



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-07448
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro se*

May 29, 2009

**Decision**

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MASON, Paul J., Administrative Judge:

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

**Statement of the Case**

Applicant submitted her Security Clearance Application (SCA) on May 9, 2008. On December 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her notarized answer to the SOR on January 12, 2009. DOHA issued a notice of hearing on March 23, 2009, and the hearing was held on April 7, 2009. At the hearing, six exhibits (GE 1 through 6) were admitted in evidence without objection to support the Government's case. Applicant testified and presented one exhibit (AE A) from her security manager describing the conditions under which she needed a security clearance. DOHA received a copy of the transcript (Tr.) of the proceedings on April 15, 2009.

### **Rulings on Procedure**

The Directive (E3.1.8.) requires that an applicant shall be notified 15 days in advance of a hearing near an applicant's place of employment or residence. With the notice of hearing dated March 23, 2009 and the hearing dated April 7, 2009, Applicant was not given 15 days notice of the hearing. However, the government notified Applicant by telephone on March 17, 2009 that the hearing would take place on April 7, 2009, and Applicant recalled the telephone conversation with Department Counsel (Tr. 7-8). Having been notified of the hearing date six days in advance of the notice of hearing (March 23, 2009), I am satisfied that both elements of E3.1.8. were satisfied as to notification and location of the hearing.

### **Findings of Fact**

The SOR alleges debts under the financial considerations guideline. Applicant admitted some debts and denied others. Almost all of her denials resulted from not recognizing the collection agency holding the debt at the time. Applicant is 49 years old, single, and has one nine-year-old daughter. She has not received child support since April 2008 (Tr. 36), but expects it to resume in the future. She works as a maintenance scheduler. She has worked for her employer (or his successor) since 1985 (Tr. 38). She does not know whether she has ever had a security clearance, but she has a security badge. She seeks a security clearance.

The SOR alleges 17 delinquent debts totaling \$49,989 under the financial considerations guideline. Several of the debts are over nine years old. However, the account in 1.a. became delinquent in July 2007.

In April 2006, Applicant explained in an interview (GE 3) that her financial problems were triggered in 1997 when she was laid off for about a year. At some time in early 1998, Applicant was rehired for a short time only to be laid off a second time. She was rehired in the spring of 1998. In July 1999, Applicant took pregnancy leave. Her baby was born prematurely. Applicant has been working at her job location from the spring of 1998 to the present time (GE 1).

Even though Applicant was aware she had delinquent debt, she decided to help her brother after he lost his job in 2007. To keep him from committing suicide, she convinced him to stay at her home until the summer of 2008 (Tr. 43). During the same period, Applicant helped her mother (*Id.*) Applicant tried several times to deal with her

delinquent debts, but some emergency always arose to keep her from taking action (Tr. 48). In July 2008 (GE 2), she learned that several of the creditors and collection agencies in her credit report engaged in sinister credit practices. She planned to file a lawsuit against the listed creditors. She never got a chance to dispute the debts (Tr. 50).

**SOR 1.a.** \$50, medical debt. The credit report (GE 4) shows the last activity date on the debt is reported as July 2007. Applicant is not aware of the account. Applicant owes for this debt.

**SOR 1.b.** \$208, telephone debt. The credit report (GE 4) shows the last activity on this debt was August 2006. Applicant owes the debt.

**SOR 1.c.** \$1,112, credit card. Applicant explained in GE 3 that she sold her house in 2004, and opened a credit card account. There were four hurricanes that prevented her from going to work. She used the credit cards to live. This debt is still unresolved.

**SOR 1.d.** \$1,853, department store credit card. GE 6 shows the last activity on this card was October 2005 (Tr. 51). Applicant still owes this debt.

**SOR 1.e.** \$1,729, insufficient information to identify this account, and Applicant has no knowledge. I find for Applicant.

**SOR 1.f.** \$896, insufficient information to identify debt which is being handled by a collection agency. Applicant included the debt in her SCA (GE 1). The debt is still unresolved.

**SOR 1.g.** \$11,570, deficiency balance after repossession of the car. The last activity on this account was June 2004. Applicant had the car for about three months (Tr. 54), but turned the car back over to the dealer as she could not handle payments, and the car was continually breaking down (Tr. 54). The debt has not been paid.

**SOR 1.h.** \$11,238, education loan. Applicant's wages are being garnished to pay off loan. The last activity on this account (GE 4) was June 2004. *See also*, GE 2. This debt is unresolved. I have taken official notice that there is no statute of limitations on Federal obligations such a student loans.

**SOR 1.i.** \$209, medical account. This account has not been paid.

**SOR 1.j.** \$800, medical account. According to GE 6, the last activity on the account was in August 1999.

**SOR 1.k.** \$947, credit card. Applicant recalled having insurance to pay the account. The last activity on the account (GE 6) was August 1999. The state statute of limitations makes the account unenforceable, but Applicant still owes the debt. Because

Applicant has not acted to resolve any of the listed debts, I find the limitations statute inapplicable.

**SOR 1.i.** \$900, credit card. As with **SOR 1.k.**, Applicant believed her insurance was supposed to pay this debt. GE 6 reflects the last activity on the account was in August 1999. Even though the debt would be outside the time statute, it has not been applied.

**SOR 1.m.** \$6,724, department store credit card. Applicant admitted the debt, but the account does not appear in the credit reports. She still owes the debt.

**SOR 1.n.** \$11,238, same educational loan appears in **SOR 1.h.**

**SOR 1.o.** \$201, medical account. The last activity on this account (GE 4, GE 6) was December 1999. The state statute of limitations makes this debt unenforceable. However, Applicant still owes the debt, and, under the circumstances does not receive the benefit of this statute.

**SOR 1.p.** \$74, medical account. The last activity on this account (GE 6) was in August 1999. Though this debt is unenforceable under the state statute of limitations statute, Applicant still owes the debt. Her negligible effort in repaying any of the creditors precludes her from favorable consideration under the applicable state statute of limitations pertaining to credit cards.

**SOR 1.q.** \$240, medical account. The last activity on this account is September 1999. The delinquent debt is unenforceable under the state statute of limitations for bringing actions to recover a debt. However, Applicant still owes the debt.

Applicant claimed she tried to get control over her student loan in 1997 (Tr. 69), but was unsuccessful. In July 2008, Applicant tried to enroll in a debt consolidation plan to regain control over her debts. In GE 2, she provided documentation of enrollment documents of the plan, and also a spending plan worksheet indicating net monthly expenses (\$2,752) exceeded her net monthly income (\$2,541) by \$211 every month. She did not join the plan because the plan administrators wanted \$900 to begin the plan (Tr. 34).

### **Character Evidence**

Applicant testified that she is a reliable and trustworthy employee on the job. She has a key in her pocket that gives her personal access to her employer's warehouse which contains over \$200,000 in business products (Tr. 33). Applicant provided no independent character evidence concerning her reputation or job performance.

## 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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

## Analysis

### Financial Considerations (FC)

18. *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.”

Applicant accumulated 17 delinquent debts totaling almost \$50,000. She is unable to repay the debt. Considering the passage of more than nine years, I find her inability to repay also suggests an unwillingness to repay. The fact that several of the debts are almost 10 years old shows a history of not paying debts voluntarily incurred. Both FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and 19.c. (*a history not meeting financial obligations*) apply.

I have examined all mitigating conditions under the FC guideline, but none are applicable. Those past due debts listed in 1.i., 1.j., 1.k., 1.l., 1.o, 1.p., and 1.q., became delinquent in 1998 and 1999 when Applicant faced two layoffs followed by the premature birth of her child. SOR 1.a., 1.b., 1.c., 1.f., and 1.g. became delinquent after the beginning of 2004, or inside the controlling state statute of limitations period (5 years) applying to contracts and credit cards. Applicant has had steady employment since 1999, yet she has done nothing to address the overdue accounts. Her inaction continues to impose a negative impact on her current reliability, trustworthiness, and judgment.

Furthermore, to find in Applicant’s favor under the state statute of limitations for those listed delinquent debts outside the 5-year reach of the limitations statute ignores the long standing DOHA Appeal Board precedent that limitation statutes cannot take the place of good-faith efforts to repay creditors., ISCR Case No. 99-9020, at 5-6 (App. Bd. 2001). FC mitigating condition (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 reliability, trustworthiness, and good judgment*) does not apply.

A couple of layoffs in 1998 and 1999, and a pregnancy in 1999 were events that clearly affected Applicant’s ability to pay her bills. Hence, FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person’s control and individual acted responsibly under the circumstances*) would apply to mitigate and extenuate Applicant’s inability to pay her debts during the period, and a few years subsequent to 1998 and 1999. However, the mitigator has no application more than

nine years later, particularly when Applicant has done nothing to act responsibly under the circumstances. Applicant receives no credit under FC MC 20.b.

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)* applies based on the documentation attached to GE 2 showing a financial profile and other material related to managing finances. However, the favorable evidence in GE 2 does not have much probative value without indications that Applicant's financial problems are being resolved or under control. Since there is no evidence Applicant's financial problems are under control, FC MC ¶ 20.c. must be removed from consideration. With no evidence of repayment of any of the creditors, FC MC ¶ 20.d. *(the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts)* does not apply either. Applicant has not mitigated the FC guideline.

### **Whole Person Concept (WPC)**

The adjudicative process is an examination of a sufficient period of a person's life, and a careful consideration of nine variables that comprise whole person model:

(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 was 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 and recurrence. ¶ 2, p.18 of the Directive.

I have considered the disqualifying and mitigating factors in light of all the facts and circumstances surrounding this case. Applicant is currently 49 years old. She has worked at her current job location since 1985. Based on her possession of a key that accesses \$200,000 of merchandise at her employer's warehouse, it is safe to conclude her employer finds that she is trustworthy and exercises good judgment. She has an obligation to show the government she utilizes the same good judgment and trustworthiness in her personal life as she does with her employer. One of the requirements for a security clearance is to demonstrate financial responsibility. Applicant's choice of helping members of her family instead of herself represents poor judgment that has not been mitigated under the FC guideline.

## **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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant
Subparagraph 1.k.	Against Applicant
Subparagraph 1.l.	Against Applicant
Subparagraph 1.m.	Against Applicant
Subparagraph 1.n.	Against Applicant
Subparagraph 1.o.	Against Applicant
Subparagraph 1.p.	Against Applicant
Subparagraph 1.q.	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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Paul J. Mason  
Administrative Judge