



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 08-03198  
)  
)  
Applicant for Security Clearance )

For Government: Nicole Noel, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 12, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On July 23, 2007, Applicant submitted a Questionnaire for Sensitive Positions (SF 86). On June 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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.

Applicant answered the SOR in writing on July 16, 2009, and requested a hearing. On September 10, 2009, DOHA assigned the case to me. On September 21, 2009, DOHA issued a Notice of Hearing, setting the case for October 14, 2009. The case was heard as scheduled. Department Counsel offered Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified, but did not provide any documentary evidence. The record remained open until October 29, 2009, to give Applicant an opportunity to submit information pertinent to the delinquent debts listed in the SOR. She timely submitted documents that were marked as Applicant Exhibits (AE) 1 through 5 and admitted into the record without objection from Department Counsel. DOHA received the hearing transcript on October 21, 2009.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the allegations contained in ¶¶ 1.a, 1.e, and 1.i. She denied the allegations contained in ¶¶ 1.b, 1.c, 1.d, 1.f, 1.g, 1.h, 1.j, and 2.a.<sup>1</sup>

Applicant is 40 years old. She has two children, ages 21 and 15. She graduated from a state university with a bachelor's degree in social work in 1994, after which she worked at the university for two-and-a-half years. In September 1997, she enlisted in the Army and was on active duty until November 2000, when she became an active reservist. In August 2005, she was honorably discharged in the pay grade of E-4. (Tr. 20-21.) She had a security clearance while in the Army.

After leaving active duty, Applicant was unemployed from August 2000 until December 2000, when she secured work with a telephone company. She worked there until August 2001, when she lost her position. She remained unemployed until February 2002, when she obtained a position with a defense contractor. She continued working for that contractor until January 2007. She was then unemployed from February 2007 through March 2007, at which time she obtained another contractor position that she had for two months. In June 2007, she obtained her current position as a technical installer of communications equipment in military vehicles. From March 2001 to February 2002, she attended cosmetology school and received unemployment benefits. (GE 1.) She attributed some of her financial problems to those periods of unemployment and the lack of sufficient child support. In 2004, the father of one of her children was killed in an accident. Subsequently, she receives a small amount of social security payments for her son. The father of the other child sporadically gave her very small amounts of money over the years. (Tr. 42.)

In September 2004, Applicant was interviewed by a government investigator after completing a security clearance application. During the interview, she responded to questions about the delinquent debts noted in SOR ¶¶ 1.a, 1.d, 1.f, 1.g, 1.h, 1.i, and 1.j.

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<sup>1</sup>Applicant's Answer to SOR ¶ 2.a is not attached to the written Answer she submitted. She denied the allegation on the record. (Tr. 34.)

She stated it was her intention to pay the bills, but that she did not have sufficient money to do so. (GE 5.)

In July 2007, Applicant completed another SF 86. In response to “*Section 28. Financial Delinquencies: Your Financial Delinquencies: a. In the last 7 years, have you been over 180 days delinquent on any debt(s),*” and “*Section 28: b. Are you currently over 90 days delinquent on any debts(s),*” she answered “no,” and failed to list the 10 delinquent debts listed in the SOR. At the time, she did not know the status of her old delinquent debts and did not have a credit bureau report in front of her. She knew that her current bills were not delinquent, so she did not think she had delinquent debts or financial problems. (Tr. 46.) Additionally, she was applying for a mortgage and did not receive notice or any indication from her realtor that she had a credit problem. (Tr. 47.) She denied that she intentionally falsified the SF 86. (Tr. 35.) She credibly asserted she made an honest mistake. (Tr. 45.)

In August 2008, Applicant responded to the government’s interrogatories about her delinquent debts, including nine of those subsequently listed in the SOR. She explained that the debts “have either been charged off, paid, or in the old uncollected [sic] debts.” (GE 2.) She claimed that “The only current bills that should be on my up to date credit report should be student loans and the debts I have listed on the monthly income sheets.” (GE 2.)

Based on credit bureau reports (CBR) dated February 26, 2009, and August 3, 2007, the June 2009 SOR alleged security concerns based on the accumulation of ten delinquent debts totaling \$20,981. The status of each of those debts is as follows:

1. (¶ 1.a) This \$987 medical debt is owed to a hospital for a visit relating to her young son in October 2002 when he broke his arm. Public aid sent a check for more than the amount owed and the hospital would not accept the check. The debt remains unresolved. (Tr. 27; 47-48.)
2. (¶ 1.b) This \$423 debt is owed to a cellular telephone company. Applicant denies that she ever used this company. (Tr. 28.) She said she would dispute the debt after the hearing. She did not subsequently submit any evidence that she did so. The debt became delinquent in May 2002 and is unresolved. (GE 4.)
3. (¶ 1.c.) The \$180 student loan debt is paid. (AE 3.)
4. (¶ 1.d) Applicant claimed that the \$14,088 debt owed to an automobile company was paid. She asserted that her insurance company issued a check for all but \$355 of the debt. She submitted evidence that she paid the \$355 in 2005 (AE 4), but did not provide evidence that the larger portion of the debt was paid by the insurance company and is resolved. (Tr. 30; 48.) The debt appears on the February 2009 CBR, indicating that it is unresolved. (GE 3.)

5. (¶ 1.e) The \$3,945 debt owed to a credit card company is unresolved. It became due in July 2007. She believes most of the reported amount is for interest and penalties charges that she cannot afford. (Tr. 31; 49.) She has not contacted the creditor.
6. (¶ 1. f) Applicant thinks the \$407 debt is for medical services her son received in February 2002. She is not certain. She has not contacted the creditor to work out a resolution. It is unresolved. (Tr. 51-52; GE 4.)
7. (¶ 1.g) Applicant is unfamiliar with the \$109 debt owed to her current cellular telephone company. It became delinquent in July 2007. (Tr. 32; GE 4.) It is unresolved.
8. (¶ 1.h) This \$482 debt is owed to the landlord of an apartment complex where she lived. It became due in August 2001. She claims she does not owe the debt, but has not taken any action to formally dispute or resolve it. (Tr. 33; GE 4.)
9. (¶ 1.i) This \$286 debt is a medical bill owed for her son's care. It became delinquent in July 2002. It is unresolved. (Tr. 33; GE 2).
10. (¶ 1.j) This \$74 debt is owed to her current cellular company. She is unfamiliar with it. It became delinquent in March 2003. (Tr. 33; GE 2.) It is unresolved.

Applicant submitted copies of 13 checks, totaling \$8,153, which she has issued to creditors. (AE 4.) It is not clear to whom the checks were written, when they were written, and to which SOR debts they pertain, other than one regarding the automobile debt. In summary, her student loan is paid, she paid at least \$355 on the automobile loan, and the other eight debts are unresolved. She admitted that she did not review the credit reports she received from Department Counsel as part of the discovery materials prior to her hearing. (Tr. 55.) She has not obtained financial counseling. (Tr. 61.)

Applicant provided a copy of her budget. Her net monthly income is \$2,923 and expenses are \$2,482, including payments on a credit card, car loan, and a personal loan. She has approximately \$400 at the end of the month for other expenses. (AE 5) She stated that all of her bills are current. (Tr. 58.)

### **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 (DC) and mitigating conditions (MC), 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable clearance 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 an 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."

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to this guideline 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 conditions that could potentially raise security concerns. Under AG ¶ 19(a), “an inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has a history of financial delinquencies that began in August 2001, continued into July 2007, and essentially remain unpaid or unresolved at the present. The evidence is sufficient to raise these potentially disqualifying conditions.

AG ¶ 20 provides six conditions that could mitigate security concerns arising under this guideline:

(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 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;

(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 initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(f) the affluence resulted from a legal source of income.

AG ¶ 20(a) does not apply because Applicant's problems are ongoing and did not occur under circumstances that were so unusual and unlikely to recur. AG ¶ 20(b) has limited application. There is some evidence that Applicant's delinquent debts accrued as a result of periods of unemployment over the course of the last seven years and insufficient child support; however, there is no evidence that she attempted to responsibly resolve or manage her problems during those times, which is necessary for full application of this mitigating condition. Applicant has not obtained credit counseling or presented sufficient evidence to indicate that her delinquent debts are under control,

as required under AG ¶ 20(c). Applicant provided proof that she paid her student loan, demonstrating a good-faith effort to pay that delinquent debt and warranting the application of AG ¶ 20(d) to it. Although she repeatedly claimed that she disputes many of the debts, she never took any affirmative steps to formally dispute the debts with the reporting credit bureaus, which is necessary to warrant the application of AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

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

The security concern pertaining to this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The government alleged in SOR ¶ 2.a that Applicant falsified answers to a question on her SF 86, regarding disclosure of debts more than 90 or 180 days delinquent. The government contended that her omissions may raise a security concern and be disqualifying under AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that she intentionally omitted information about the delinquent debts. When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Because her current bills were paid and she did not have a CBR in front of her when she completed the SF 86, Applicant did not think that she had financial problems. She acknowledged that she made a mistake by not listing her old debts that were on her credit report. After listening to her testimony on this issue, I find that the omission of the information was likely negligent, but not intentional. Hence, the evidence does not establish deliberate falsification.

## 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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 eligibility for a security clearance must include 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. Applicant is a 40-year-old educated woman, who served in the military for eight years and subsequently worked for a defense contractor for almost eight years. Over the course of the last ten years, she has experienced periods of unemployment and limited child support, which have created some financial hardships for her as a single parent. She appears to be dedicated to her job and has performed satisfactorily for her current employer.

In September 2004, the government notified Applicant that certain delinquent debts were creating security concerns. In August 2008, the government again notified her of its concerns. In June 2009, she received the SOR, setting forth delinquent debts that have raised a concern for at least five years. At the hearing, she strongly contended that she paid and resolved the largest debt listed in the SOR and agreed to supply proof. At the conclusion of the hearing, the record remained open for more than two weeks to give her an opportunity to submit evidence in support of her appeal. Despite her consistent statements that the car loan had been resolved since 2005, she did not provide proof (other than a \$355 payment) that the \$14,088 debt, representing 65% of the listed debts, was resolved.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude there is sufficient evidence to raise a security concern under Guideline F, and that Applicant did not mitigate the security concerns raised under financial considerations. For the reasons stated above, Guideline E is found for the Applicant.



## 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against 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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge