



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-01967  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Per Se*

February 21, 2008

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**Amended Decision**  
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WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On November 9, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on November 30, 2007, and requested a hearing. The case was assigned to me on January 2, 2008, and was scheduled for hearing on January 29, 2008. A hearing was held on January 29, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of five exhibits; Applicant relied on one witness (herself) and 11 exhibits.

The transcript (R.T.) was received on February 6, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

### **Procedural Rulings and Evidentiary Issues**

Before the close of the hearing, Appellant requested leave to supplement the record with documentation of her payments of several of her medical and consumer creditors and efforts to contact listed creditors she cannot identify as her own. For good cause shown, Applicant was granted seven days to supplement the record. Within the time permitted, Applicant supplemented the record with documented payments and contacts with a number of her listed creditors. Her post-hearing exhibits were admitted and considered.

### **Summary of Pleadings**

Under Guideline F, Applicant accumulated 28 debts exceeding \$31,000.00. Applicant admitted most of the listed debts but denied the allegations covered by subparagraphs 1.d and 1.l on the grounds she does not recognize the debts as her debts. She denied subparagraph 1.q on the grounds the debt was paid when she sold her house. And she denied subparagraphs 1.s and 1.bb on the stated grounds they were duplicates of debts covered by subparagraphs 1.k and 1.n.

### **Findings of Fact**

Applicant is a 38-year-old senior engineering associate for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant accumulated 28 debts over a five-year period that exceed \$31,000.00. Many of her debts are medically related. Some are linked to the period in 2004 when her husband lost his job.

Applicant married H in 1990. She has two sons from that marriage (ex. 1; R.T., at 74-75). For the first three years of their marriage Applicant and her husband maintained good control of their finances, despite living a little beyond their means (R.T., at 71). When H lost his job in 2004, they began experiencing considerable financial difficulties. During this period, Appellant accrued considerable consumer debts and medical debts associated with H's hospitalization (R.T., at 62-63).

Applicant's financial problems compounded after her separation from H and his relocating elsewhere. She described her marriage to H as a violent one: H had an alcohol problem, and had difficulty holding a job (R.T., at 71-72). After H lost his job in 2004, they were forced to sell their home on a short sale basis, and move into a trailer (R.T., at 38). With their marriage severely strained, H moved out of their trailer in July

2005, and moved to another state (R.T., at 38). Applicant subsequently filed for divorce, which was finalized in May 2006 (see ex. 1). As a part of their divorce decree, H was required to provide monthly child support of \$300.00 a month. H makes only sporadic child support payments, and has avoided scheduled child support hearings (R.T., at 35, 72-73).

Applicant's three largest debts comprise deficiencies on two cars she obligated herself on with her ex-spouse, and the cost of windows installed in her house that was subsequently sold. In 2000, she purchased an Altima for about \$10,000.00. When she and H began having financial problems in 2004, the car was repossessed by creditor 1.r. Applicant assures she never received notice of the public sale of the vehicle (R.T., at 40-43). Because the listed deficiency so closely reflects the purchase price of the car, Applicant does not believe the listed debts reflect any credited proceeds from the sale of the car (see ex. 5; R.T., at 40-43). As a result, she contests the validity of the deficiency debt associated with creditor 1.

The second of Applicant's major debts reflects a reported deficiency on another vehicle purchased by Applicant. In 2004, she and her husband purchased a Buick for about \$13,000.00. She assures she made payments on the vehicle for about six to eight months before her husband moved to another state and took the car with him (R.T., at 41-42). H defaulted on his payments for the car, and the creditor (creditor 1.p) came to Applicant's house looking for the vehicle (R.T., at 43). Applicant informed creditor 1.p of H's whereabouts (R.T., at 43), and subsequently learned that the creditor repossessed the vehicle. After the sale, a deficiency was assessed in the amount of \$8,651.00 (see ex. 5; R.T., at 66-67). This amount is apparently still owed on the vehicle to creditor 1.p, which Applicant does not dispute (R.T., at 68-70).

Applicant's third major debt (creditor 1.q) for some windows that were installed in her home in 2002 (see exs. 5 and K). After H lost his job in 2004, they were forced to sell the home by means of a "short sale" to avert foreclosure (R.T., at 45-46). Applicant disputes this creditor 1.q debt based on her expressed belief that the obligation was absorbed by the loan assumed by the buyer of the house. Her efforts to verify satisfaction of this debt have not been fruitful (see ex. L; R.T., at 45-46).

In the past, Applicant disputed a number of the debts listed in the SOR. In her post-hearing submissions, she documented her disputed debts with creditor 1.m (ex. N), creditors 1.b and creditors 1.f through 1.h (see exs. 5, K and L through T), creditor 1.l (ex. K), creditor 1.o (ex. L), and creditor 1.q (R.T., at 54-61, 64-65). Most of these debts have since been removed from her most recent credit report (see ex. K). Applicant is also able to document her payments to several of her listed creditors: creditor 1.a (ex. O), creditor 1.k (see exs. 2 and M), creditor 1.m (see ex. N), and creditors 1.w through 1.aa (see exs. A through G, P, Q, R, S and T; R.T., at 47-56, 62-70). She assures, too, that she has paid creditors 1.c, 1.l and 1.t, which are no longer reflected in her credit report (see ex. K; R.T., at 52-62). Albeit, she has not been able to provide any additional payment documentation.

Applicant also disputes two of the listed debts (creditors 1.s and 1.bb) on the grounds that they are duplicates of the listed debts covered by subparagraphs 1.k and 1.s, respectively. The respective debts cover roughly the same amounts and identify either the same creditor (in the case of creditors 1.s and 1.k) or the same type of collection account (creditors 1.n and 1.bb). Applicant's claims are corroborated by her credit reports (see exs. 4 and 5), reflect plausible and credible explanations, and are accepted.

While she has sought formal counseling regarding her finances, Applicant has relied on the advice of a well known radio commentator in her community who recommends to listeners with debt problems to pay their smaller debts first, before addressing their larger debts (R.T., at 76-77). Appellant has been following this advice to the best of her ability. She estimates to have a minus \$73.00 remainder each month in her most recent financial statement (see ex. 2; R.T., at 81). She lives in her father's house with her two sons and has had to expend considerable money on utilities and repairs in this very old house (R.T., at 78-79). She pays her sister over \$300.00 a month on the car she is purchasing from her (R.T., at 73-74, 80-81). To pay some of her listed old debts with the limited income she has, she has had to borrow from her sister and work odd jobs at her church for extra money (R.T., at 81-82).

Applicant is highly regarded by her supervisors, co-workers and friends. The director of her office for the past 18 months of her employment describes her as a very trustworthy, dependable, and responsible administrative assistant who performs her assigned duties flawlessly (see ex. J). Management personnel in her department who work with her on a daily basis characterize her as highly ethical, dependable, and trustworthy (ex. J). Her pastor describes her as a "model of sincere and true faith" with unquestionable integrity and trustworthiness (ex. J). And her good friend and junior high math teacher in her community credits her with extraordinary help with her students as a full-time teacher's aide (ex. J). She is known to have impressed other teachers and staff with the responsible way she accepted and handled her various tasks and responsibilities (see ex. J).

## **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*The Concern:* "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

### **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Applicant is a senior engineering associate for a defense contractor who accumulated a number of delinquent debts over a five-year period spanning 2004: and

2007, some disputed and some acknowledged.. Considered together, and without resolution, they raise security significant concerns.

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual appellant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and her past inability to address most of these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a) "inability or unwillingness to satisfy debts" and DC 19©) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to income shortages following her divorce. With little child support from her former husband, and no health insurance for a considerable time before she obtained her current position, she has had to struggle financially as a single parent with little income to cover her medical needs and family necessities. Several of her debts (including her three largest debts) were jointly created with her ex-husband who departed without bearing any responsibility for the remaining marital obligations. These debts include the deficiency balances on two vehicle repossessions, as well as the debt associated with window installations on the house she and her former husband jointly sold before their divorce. Applicant believes this latter debt was incorporated in the mortgage loan assumed by the buyers of the of the house. Although, she has not been able to provide any documentation of any buyer's assumption of this debt. Applicant continues to dispute a number of the other listed debts, some or all of which may belong to her ex-husband.

Since receiving the SOR, Applicant has initiated considerable efforts to resolve the debts she acknowledges as her own, and dispute those she insists are not. Specifically, she is able to document payments to some of her listed creditors (creditors 1.a, 1.k, 1.m, and 1.w through 1.aa and provide corroborated explanations of several duplicated debts (*i.e.*, creditors 1.n and 1.bb and creditors 1.k and 1.s).

To be sure, Applicant has not been able to document payment or dispute of all of the listed debts. Just the same, she assures she has paid several of the creditors that she is not able to document (*i.e.*, creditors 1.c, 1.l, and 1.t), which are no longer reflected on her most recent credit report. She has not been able to document any resolution of her three largest debts (creditors p, q and r); they remain outstanding. With the help of her sister, her work income, and the small amounts of money she receives from doing odd jobs at her church, she hopes to address her remaining debts.

Given Applicant's exhibited extenuating circumstances associated with her sudden loss of marital income in 2004, her ensuing divorce with little child support from her former husband, the limited resources that have been available to her to address her old debts, and her documented responsible efforts to resolve her acknowledged

debts, Applicant may rely on MC 20 (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,” of the Guidelines for financial considerations. Extenuating circumstances continue to impact Applicant in her current efforts to resolve her accumulated debts.

Mitigation credit is also available to Applicant based on her credible proofs of payment, age of the debts, and good-faith disputes. Applicant is able to demonstrate credible disputes with a number of her creditors and initiated repayment efforts with most of her smaller creditors. Age of the debts at issue is covered by two of the mitigating conditions for financial considerations: MC 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” has applicability, while not dispositive. MC (d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” has some applicability. MC 20(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,” has applicability as well relative to the listed creditors she disputes.

Applicant seriously disputes her three major debts with creditors 1.p, 1.q, and 1.r. Whether any of these debts are valid any more is not clear. Two of the debts (creditors 1.q and 1.r) originated in 2002 (creditor 1.q) and 2000 (creditor 1.r), respectively, and show no activity in the accounts since 2003. For these accounts, regardless of whether they reflect otherwise valid debts owing, they may no longer be enforceable under the State’s applicable statute of limitations for written contracts.

The state statute of limitations in Applicant’s state for claims based on a written contract is four years (see 16.004(a)(3) of T Civ. Practice and Remedies Code) and claims not otherwise provided for (see 16.051 of T Civ. Practice and Remedies Code). Only Applicant’s Buick purchase in November 2004 does not appear to be barred by the State’s four-year statute of limitation. This is the vehicle H took with him when he separated from Applicant and assumed implicit responsibility for making the required payments. While Applicant may have continuing joint and several liability for this debt, there would appear to be little risk of collection on the debt or justification for attributing judgment lapses to Applicant under all the circumstances considered.

While potentially applicable statutes of limitation have not been recognized by our Appeal Board to absorb security risks associated with unresolved delinquent debts. Statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation. They have never been equated with good-faith efforts, though, to repay overdue creditors. See, e.g., ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). Weight, if any, to be assigned to potentially statutes of limitations under the new Guidelines should be considered in light of all the

circumstances surrounding the existing debts, and must take account of the Applicant's entire history of demonstrated trust and responsibility. Viewed in this whole person light, the controlling state statute of limitation for written contracts is entitled to be accorded significant mitigation weight in evaluating Applicant's overall financial risk.

While the counseling advice Applicant relied on does not technically fit the definition of counseling services under the Guidelines, she is to be credited with earnestly looking for sources of financial advice with the resources available to her and taking productive advantage of the public advice she received in addressing her debts. She may take limited advantage MC 20©), "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." Based on her initiated efforts to date, prospects for her gaining important insights in handling her finances in the future appear to be promising.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations, her documented steps taken to resolve them, and the responsibility and trustworthiness she is credited with in her work, church, and personal life as a struggling single parent, Applicant mitigates security concerns related to both her disputed debts and her proven debt delinquencies. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.bb of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS):      FOR APPLICANT

Sub-paras. 1.a through 1.bb:      FOR APPLICANT



### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge