



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



In the matter of: )  
)  
) ISCR Case No. 07-10078  
)  
)  
Applicant for Security Clearance )

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

December 31, 2009

Decision

DAM, Shari, Administrative Judge:

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

On August 8, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 June 17, 2008, and waived her right to a hearing before an administrative judge. On July 24, 2009, she withdrew her waiver, filed another answer (Answer No. 2) and requested a hearing. On August 21, 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 6 into evidence without objection. Applicant testified and offered Exhibits (AE) A through I into evidence without objection. DOHA received the hearing transcript on October 21, 2009. The record remained open until October 29, 2009, to give Applicant an opportunity to submit additional information. She timely submitted 14 documents that were marked as AE 1 through 14 and admitted into the record without objection from Department Counsel.<sup>1</sup>

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the allegations contained in ¶¶ 1.c, 1.e, 1.p, 1.q, 1.r, 1.s, 1.t, 1.aa, 1.bb, and 1.gg. She denied the allegations contained in ¶¶ 1.a, 1.d, 1.i, and 1.x. She neither admitted nor denied the allegations contained in ¶¶ 1.b, 1.f, 1.g, 1.h., 1.j, 1.k, 1.l, 1.m, 1.n, 1.o, 1.u, 1.v, 1.w, 1.y, 1.z, 1.cc, 1.dd, 1.ee, 1.ff, 2.a, and 2.b, and offered explanations in support of her answers. Her answers to those allegations are construed to be denials.

Applicant is 40 years old and divorced. She married her first husband in 1988 and divorced in 1992. She and her ex-husband have two children, ages 18 and 19. She remarried in 1994 and divorced in 2004. They did not have children. She needs a few more college credits to complete an associate's degree. Her children currently live with their grandparents as they complete school.

After graduating from high school, Applicant worked for a large department store until 1992 or 1993. She then worked as a teller for a bank until 1998 and a clothing store for the following year. In November 1999, she began employment with her current employer as a contractor. In 2007, her employer promoted her to a supervising position in configuration and data management. She has three employees under her supervision.

Applicant's financial difficulties began after she married her second husband, who assumed control of the family finances. (Tr. 31.) In 1996, she learned that he was not paying their bills. In February 1998, they filed a Chapter 7 bankruptcy and discharged \$65,369 of delinquent debt in August 1998, which included credit cards, utility debts, and many medical bills for her children and herself. (GE 3; Tr. 33.) Later in their marriage, she discovered that he was involved with another woman. When they divorced in 2004, she became responsible for most of their debts because the accounts were in her name. (Tr. 34.)

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<sup>1</sup>Also included in the file are eight exhibits marked Items 3 through 10 that were previously sent to Applicant by the Government and appear to have been attached to Answer No. 2, and are included in the record.

In August 2006, Applicant completed an e-QIP. In response to “*Section 27. Your Financial Record: a. In the last 7 years have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)? b. In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?; d. In the last 7 years, have you had any judgments against you that have not been paid,*” she answered “no.” She did not disclose the \$102 medical judgment that is alleged in SOR ¶ 1.b. In response to “*Section 28: 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 17 of the 33 delinquent debts listed in the SOR.

Applicant explained that her employer gave her the e-QIP and asked her to complete it the same day and did not provide any assistance. She knew she had debts, but did not have a credit report to review. She did not realize that she could make a separate written notation about her debts in the e-QIP. (Tr. 53; 67.) She denied that she intentionally falsified the application. (Answer.)

In October 2007, Applicant responded to the government’s interrogatories about her finances and submitted attachments addressing some of them. (Item 2.) In March 2008, Applicant entered into a contract with a credit services company to restore her credit and provide credit education. (Tr. 36; Item 6.) She paid the company \$941 as a retainer and has paid a monthly maintenance fee of \$99 since May 15, 2008. (Item 6.) The company initially verifies debts and then begins to resolve them. (Tr. 60.) She provided a copy of the SOR to the company for reference. (Tr. 65.) She completed a one-on-one counseling course class through the company. She learned to timely pay her bills to avoid additional fees and to switch the time frame in which to pay some bills to help her monthly cash flow. She has only one credit card now with a current balance of \$293. (Tr. 70.)

With the assistance of the credit services company, Applicant disputed the medical bills listed on the SOR through the credit reporting agencies. She claimed that she was not responsible for them, having paid her co-pays. She thinks the amounts shown on credit reports are monies that the insurance companies billed her for amounts over their negotiated contracts. (Tr. 36; 62; GE 2.) She also disputed other listed debts, one of which she thought was a duplicate debt that was paid.

The May 2008 SOR alleged security concerns based on Applicant’s financial history, which included a July 1998 Chapter 7 bankruptcy discharge of \$65,000 of debt, and her subsequent accumulation of 32 delinquent debts totaling \$26,293. The status of each of those debts is as follows:

1. Applicant paid the four debts listed in ¶¶ 1.a, 1.d, 1.e, and 1.t. They totaled \$2,548, and included the \$400 owed on her student loan (1.t.). (AE 1, 2, B, C.)

2. Applicant disputed the 18 medical debts listed in ¶¶ 1.b, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.m, 1.n, 1.o, 1.u, 1.v, 1.w, 1.z, 1.dd, 1.ee, 1.ff. They have been deleted from her credit file and total \$2,548. (AE 3, 10; GE 2.)
3. Applicant disputed five other debts listed in ¶¶ 1.q, 1.r, 1.x, 1.y, and 1.cc. They have been deleted from her credit file and total \$5,790. (AE 3, 10.) She believes that the debt listed in ¶ 1.x for \$4,115 may be a duplicate of the credit card debt listed in ¶ 1.p. (Tr. 44, 45, 47, 24, 49, 50.)
4. Applicant admitted that she is responsible for paying five debts listed in ¶¶ 1.c (a cable bill for \$589 as of May 2008), 1.p (a credit card balance of \$3,548 as of August 2003), 1.s (a personal loan for \$415 as of October 2008), 1. aa (a balance on an automobile repossessed as of September 2003 for \$8,732), and, 1.bb (a credit card balance of \$2,187 as of August 2006).<sup>2</sup> These debts became delinquent between August 2003 and August 2008 and total \$15,471. (AE 3, C; Item 9.)

In summary, Applicant has resolved \$10,822 of the \$26,293 in delinquent debt alleged in the SOR. She has yet to resolve \$15,471 of the remaining debt, of which \$8,732 relates to a 2003 automobile repossession and \$3,548 is owed on a credit card delinquent as of 2003.

Applicant submitted her budget. Her net monthly income is \$3,065 and expenses are about \$2,500, leaving a remainder of \$400 at the end of the month, after deducting a \$100 credit service company's fee. (AE 12.)

Applicant testified credibly. She presented numerous documents in an organized manner, indicating that she has researched her debts and has attempted to resolve them. She is aware of the importance of financial responsibility.

### **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

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<sup>2</sup>Applicant has held at least four credit cards with this creditor over the years, one of which was paid and another sold to a collection company. (Item 7; GE 5.)

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 problems that began when she married her second husband in 1994 and discharged \$65,369 of delinquent debt through a bankruptcy in July 1998. She continued to accumulate additional debts up to 2004 when she divorced, and after the divorce. She did not begin to address her debts until she learned of the government’s security concerns in October 2007. Some of her debt remains unresolved. The evidence is sufficient to raise these potentially disqualifying conditions.

AG ¶ 20 provides six conditions that could mitigate security concerns arising under this guideline, four of which may potentially apply:

(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; 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.

Applicant attributes her financial problems to her second husband, to whom she was married from 1994 to 2004. During that time, he mismanaged their money, resulting in a bankruptcy in 1998. Upon her divorce in 2004, she assumed their delinquent debts because the accounts were in her name. Some of those conditions were beyond her control; however, there is sufficient evidence to demonstrate that subsequent to the bankruptcy and her divorce, she failed to responsibly manage her delinquent debts and accumulated new ones. Hence, AG ¶ 20(b) has very limited application.

Applicant provided evidence that in March 2008, she hired a company to resolve her debts and restore her credit. She has continued to work with that company, which has assisted her in resolving 27 of the 32 debts listed on the SOR. She has also participated in individual credit counseling through the company. There is sufficient evidence to warrant the partial application of AG ¶ 20(c), as some of her financial delinquencies are slowly coming under control.

Applicant paid four delinquent debts, demonstrating a good-faith effort to resolve or pay those creditors, and warranting the application of AG ¶ 20(d) to those debts.

AG ¶ 20(e) is applicable in this case. Applicant produced evidence that she successfully disputed 23 debts, beginning in March 2008 when she hired the credit counseling company to help her resolve delinquent debts. She disputed 18 medical debts because she believed she did not owe the monies and that the insurance companies were attempting to collect funds outside the scope of their contracts. She appeared to be uncertain about five non-medical debts, but thought the largest one, \$4,115, was a duplicate credit card debt that was previously resolved.

Based on all of the facts discussed above, I find for Applicant under Guideline 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 and 2.b that Applicant falsified answers to two questions on her e-QIP, regarding disclosure of a judgment and 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 judgment and delinquent debts. When a falsification allegation is controverted or denied, the government has the burden of proving it. 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)).

When completing her e-QIP, Applicant knew that she had debts, but did not know the extent of those debts. She did not have any information available to her regarding her debts in order to accurately complete the e-QIP, and did not realize that she could

have written a notation about them in the e-QIP. She was not given sufficient time to complete the form or assistance from her employer. After listening to her testimony and observing her demeanor, I find that the omission of the information was not intentional. Hence, the evidence does not establish deliberate falsification. This Guideline is found in her favor.

### **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 woman, who has worked for a defense contractor for ten years and was recently promoted to a supervisory position. She has a history of financial problems, dating to 1994 when she married her second husband. In 1998, she discharged a large amount of debt through bankruptcy. She continued to have financial issues with him until they divorced in 2004, including the accumulation of an August 2003 automobile loan debt and an August 2003 credit card bill. Subsequently, she incurred additional delinquent debts. Since March 2008, she has slowly attempted to resolve about \$26,000 of delinquent debt in conjunction with the credit service company she hired. She has resolved 27 of the 32 debts, representing about 40% of the debt amount, and owes five creditors, which represents about 60% of the debt amount, half of which relates to the automobile repossession.

Given Applicant's awareness of the effect future delinquencies may have on her employment, along with a believable commitment to responsibly manage her finances, I do not believe similar problems will recur, despite a potentially tight budget. The Appeal Board noted in ISCR Case No. 06-12930 "that an applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken 'significant actions to implement



that plan.’ ISCR Case No.04-09684 at 2-3” (App. Bd. Jul.6, 2006). In this case, Applicant has slowly worked to address many delinquent debts with the assistance of a company and has acknowledged five outstanding obligations and her credible intention to resolve them.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. There is no other evidence in her background to indicate that her current delinquent debts may create a security risk. For all these reasons, conclude Applicant mitigated the security concerns arising 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
Subparagraphs 1.a through 1.gg:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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SHARI DAM  
Administrative Judge