



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



In the matter of:

SSN:

Applicant for Security Clearance

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ISCR Case No. 07-05659

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel

For Applicant: Pro Se

December 15, 2008

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance application, Standard Form 86 (SF 86) on June 8, 2005. On June 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, for Applicant. The action was 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 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.

On July 25, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on September 2, 2008. Applicant was deployed out of the country. A hearing date was arranged upon her return. On October 20, 2008, a Notice of Hearing was issued, scheduling the hearing for November 6, 2008. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4 without objection. The Applicant testified and offered two exhibits which were admitted as Applicant Exhibits

(AE) A – B without objection. The record was held open until November 20, 2008, to allow Applicant to submit additional evidence. On November 17, 2008, Applicant requested an extension to submit documents. The extension was granted until December 11, 2008. Applicant timely submitted a 26-page document that was admitted as AE C without objection. The transcript was received on November 24, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted SOR ¶ 1.a, and denied all remaining allegations with explanation.

Applicant is a 35-year-old employee with a Department of Defense contractor seeking a security clearance. From November 2007 to November 2008, she worked in Iraq as a system administrator for a contractor. On November 11, 2008, she started a new job with another contractor as a desk top engineer. She has approximately two years college credit. She has been separated from her husband since September 2006 and is in the process of filing for divorce. She has a 16-year-old son from a previous relationship. (Tr at 4-7, 27-28, 37, 51; Gov 1; AE C at 13-17, 23-26.)

On June 8, 2005, Applicant completed a security clearance application when she was employed with a previous defense contractor. (Gov 1.) The security clearance application apparently was transferred to her subsequent employers. Applicant testified that Government Exhibit 1 was the most recent security clearance application submitted by her. (Tr at 44.) A subsequent background investigation revealed that Applicant had filed for Chapter 7 bankruptcy in May 2007. Her debts were discharged in August 2007. Her credit reports listed six delinquent accounts, with a total approximate balance of \$15,762. Of that amount, \$13,329 was a delinquent student loan account. (Gov 2; Gov 4.)

Applicant's delinquent accounts include: a \$140 account placed for collection in August 2007 (SOR ¶ 1.b: Gov 2 at 2); a \$325 medical account placed for collection in February 2008 (SOR ¶ 1.c: Gov 2 at 2); a \$150 medical account placed for collection in February 2008 (SOR ¶ 1.d: Gov 2 at 2); a \$13,329 delinquent student loan account placed for collection in April 2007 (SOR ¶ 1.e: Gov 2 at 2); a \$638 delinquent account placed for collection in August 2006 (SOR ¶ 1.f: Gov 2 at 2); and a \$1,180 delinquent cell phone account placed for collection (SOR ¶ 1.g).

In 2005, Applicant and her husband started a moving company because her husband was unable to find a job. Her husband eventually stopped making an effort to make the company successful which resulted in their marital separation in September 2006. Employees stole from the company which further contributed to the company's problems. (Tr at 25-27.) Applicant tried to keep the company in business by herself after they separated. She also had a full-time job. She was unable to pay the bills and lost her full-time job in June 2006. (Tr at 39-40.)

On May 16, 2007, Applicant filed for Chapter 7 bankruptcy. Her attorney advised her to file for Chapter 7 because all of the business accounts were in her name. She claimed total assets of \$51,808 and total liabilities of \$81,890.23. She attended credit counseling as part of a requirement for filing the bankruptcy petition. On August 29, 2007, her dischargeable debts were discharged. (Tr at 29-36; Gov 3.)

Applicant was unemployed from July 2006 to January 2007. She worked a six-month temporary position from January 2007 to June 2007. She was unemployed from July 2007 to November 2007 until she was hired for the one-year term position in Iraq. (Tr at 51-52.)

Applicant earned approximately \$6,000 in take home pay during the year she was in Iraq. She was able to pay most of her debts because she had approximately \$1,500 left over each month after expenses. She will earn approximately \$27 an hour in her new job. (Tr at 45-47.)

The status of the debts in the SOR are:

1.b: \$140 collection account, paid off. (Tr at 41-42; AE B at 3; AE C at 21.)

1.c: \$325 medical account, claims paid April 2008. (Tr at 22, 25.) This debt is not listed on Applicant's current credit report. (AE B.) Several medical accounts were listed on Schedule F of Applicant's Chapter 7 bankruptcy filing. This debt was either paid or discharged in bankruptcy. (Gov 3, Schedule F.)

1.d: \$150 medical account, claims paid April 2008. (Tr at 22, 25; AE B at 9.) Several medical accounts were listed on Schedule F of Applicant's Chapter 7 bankruptcy filing. This debt was either paid or discharged in bankruptcy. (Gov 3, Schedule F.)

1.e: \$13,329 delinquent student loan has been rehabilitated. The loan is no longer in default. She has an agreement to pay \$200 a month towards the loan and is current on her payments. (Tr at 22; AE A; AE C at 5-7, 10-12.)

1.f: \$638 collection account, resolved and/or paid. The most recent credit report lists the balance on the account as \$1. It also indicates Applicant disputed the account. (Tr at 44; AE B at 18; AE C at 11.)

1.g: \$1,180 cell phone account placed for collection. Applicant states this account is not hers. She disputed to account and it was removed from her credit report. This account is not listed on any of the credit reports that are in the record. The government did not establish that this is a valid debt. (Tr at 21-22; Gov 2; Gov 4; AE B.)

Applicant is in the process of filing her tax returns for this year and the past year. She did not receive W-2s from the companies she worked for in 2007 before going to

Iraq. She anticipates a refund. (Tr at 50-51.) Applicant was under the mistaken belief that taxpayers only had to file tax returns every three years unless they owe taxes. (Tr at 60-61.)

Applicant's site manager in Iraq wrote a letter of recommendation on her behalf. He states that she did an excellent job while mentoring others. She was responsible for systems support and provided countless hours of support to ensure the Department of Defense networks remained functional at all times. She was always willing to go above and beyond what was required of her. (AE C at 3.) Applicant received two Letters of Appreciation during her tenure in Iraq. (AE C at 1-2.)

## **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.

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**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶ 19(c) (a history of not meeting financial obligations); apply to Applicant's case. Applicant incurred a significant amount of business-related and personal debt, which resulting in her filing for Chapter 7 bankruptcy in May 2007. She was unable to pay her student loans which went into default.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) applies. Applicant's financial problems were the result of a failed business and the breakup of her marriage in 2006. Her current financial condition is stable.

FC 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) applies for the reasons mentioned in the above paragraph. The moving business Applicant and her husband started in 2005

ultimately went out of business in late 2006/2007. The debts from the business and her marital separation in September 2006 made it difficult for Applicant to pay her business and personal debts. Her financial conditions were further complicated by the loss of her full-time job in June 2006. Applicant acted responsibly under the circumstances. Bankruptcy is a legitimate way to resolve one's debts. She rehabilitated her student loans and is paying on them. The other accounts are resolved.

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) does apply. Applicant demonstrated that she has control over her finances. The one concern raised at hearing is her failure to file her income tax returns last year. She misunderstood her duty to file her federal income tax returns on annual basis. However, she worked in Iraq over the past year and is in the process of filing her taxes. Her current financial situation is stable.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant had a good basis for filing for bankruptcy. Her financial problems were not the result of living beyond her means. Bankruptcy is a legitimate way of resolving one's debts. She rehabilitated her student loans and is current on her monthly student loan payments. The other debts alleged in the SOR were minimal (total balance \$1,253) and have been resolved.

### **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 common sense 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 Applicant's favorable references related to her year of working in Iraq. I considered her efforts to resolve her financial situation. I considered that her financial problems were the result of a failed business, a failed marriage, and several periods of unemployment. Her current financial situation is stable. Applicant has mitigated the concerns raised under financial considerations.

### **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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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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ERIN C. HOGAN  
Administrative Judge