. At the time she completed her SF 86, she was not receiving any calls or correspondence from creditors and simply forgot about the debts.

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning delinquent debt is not deliberate if the person did not know of their existence or failed to remember them. The Applicant did not know any of her accounts were delinquent or remember any delinquent debts when completing her SF 86.

I found Applicant’s explanation of her negative answers on her SF 86 plausible. After hearing her testimony, observing her demeanor, and evaluating all the evidence of record, I found her testimony credible on the falsification issue. I am satisfied she did not intentionally falsify her SF 86.

## **Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to 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. Intentionally providing false answers on an SF 86 is a violation of Federal law, Title 18, United States Code, Section 1001, a felony.

The criminal conduct must be intentional and I have found Applicant's incorrect answers in answering her SF 86 to be unintentional. I find for Applicant as to the criminal conduct alleged.

## **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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When these problems first began, Applicant's job forced her to relocate to another state and then she move back. She suffered periods of unemployment and underemployment until August 2004, when she obtained her current job. Following her relocation, she had difficulty paying her rent.

In 2004, she obtained stable employment. After obtaining stable employment she has been able to stay current on her accounts. She is credit worthy enough to have purchased a vehicle and a house and is current on her payments for these accounts. She is not living beyond her means. The unusual circumstances that caused the delinquent debts are no longer extant.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations, personal conduct, and 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:           FOR APPLICANT

    Subparagraph 1.a – 1.f:   For Applicant

Paragraph 2, Guideline E:           FOR APPLICANT

    Subparagraph 2.a – 2.b:   For Applicant

Paragraph 3, Guideline J:           FOR APPLICANT

    Subparagraph 3.a:           For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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CLAUDE R. HEINY II  
Administrative Judge