



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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-----, ----- ) ISCR Case No. 07-10405  
SSN: ----- )  
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Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro Se*

April 25, 2008

**Decision**

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WHITE, David M., Administrative Judge:

Applicant admitted owing 12 delinquent debts, totaling \$7,044, and denied, without substantiating evidence, an additional 7 delinquent debts totaling \$4,402 that appear on her credit bureau reports (CBRs). She does not have the means to repay these debts. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted her electronic Questionnaire for National Security Positions (SF 86), on December 29, 2005. On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines F.<sup>1</sup> 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,

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<sup>1</sup>Item 1.

2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 17, 2007, and requested that her case be decided by an Administrative Judge on the written record without a hearing.<sup>2</sup> Department Counsel submitted the Government's written case on February 12, 2008. A complete copy of the file of relevant material (FORM)<sup>3</sup> was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of her copy of the FORM on February 29, 2008, and returned it to DOHA. She provided a written response to the FORM on March 18, 2008, further explaining her situation, and made no objection to consideration of any evidence submitted by Department Counsel, who did not object to consideration of Applicant's response to the FORM. I received the case assignment on March 27, 2008.

### **Findings of Fact**

Applicant is a 31-year-old employee of a defense contractor. She has no prior military service, and has never held a security clearance. She never married, and has two children, ages eight and five. She was fired from a job she had held for three and a half years in October 2003, and was unemployed until March 2004 when she started working on the military base where she is still employed.<sup>4</sup>

In her Answer to the SOR, dated December 5, 2007, Applicant admitted the truth of the factual allegations in SOR ¶¶ 1.d through 1.h, 1.k through 1.n, and 1.q through 1.s. These twelve delinquent debts total \$7,044. Eight of these debts, totaling \$1,535, are for medical bills placed for collection between January 2005 and September 2006. Her admissions are corroborated by the CBRs in Items 5 through 8 of the FORM, and are incorporated herein as findings of fact. She also stated, "I do understand that it has taken me longer than average to get these accounts paid, however I have not been in a position to be able to afford the arrangements that have previously been offered to me. I am actively contacting the creditors and will come to an arrangement with them that will satisfy the debit [sic] and I will be able to afford."<sup>5</sup>

The seven delinquent debts listed in the SOR, which Applicant denied, total \$4,402. Each of them is also documented on the record CBRs, although a few of the older debts have been removed from more recent reports. The only explanation she provided for denying any of these debts was a notation that she "cleared" a \$3.00 collection account (SOR ¶ 1.j) on December 7, 2007, about ten days before she

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<sup>2</sup>Item 2.

<sup>3</sup>The government submitted nine items in support of the allegations.

<sup>4</sup>Item 5.

<sup>5</sup>Response to FORM, dated Mar. 18, 2008, at 1-2.

submitted her SOR Answer, and well after the date alleged in the SOR. She provided a reference number, but no further evidence documenting payment of this debt. She submitted no evidence any of the remaining delinquent debts were either erroneously listed on her CBRs or had been resolved. The record establishes that all SOR allegations are accurate. Some became delinquent as long ago as 1999, some as recently as 2006, and some in the intervening years including many in 2005. In October 2003, about eight months after her second child was born, Applicant was fired for missing too much work, and was unemployed for the next five months.<sup>6</sup> However, her delinquencies both pre- and post-date this period of unemployment, and she did not specifically attribute any of them to this time. Other than stating, without substantiation, that she incurred significant medical expenses for her first child shortly after he was born in 1999, she offered no other evidence that would support application of any financial considerations mitigating condition, either in terms of resolving or disputing these debts, or by seeking counseling or other assistance.

Applicant provided no other evidence of good character, trustworthiness or judgment for consideration in mitigation. Since she elected a determination on the written record, no in-person evaluation of her character or credibility was possible.

### **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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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.

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<sup>6</sup>Item 4 at §§ 11, 22.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **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 conditions that could 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 accumulated a significant number and amount of delinquent debts over the past nine years. She was either unable or unwilling to repay these debts, and provided no information that repayment of any of them is probable in the foreseeable future. Applicant demonstrated no effort to resolve her more than \$11,400 of proven delinquent debt. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination and balancing of resulting security concerns with any potentially mitigating matters.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be

mitigated where “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.” Applicant’s financial issues have been a continuing problem since at least 1999. She is a single mother of two children and has regularly incurred debt she could not repay throughout their lives. Her disregard of these financial obligations is ongoing, and continues to raise concerns about her current reliability, trustworthiness, or good judgment. The evidence does not support this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant’s delinquencies arose on a regular basis, with new delinquent debt reported in almost every year since 1999. These delinquencies preceded and followed her five-month period of unemployment after being fired for missing work, with no evidence of recent responsible action to address them. Some of the older debts may have become delinquent due to medical expenses for her son’s treatment, but the majority of her indebtedness arose more recently. This potentially mitigating condition is raised by her undocumented assertions, but is not supported as a factor for significant consideration in this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant neither asserted nor provided evidence of either of these conditions. I conclude these potentially mitigating conditions do not apply.

Applicant expressed a desire to address or resolve the delinquent debts established by the Government, if and when she somehow acquires additional funds. To date, however, she has made minimal, if any, effort to do so, even after receiving notice of the security concerns raised by these issues. This supports the inference that she remains financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. The \$3.00 delinquent debt, alleged in SOR ¶ 1.j, would be insignificant standing alone, but it reflects part of a general pattern of inattention and financial irresponsibility. This pattern further indicates a lack of judgment and unwillingness to abide by rules and regulations, thereby raising substantial questions about her reliability, trustworthiness, and ability to safeguard classified information.

### **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. Applicant is a mature individual who is responsible for her choices and conduct. Some of her delinquent debts involve medical bills, but they were relatively small, and appear to be co-pay or deductible amounts. She did not show that any of these debts arose from unusual medical circumstances, rather than normal care, or that the other debts arose due to circumstances largely beyond her control. Applicant has been employed for all but five months of the period during which these debts became delinquent, but has resolved none of them. She submitted no evidence of rehabilitation or permanent behavioral change, or demonstrating that risk of coercion or duress is not significant. Her ongoing disregard of lawful obligations, especially after receiving notice of the security concerns raised thereby, creates continuing doubt about her trustworthiness and reliability. She offered no other evidence about her character or responsibility to mitigate these concerns, or tending to make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her 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:	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:	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
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
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	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. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge