



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



In the matter of: )  
)  
) ISCR Case No. 07-10409  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 14, 2008

**Decision**

RIVERA, Juan J., Administrative Judge:

After a 1999 bankruptcy discharge, Applicant established a history of failing to meet her financial obligations. As of the date of the hearing, she had 9 accounts, owing approximately \$66,000, seven of which had been delinquent for many years. Her evidence is insufficient to show that she is in control of her finances, is not overextended, and has a track record of financial responsibility. She failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

**Statement of the Case**

On January 4, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Standard Form (SF) 86.<sup>1</sup> On November 9, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons

---

<sup>1</sup> GE 1.

(SOR) to her,<sup>2</sup> pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>3</sup> The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR on December 1, 2007 and January 21, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on February 14, 2008. DOHA issued a notice of hearing on February 26, 2008. The hearing was convened as scheduled on March 26, 2008. The government offered Government Exhibits (GE) 1 through 4, which were admitted without objection (Tr. 19). Applicant testified on her own behalf, and presented four exhibits, marked Applicant Exhibits (AE) 1 through 4, which were received without objection. DOHA received the transcript of the hearing (Tr.) on April 4, 2008.

### **Procedural Issues**

The Government moved to amend the first sentence of SOR ¶ 1.h, by deleting the year “2008,” and substituting “2007.” Applicant did not object. I granted the motion (Tr. 13).

### **Findings of Fact**

Applicant admitted all the SOR allegations with the exception of SOR ¶¶ 1.f and 1.i, which she disputed, and SOR ¶ 1.k, which is a duplicate of SOR ¶ 1.b. SOR ¶¶ 1.b and 1.k allege the same offense and were consolidated under SOR ¶ 1.b. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 46-year-old senior software consultant working for a Government contractor. After completing high school, she enlisted in the U.S. Army where she served on active duty for three years. She achieved the rank of E-4, and received an honorable discharge. While in the Army, she had access to classified information at the top secret level. Since her discharge from the Army, she has had continuous access to

---

<sup>2</sup> GE 1 is the source for the facts in the remainder of this paragraph unless stated otherwise.

<sup>3</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant’s case.

classified information. As of the hearing day, she had access to classified information at the secret level. There is no evidence to show that she has ever compromised or caused others to compromise classified information. Nor is there evidence showing that she has ever failed to follow the rules and procedures required to handle classified information. She has no police record, and there is no evidence she has used or trafficked in illegal drugs.

After her discharge from the service, Applicant worked for a Government agency for approximately 17 years as an analyst in the Information Technology field. In January 2005, she resigned her civil service position and started working for defense contractors. She has worked for her current employer since April 2006, and needs access to classified information to do her job. Applicant is considered a valuable employee, and had earned a good reputation among her customers and employer. She is considered a diligent and professional employee (AE 1).

Applicant has been married twice and has three children. She was first married in 1981, and divorced in 1990. She has two daughters from that marriage, ages 24 and 22. Applicant provides financial support to both of her daughters. Applicant's oldest daughter is attending college. Applicant pays for her daughter's student loans and helps her with college expenses (Tr. 31, 67). Applicant's younger daughter is not married. She has two children of her own, ages three and one. They live with and depend on Applicant's financial support on a frequent basis. Applicant married her second husband in 1990 and divorced him in 2003. She has a 17-year-old son from this marriage. He is attending high school and is fully dependent on Applicant. She receives \$360 month as child support from her second husband. Additionally, Applicant's 77-year-old mother lives with and is financially dependent on Applicant (Tr. 32).

Applicant has completed approximately 24 college hours of accounting and six hour of mathematics. She last attended college in 1999 (Tr. 5).

## **Financial Considerations**

Applicant's background investigation addressed her financial situation and included the review of her e-QIP, two credit bureau reports (CBRs) from 2007 (GEs 2 & 3), and a Docket Sheet for Applicant's 1999 Chapter 7 bankruptcy petition (GE 4). The SOR alleges 11 delinquent/charged off accounts totaling approximately \$68,600.

Applicant admitted that the debts alleged in SOR ¶¶ 1.a (\$1,118), 1.b (\$6,827), 1.c (\$446), 1.d (\$1,236), 1.e (\$221), and 1.g (\$36,049) are her debts and have been delinquent for a long period of time. She disputed the debts alleged in SOR ¶¶ 1.f (\$60), claiming she never had an account with this provider, and 1.i (\$2,135), claiming the debt should have been paid by the seller of her house in accordance with her house purchase contract. She never contacted anyone to dispute SOR ¶ 1.f (Tr. 34), and claimed she did not know how to formally dispute the debts (Tr. 36). She presented no documentary evidence to support her claim concerning SOR ¶ 1.f.

Regarding her 1999 bankruptcy filing, Applicant explained her financial problems were caused by a combination of factors. After divorcing her first husband in 1990, she retained many of the debts she personally acquired while married. In addition to supporting herself and her children, her parents moved in to live with her after her father was diagnosed with cancer. She assisted her parents financially. She remarried in 1990, and her second husband also had numerous debts from his first marriage. He contributed very little to the household finances. The accumulation of her father's medical expenses, her debts, and her then husband's debt, forced Applicant, her husband, and her parents to file for bankruptcy protection. Most of her debts were discharged in July 1999.

Applicant described her financial situation from 1999 to 2003 as "pretty good but not perfect". She was making it on a month-to-month basis, but not necessarily making all her payments, and sometimes she had to "shuffle" her payments (Tr. 41-42). In 2003, Applicant made the mistake of buying a home outside of her financial means. After the purchase of her home, she struggled every month to pay the mortgage and to cover her day-to-day living expenses, and was never able to make ends meet (Tr. 37). Applicant could not make her mortgage payments and the house went into foreclosure in September 2007 (Tr. 37). Applicant believes she will owe approximately \$56,000 as a result of the foreclosure, which includes \$36,000 she owed for a second mortgage on the house (SOR ¶ 1.g).

Applicant left her Government employment in 2004 after 17 years of civil service. She cashed in her civil service retirement fund because she needed money to pay off some of her debts and a car note to have money left over at the end of the month to make her mortgage payments (Tr. 61). The Internal Revenue Service (IRS) and her state assessed taxes and penalties against Applicant for the early withdrawal of her civil service retirement fund. This resulted in Applicant acquiring the debts alleged in SOR ¶¶ 1.l and 1.m. In September 2006, Applicant entered into a payment agreement with the IRS to pay \$280 a month. The IRS total initial debt was around \$13,000. As of the hearing she owed approximately \$7,344 (Tr. 33-34, 65). In February 2008, she also established a payment plan with her State tax authorities to repay \$5,600 in monthly installments of \$400.

Additionally, while working for the Government and after leaving her civil service job, Applicant incurred travel and moving expenses associated with her job moves, lateral transfers, and servicing customers in different locations. As an example, she noted that in January 2005, she moved back to her home state and took a pay cut of \$35,000 (Tr. 59).

Applicant explained that although her delinquent debts are relatively small (except for the foreclosure related debts), she never made any effort to contact her creditors and did not pay any of her debts because she could not afford to pay for her day-to-day living expenses and her past financial obligations (Tr. 71).

Applicant testified she has not had any periods of unemployment since 1982. From 2004 to 2006, Applicant's yearly salary was approximately \$75,000. Since 2006, she has been earning approximately \$110,000 (Tr. 65). Her monthly take home pay is around \$5,800. She receives \$360 for child support. Her monthly rent is \$1,090. Her monthly expenses are as follow: utilities \$500; food \$500-\$750, car insurance \$350, car payment \$450, and cell phone \$200. Her son drives a 1999 Sebring she bought used in 2002. In 2007, Applicant bought a 2006 Sebring because she needed a reliable car to perform her job as a traveling consultant (Tr. 45-46). She only carries a company credit card which she uses for job related expenses.

In January and August 2007, and in January 2008, Applicant consulted with a bankruptcy attorney seeking assistance to resolve her debt. She was advised to wait until her house foreclosure is final to determine the extent of her total debt before deciding whether bankruptcy is a feasible option (Tr. 51, 75). Other than the bankruptcy counseling she received in 1999, 2007, and 2008, Applicant has not participated in any financial counseling.

Applicant expressed remorse for her past financial problems. She asserted she is doing the best she can under her circumstances. She noted her honorable service for her country, as well as her 17 years of civil service working for a Government agency. She has had access to classified information since 1982 without any adverse incidents. Through the years, Applicant has disclosed to her supervisors her financial problems and claimed her financial problems cannot be used by anyone to exploit or influence her. Applicant testified she is a valued employee, and has an excellent reputation among her clients and employers for protecting the Government's interest. Applicant asserted she has strong morals, values and integrity, which have allowed her to work in positions of trust (Tr. 25).

## **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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”<sup>4</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>5</sup>

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

---

<sup>4</sup> See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>5</sup> “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

## Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is well documented in her credit reports, her SOR response, and her testimony. She received Chapter 7 bankruptcy protection in 1999. Shortly thereafter, she acquired numerous debts which became delinquent and have remained outstanding. As of the hearing date, she had nine outstanding debts totaling approximately \$66,000. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(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; 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.

Considering the record evidence as a whole,<sup>6</sup> I conclude that none of the mitigating conditions apply. Applicant presented little evidence of efforts taken to contact creditors, or to resolve any of the debts since she acquired them. Nor is there any evidence that she has participated in any financial counseling. I specifically considered Financial Considerations Mitigating Condition AG ¶ 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”, and conclude it applies, but only to a limited extent.

Applicant’s testimony established factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts, i.e., being a single mother, and sole provider for her three children, two grandchildren, and her mother; the lack of financial assistance from her adult children and her ex-husband (while they were married); her father’s medical expenses; her bad business decisions to purchase a home beyond her financial means and to cash in her civil service retirement fund; and the additional expenses associated with her job lateral transfers, moves, and work-related travel.

Notwithstanding, Applicant’s evidence is not sufficient to show she has dealt responsibly with her financial obligations before, or especially after receipt of the SOR. Applicant has been consistently employed since 1982. From 2004 to 2006 she earned around \$75,000 a year, and from 2006 to the present she earned approximately \$110,000 a year. She presented little or no evidence to show paid debts, settlements, documented negotiations, payment plans, budgets, or financial assistance/counseling. 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 the available evidence, she is overextended financially and her financial problems are likely to be a concern in the future. Her financial problems are recent, not isolated, and ongoing.

### **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

---

<sup>6</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.



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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c).

Applicant's 26-years of working for the Government and Government contractors weighs in her favor. She has had access to classified information for 26 years and there is no evidence that she ever compromised or caused others to compromise classified information. She is considered a valued employee who is diligent, responsible, and professional. Aside from her delinquent debts (which are a civil, non-criminal issue), she is a law-abiding citizen, a concerned mother and grateful daughter. She expressed regrets for her financial mistakes and claimed she is trying to correct them.

Considering the totality of the circumstances in her case, including Applicant's age, education, maturity, her years working for the Government and defense contractors, she demonstrated a lack of judgment and trustworthiness in the handling of her financial affairs. Because of her age, education, and job experience she knew or should have known of the Government's security concerns. She failed to deal responsibly with her financial obligations, especially after receipt of the SOR. Her failure or inability to live within her means and to meet her financial obligations indicates poor self-control or an unwillingness to abide by rules and regulations. Her behavior raises questions about her reliability, and ability to protect classified information.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns pertaining to 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 |
| Subparagraphs 1.a - 1.j:   | Against Applicant |
| Subparagraph 1.k:          | For Applicant     |
| Subparagraphs 1.l and 1.m: | Against Applicant |

## **Conclusion**

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

---

Juan J. Rivera  
Administrative Judge