



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 14-00064  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

09/23/2014

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant failed to provide sufficient information to mitigate security concerns based on her finances and personal conduct.

**Statement of the Case**

On August 13, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated March 14, 2014, detailing security concerns for personal conduct under Guideline E and financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on April 11, 2014. She admitted the 22 allegations under Guideline F and the 30 allegations under Guideline E. (See, Transcript, at 14-16) Department Counsel was prepared to proceed on June 23, 2014, and the case was assigned to me on June 26, 2014. DOD issued a Notice of Hearing on July 10, 2014, scheduling a hearing for July 28 2014. I convened the hearing as scheduled. The Government offered 15 exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 15. Applicant testified. Applicant did not offer any exhibits. I kept the record open for Applicant to submit documents. Applicant timely submitted two documents that I marked and admitted into the record as Applicant Exhibits (AX) A and B. Department Counsel did not object to the admission of the documents. (GX 16) DOHA received the transcript of the hearing (Tr.) on August 6, 2014.

### **Procedural Issues**

Department Counsel notified Appellant of the hearing date on July 7, 2014. The notice of hearing was mailed on July 10, 2014. Applicant signed for the notice on July 15, 2014. I determined that Applicant had received at least 15 day notice of the hearing. In any event, Applicant waived the 15 day notice provision. (Tr. 9-12)

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 38-year-old single mother with a 16-year-old daughter. She has been employed with a defense contractor for approximately 18 months as an electrician's helper. She graduated from high school in 1995, attended technical schools, and has technical certifications in computer systems. She married at age 21 and had her daughter in 1998 at age 22. Applicant's monthly income is approximately \$2,000 with monthly expenses of approximately \$2,000. She has no discretionary funds and basically lives paycheck-to-paycheck. (Tr. 27-28, 37-39, 68-71)

The SOR alleges 22 delinquent debts, of which 14 debts are medical bills, totaling over \$13,000. Eleven of the medical debts are in collection by the same collection company. The remaining three medical debts are in collection by a different collection company. There is a \$228 dental debt listed as a judgment (SOR 1.c). The other delinquent debts consist of a judgment for past-due rent for \$779 (SOR 1.a), a judgment for \$5,007 on a car repossession (SOR 1.b), another car repossession for \$8,080 (SOR 1.j), a telephone delinquent debt of \$767 in collection (SOR 1.o), a debt to a bank in collection for \$226 (SOR 1.t), a school tuition debt in collection for \$258 (SOR 1.u), and a fine to a city in collection for \$60 (SOR 1.v). The total delinquent debt is approximately \$28,600.

The SOR alleges 30 allegations of misconduct under guideline E. Most of the personal conduct allegations are for violations of traffic and motor vehicle administrative

rules, regulations, and procedures. The other misconducts concern offenses related to court appearances or failures to appear in court.

Applicant had a difficult pregnancy and birth in 1998. She experienced medical issues resulting from the pregnancy and birth in 1998 until approximately 2008. The medical debts at SOR 1.d, 1.e, 1.f, 1.g, and 1.h and 1.i are from treatment received for the medical problems from the pregnancy and birth. During this time, she had to be out-of-work repeatedly so she was unable to hold a full-time job. She went from job-to-job and had many jobs not all of which were in the computer field. Applicant became pregnant again in 2011. She had an ectopic pregnancy that required extensive medical treatment. The medical debts at SOR 1.k, 1.l, 1.m, 1.n, 1.p, 1.q, 1.r, and 1.s are from that failed pregnancy. Some of her employers at that time offered health insurance. She did not always take advantage of the health insurance that was offered by the employers. She wanted to have the maximum amount in take home pay so she did not sign up for the health insurance plans. She also thought she and her daughter were covered by Medicaid, but they were not covered by Medicaid or any other health insurance program. None of these medical debts have been paid. (Tr. 27-30, 43-44, 71-76)

The delinquent debt at SOR 1.a is for an apartment rent. Applicant had to use whatever funds she had available to rent a new apartment and pay the deposit and first month's rent. Therefore, she did not have funds to pay other debts. She admits the debt has not been paid. In her response to the SOR, Applicant stated that she paid the rent on time but the landlord sought a judgment on the debt without checking that the rent was paid. In her testimony at the hearing, Applicant stated that the debt arose from an eviction because she had pets in her apartment contrary to the lease. At the hearing, Applicant insisted that the debt was an eviction over pets. She stated that her mother helped her complete and typed the response to the SOR. Her mother misunderstood what she told her and attributed the dispute to the landlord not checking that the rent was paid before seeking a judgment. Applicant signed the SOR response. Applicant provided two different explanations for the debts. Her different explanations do not change the fact that the debt has not been paid. However, the different explanations reflect adversely on Applicant's credibility in explaining her financial problems. (Tr. 30-31, 76-82)

SOR debt 1.b is for a car Applicant voluntarily returned to the dealer in 2007 because she could not make the payments on the car loan. The debt has not been paid. SOR debt 1.j is for an automobile repossession in 2011 that Applicant returned to the dealer because she could not make the loan payments. The debt has not been paid. She now has another car and the loan payments are current. SOR debt 1.c is a dental debt reduced to a judgment by the dental provider. The debt has not been paid. (Tr. 42, 46)

SOR debt 1.o is for a telephone Applicant cosigned for her niece. The niece did not pay the bill leaving Applicant with the debt. The delinquent debt at SOR 1.t is for a check Applicant received from a third party that she presented to her bank receiving

cash. The check did not clear and debt is to cover the cash she received. The delinquent debt at SOR 1.u is for medical transcription course tuition. Applicant started but did not finish the course. The \$60 delinquent debt at SOR 1.v is a fine to a city for a fraudulent inspection certificate on a car. Applicant stated this debt was paid but no documentation of payment was presented. (Tr. 49-55)

Applicant admits that none of the delinquent debts have been paid. She stated that she paid her student loans incurred for the technical school courses. There are no student loan debts from the technical school on the credit reports. (GX 6) However, the status of student loans submitted after the hearing by Applicant shows a balance due on federal student loans of approximately \$10,000. The loans are not past-due and appear to be current. (AX B) She stated her intent to "take care of her credit." She said she started to work on paying her debts prior to receiving the SOR. She does not want to file bankruptcy, but she wants to consolidate her debts so they are easier to pay. She had not finalized any agreements with a debt consolidation company prior to the hearing. She presented an agreement reached with a debt consolidation company after the hearing. She did not present any documents showing payment to the debt consolidation company or if that company made any payments on her debts. (Tr. 34-35, 59-60, 82-85)

The personal conduct Guideline E allegations all revolve around traffic or automobile administrative rules violations. Applicant had a disturbing the peace and disorderly conduct charge in 2005. (SOR 2.dd) Applicant had traffic infractions in 2006, 2007, and 2008. She had no infractions in 2009 and 2010. She had one infraction in 2011, and more in 2012 to 2013. The offenses from 2006 to 2008 include having improperly tinted windows on the car, speeding, driving on a revoked/suspended license, improper exhaust system, seat belt violation, violating no right turn on red, following too closely, HOV violation, and no vehicle registration for a car. She also had violations for failure to appear on some of the offenses. (SOR 2.j to 2.cc) The offenses from 2011 to 2013 include no inspection certificate for a car, fraudulent inspection certificate, expired car registration, not having a driver's license in her possession, no vehicle insurance, and driving on a suspended license. She is still on probation for this offense. She was charged with contempt of court in July 2011. (SOR 2.a to 2.j)

Applicant admitted the offenses. She stated the offenses were traffic violations and not criminal conduct. In 2007, she purchased a used car from a dealer that caused her to receive a citation for tinted windows and improper exhaust. In 2013, she registered a car for another individual in her name. She did not know that the car had a fraudulent inspection certificate. She noted that all of the fines stemming from her traffic offenses have been paid. She has a current license which she believes indicates that all fines have been paid. (Tr. 61-68)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 in seeking 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 that 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, thereby raising 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 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 finances in such a way as to meet financial obligations.

It is well-settled that adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in her credit reports and her SOR response. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Conditions:

- (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 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;
- (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 has initiated a good-faith effort to repay the 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.

None of these mitigating conditions apply. The debts have been in existence since as early as 2008 and have been delinquent for a long time. There are many debts

so Applicant incurred delinquent debts frequently. Applicant had opportunities to be covered by various employers' health plans, but she did not take advantage of the opportunities because she did not want to incur the cost of the plans which would have decreased her net income. She was also under the mistaken belief she and her daughter were covered by the Medicaid programs. She did not verify the Medicaid coverage before she declined to participate in the employers' health plan. When Applicant incurred medical debts from difficult pregnancies in 2008 and 2012, she could not pay the medical expenses since she had no discretionary income. While the medical problems from the pregnancies were largely beyond her control and unusual, she did not act responsibly because she did not take advantage of the health plans available from her employer and did not verify her eligibility for Medicaid before declining the employer's health care plans. Since she does not have health insurance, the medical debts may recur.

Applicant did not provide any information on payments made on her other debts. She provided conflicting information on the origin of an apartment rental delinquent debt. The conflicting information on this debt negatively affects her explanations for all of her delinquent debts. Applicant presented no information to show the debts had been paid. She presented information that she contacted a debt consolidation agency after the hearing, but she did not present any information on any payments to the debt consolidation agency. She has not presented any information that she received financial counseling.

For 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. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. 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. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant has not presented any information to show she acted reasonably and responsibly toward her debts. With evidence of delinquent debt and no documentation to support responsible management of her finances, it is obvious that her financial problems are not under control. Applicant has not presented a systematic plan to resolve debts. She stated that she will contact a debt consolidation company to assist her to resolve the debts. She presented information after the hearing that she has an agreement with a debt consolidation company to assist her. However, she presented no information on any action taken to implement the plan, and she has not established a meaningful track record of debt payments. Her promise to pay in the future is not sufficient to show an adherence to her financial obligations.

Applicant has not established that her delinquent debts have been resolved or are being resolved. Her lack of financial action does not show that she acted in good faith with adherence to her financial obligations. She has not established a “meaningful track record” of debt resolution, or that she has or will act responsibly and reasonably to resolve her financial issues. Applicant's lack of documented action is significant and disqualifying. Her failure to act reasonably and responsibly towards her finances is a strong indication that she will not act reasonably and responsibly to protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

## **Personal Conduct**

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information.

Applicant has many traffic and other rules violation offenses from 2005 until 2013. These offenses go directly to questions concerning her reliability, trustworthiness, good judgment, and willingness to comply with rules and regulations. Her conduct raises the following Personal Conduct Disqualifying Conditions under AG ¶ 16:

(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: (3) (a pattern of dishonesty or rule violations.

I considered the following Personal Conduct Mitigating Conditions under AG ¶ 17:



(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment);

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from sources of questionable reliability.

These mitigating conditions do not apply. The misconduct incidents took place from 2005 until January 2013, so there are recent misconduct incidents. While each particular incident may be minor, the accumulated effect of so many similar incidents shows the behavior is not minor. None of the incidents happened under unusual circumstances and are likely to recur. The information was admitted by Applicant and verified by reliable criminal reports. Applicant presented no information to show that she has now and will in the future comply with traffic and motor vehicle rules and regulations. Her personal conduct of security concern was recent, frequent, and could likely recur. There are no indications of any positive steps taken to change her behavior and reduce or eliminate her vulnerability to exploitation, manipulation, or duress. Applicant has failed to present sufficient information to mitigate the security concerns based on her personal 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 a single mother raising a teen age girl. I considered that she had difficult pregnancies leading to delinquent medical debts. However, she had the ability to be covered by her employers' health insurance but decided against such coverage because she wanted the maximum net pay. Applicant has not presented sufficient information to establish that she acted reasonably and responsibly towards her finances. She also had numerous traffic, motor vehicle, and court-related misconduct from 2005 until 2013. These actions indicate she may not be concerned or act responsibly in regard to classified information. Her actions indicate she will not follow rules and regulations concerning the safeguarding of classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising under the financial considerations and personal conduct guidelines. Eligibility for 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
Subparagraphs 1.a – 1.v:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.dd:	Against 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