



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



In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 07-10185
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'I, Esq., Department Counsel  
For Applicant: *Pro se*

August 26, 2008

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns pertaining to Financial Considerations. Clearance is denied.

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-Qip), on March 1, 2006. On February 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F 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.

Applicant acknowledged receipt of the SOR on March 14, 2008, which was received at DOHA on March 18, 2008. She answered the SOR in writing on March 28, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on April 15, 2008, and I received the case assignment on

June 10, 2008. DOHA issued a notice of hearing on June 20, 2008, scheduling the hearing for July 17, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 6, which were received without objection. The government also submitted a Government's Exhibit List, which was marked as Exhibit (Ex.) I. Applicant offered Applicant Exhibits (AE) A through L, which were received without objection, and she testified on her own behalf. DOHA received the hearing transcript (Tr.) on July 24, 2008.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 43-year-old administrative assistant, who has worked for her defense contractor employer since January 2006. She seeks a security clearance in conjunction with her current position. She previously held a clearance while employed by a government contractor from 1992 to 2000. GE 1, Tr. 17-19.

Applicant graduated from high school in June 1983. Beyond high school, she attended a business school during the 1986 to 1987 timeframe and was awarded a Business Automation Certificate. Tr. 13-17. She has never been married and has two sons, ages 11 and 5. GE 1, Tr. 12-13.

Applicant's background investigation addressed her financial situation and included among other things the review of her March 2006 e-QIP, her September 2007 Signed Response to Interrogatories and Attachments, her May 1998 Chapter 7 Bankruptcy Report, and her April 2008, December 2007 and March 2006 Credit Bureau Reports. GE 1 – 6.

The background investigation revealed that Applicant had filed for Chapter 7 bankruptcy in November 1997, and was awarded a discharge in May 1998. (SOR ¶ 1.a.) Response to SOR, GE 3. Applicant stated she was held responsible for significant debts accrued from a failed relationship. Tr. 21-24.

Since she was awarded her discharge in May 1998, she has accumulated 20 debts totaling approximately \$58,040. (SOR ¶¶ 1.c. – 1.v.) Two of these debts are federal tax liens totaling \$23,571. (SOR ¶¶ 1.c. – 1.d.) She incurred this federal tax liability from non-payment of federal income taxes to the Internal Revenue Service (IRS) for tax years December 1998 through December 2001, December 2003, and December 2006. AE E, Tr. 28-29. Applicant stated she increased her exemptions to allow her to have a larger net income, which she needed to pay her living expenses and also cashed in her 401k retirement account incurring penalties. Tr. 28-29. Applicant stated she has adjusted her exemptions to the "right amount." Tr. 30. Applicant established a

payment plan with the IRS in 2002. Currently, she is making monthly payments of \$200 to the IRS and is up-to-date. AE E – AE I, Tr. 27-33.

In addition to federal tax liens, discussed *supra*, the SOR alleges she has two state tax liens totaling \$4,808. (SOR ¶¶ 1.e. – 1.f.) Applicant incurred her state tax liability the same way as her federal tax liability, i.e. taking too many exemptions to have a larger net income, and cashed in her 401k retirement account early. She has since adjusted her exemptions to the correct number. She has not paid her state tax liens, but intends to do so when able. Tr. 33-35.

SOR ¶ 1.g. is a \$75 past due car loan payment, which has been paid. In fact, Applicant paid off the entire car loan in May 2008. AE J, AE K, Tr. 35-36. SOR ¶ 1.q. is a \$1,859 debt owed to her state for an overpayment of unemployment benefits. She has contacted her state agency and negotiated an agreement make \$50 monthly payments, but has been unable to make any payments. Tr. 46-47.

The remaining SOR allegations consist of 14 debts totaling approximately \$23,727. These debts include a combination of collection accounts, charged off accounts, and a past due account. (SOR ¶¶ 1.h. – 1.p., 1.r. – 1.v.) Applicant's financial delinquencies began in 2001 and continues through today. GE 4 – GE 6. Applicant's plan to resolve these debts is to file Chapter 7 bankruptcy, which has yet to be filed. She entered into a Bankruptcy Engagement Agreement with a law firm on September 11, 2007. (SOR ¶ 1.b.) At the time of hearing, Applicant had paid \$850 towards a \$1,700 retainer fee. The law firm requires full fee payment before they will file Applicant's bankruptcy petition. GE AE A – AE D, Tr. 24-26.

Apart from her debt to the IRS and late car payment (SOR ¶¶ 1.c. – 1.d., 1.g.), all remaining debts alleged remain unpaid or unresolved. Applicant's net monthly take home pay is approximately \$2,790. Tr. 52-53. Her boyfriend and father of her children lives with her and pays \$260 monthly rent. He also owns a car, which the household uses for transportation. Tr. 54, 65.

Applicant has sought financial counseling on two occasions. The first was a one-time session offered through a previous employer in the 2000 – 2001 timeframe. The second was a series of seminars offered by her present employer. Applicant also must complete financial counseling in conjunction with her planned Chapter 7 Bankruptcy, which has yet to occur. Tr. 54-55. Applicant's 11-year-old son suffers from asthma and allergies. Her five-year-old son is in good health. Tr. 64-65. Applicant describes her current situation as "living from paycheck to paycheck." Tr. 68.

Applicant attributes her financial difficulties to three separate periods of unemployment, i.e. January 2000 through March 2000, November 2001 through March 2002, and December 2005 through January 2006 or underemployment while employed. GE 1, Tr. 36-38.

Applicant did not submit any employee performance evaluations, reference letters or character evidence.

### **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. 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 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

Under Guideline F (Financial Considerations),<sup>1</sup> the Government’s concern is that an Applicant’s “[f]ailure 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.”

Applicant has a history of failing to meet her financial obligations dating back to 1997, when she filed for Chapter 7 bankruptcy. Since being awarded a discharge in 1998, she has accumulated 20 delinquent debts totaling approximately \$58,040.

Applicant is making monthly payments to the IRS and has satisfied one small debt of \$75 for a late car payment. Accordingly, she has addressed three of the 20 debts alleged in the SOR. The remaining 17 debts remain unpaid or unresolved. Applicant hopes to include the majority of her debt in a Chapter 7 Bankruptcy yet to be filed. For these 17 debts, her financial recovery plan is prospective in nature. Her financial difficulties remain ongoing. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

Considering the record evidence as a whole,<sup>2</sup> I conclude that Applicant is able to receive partial credit under Financial Considerations Mitigating Condition (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*; for her three periods of unemployment. I also gave Applicant partial credit for receiving credit counseling under FC 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*.

However, whatever credit she received by those MCs is overcome by years of financial mismanagement going back at least 11 years. Applicant presented minimal or no evidence documenting efforts taken to contact or resolve debts with her unpaid

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<sup>1</sup> Guideline ¶ 18.

<sup>2</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

creditors. Nor does the evidence support the notion that her past participation in financial counseling netted any tangible results.

Accordingly, I specifically considered FC MC ¶ 20(b): and FC MC ¶ 20(c), and concluded they do not apply given the facts of this case. Applicant's uncorroborated testimony fails to establish mitigating factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts.

She presented no evidence to show she has dealt responsibly with her financial obligations before, or especially after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, credible payment plans). Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility, or that she has taken control of her financial situation. Based on her past performance, her prospective assurances ring hollow. Her financial problems are likely to be a concern in the future. Moreover, her financial problems are recent, not isolated, and ongoing.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does not support a favorable decision.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial difficulties.

### **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. – 1.b.:	Against Applicant
Subparagraph 1.c. – 1.d.:	For Applicant
Subparagraph 1.e. – 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h. – 1.v.:	Against Applicant

## **Conclusion**

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

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ROBERT J. TUIDER  
Administrative Judge