



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



In the matter of:	)	
-----	)	
SSN: -----	)	ISCR Case No. 07-10507
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 20, 2008

**Decision**

WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On February 21, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on January 14, 2008 and requested a hearing. The case was assigned to me on April 2, 2008, and was scheduled for hearing on May 1, 2008. A hearing was held on May 1, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of five exhibits; Applicant relied on one witness (herself) and nine exhibits. The transcript (R.T.) was received on May 20, 2008. Based upon a review of the case

file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Rulings and Evidentiary Issues**

Before the close of the hearing, Appellant requested leave to supplement the record with documentation of her bank statements. For good cause shown, Applicant was granted seven days, to May 11, 2008 (R.T., at 82), to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with documented copies of a creditor's motion for summary judgment and the entered summary judgment in the creditor's behalf. her bank statements and character references. Department counsel did not object to these post-hearing submissions. Her post-hearing exhibits were admitted and considered.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have (a) accumulated 10 debts exceeding \$11,600.00 and (b) submitted a personal financial statement in September 200 that indicates a monthly remainder of \$119.00 without any reflected monthly payments on her listed delinquent debts. For her answer to the SOR, Applicant admitted all of the of the allegations.

### **Findings of Fact**

Applicant is a 54-year-old flight service center representative for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant is married and has three grown children. Two of her children reside with her: her daughter and one of her sons (R.T., at 45). Applicant provides financial support only for her son.

Between 2002 and 2005, Applicant accumulated 10 delinquent debts, exceeding \$11,600.00. She attributes these debts to financial setbacks she experienced in 1988. In 1988, she met a man with whom she lived with for the ensuing 13 years (R.T., at 64). While he lived with her, he paid the rent on the house they shared and aided in the care of her children. In or about 1998, Applicant and her boyfriend determined to buy a house together. Because of his credit problems, they could not obtain the necessary joint financing (R.T., at 64). So, Applicant purchased the house with her own financing. About a year after they closed on the house, her boyfriend vacated the premises and left her with a mortgage to service by herself.

Burdened with household and mortgage expenses, Applicant struggled paying her bills. She did some prioritizing with her mortgage and let some of her other debts slip (R.T., at 64-65). In 2002, she was diagnosed with skin cancer on her nose.

Believing at the time that her scheduled surgery would be paid for by her medical insurance carrier, she went ahead with the surgery (R.T., at 66-67). She was later told that her company declined to pay on her medical insurance policy (R.T., at 67-68). This left her without any coverage (R.T., at 68). Many of the medical bills listed in the SOR (creditors 1.a, 1.c, and 1.g through 1.j) are related to her cancer surgery and treatment (R.T., at 66-67).

Several of Applicant's listed debts, however, are not medical-related. One of the listed debts is a medical creditor (creditor 1.a) who obtained a judgment against Applicant in June 2002 in the amount of \$1,709.17. Applicant resolved this judgment with the creditor in April 2005, and obtained a release of judgment (see ex. A; R.T., at 48-49).

Besides her creditor 1.a debt, Applicant provides documentation of her payment of three of her smaller debts, *i.e.*, her creditor 1.b/1.l debt (a duplication), her creditor 1.f debt, and her creditor 1.j debt (see exs. B, C, and F; R.T., at 50-55, 61-62).

Applicant is still working on her remaining debts. She was able to work out a payment plan with one of her creditors. With creditor 1.g (a medical account with a \$4,113.00 balance), she documents payment of \$113.50 in April 2008 and commits to paying \$100.00 a month to the creditor (see ex. E; R.T., at 51-52). But she has yet to contact creditors 1.c, 1.d, 1.e and 1.h (R.T., at 55-59).

Of her four remaining debts, creditor 1.e holds the largest credit balance. It represents a deficiency on a repossessed car she co-signed for her daughter in 1996 for about \$12,000.00 (see ex. 4; R.T., at 76-77). When her son-in-law lost his job, they began falling behind in their payments. Unable to help her daughter with the car payments, Applicant and her daughter eventually acceded (sometime in 2000) to the creditor's repossession of the car (R.T., at 78-79). Following the hearing, Applicant provided copies of the entry of a February 2006 order granting summary judgment on the creditor's claimed deficiency against Applicant in the aggregate amount of \$5,104.53, plus assessed attorneys fees of \$1,850.00 (see ex. J). Applicant says she paid about \$10,000.00 on the vehicle before it was repossessed. She believed she was notified of the net deficiency following resale of the vehicle and was afforded an opportunity to supplement the record with sale information (R.T., at 80-82). Her post-hearing documentation, however, reflects a considerably larger deficiency resulting in judgment and does not include any evidence of payment or payment arrangements with the creditor.

Applicant did pursue financial counseling in 2001 after her finances tightened over her mortgage (R.T., at 68-69). With the help of her counselor, she developed a budget. Because her debts exceeded her income at the time, her counselor could not help her any further (R.T., at 68). She has not pursued any further financial counseling (R.T., at 70).

In her most recent personal financial statement she completed in September 2007, Applicant listed net monthly income of \$1,928.92, monthly household expenses of \$454.00, and household debts of \$1,355.00 (see ex. 2). She listed a personal monthly remainder of just \$119.00. However, this remainder did not reflect any payments on her accrued delinquent debts (see ex. 2). She has had no success finding a second job (R.T., at 70).

Even with her limited resources, Applicant was able to purchase a 2008 vehicle in February 2008 for around \$19,000.00. Her \$430.00 monthly payments on this vehicle are not included in her personal financial statement (R.T., at 71-72). Besides this new 2008 vehicle, she owns a 2005 vehicle, which she purchased in her name for about \$10,000.00 (R.T., at 72). Without enough income herself to cover her car payments on this second vehicle, she must look to her daughter to make these payments (R.T., at 72).

While Applicant has a 401(k) plan, the account has been frozen by her employer (R.T., at 72-73). She has no known outstanding debts besides the listed debts and appears to enjoy a comfortable working relationship with her coworkers.

### **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*The Concern:* "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known

sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.” Adjudication Guidelines, ¶ 18.

### **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Following a break-up with a former boyfriend (whom she relied on for financial support) in the late 1990s, Applicant fell behind with a number of her creditors. Several of her major debts either remain unresolved or have only recently been addressed. Absent documented discharge or payment initiatives with her remaining listed creditors, these debts raise security significant concerns.

In Applicant's case, her still outstanding delinquent debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19 (a) “inability or unwillingness to satisfy debts” and DC 19(c), “a history of not meeting financial obligations.” These disqualifying conditions cover the core concern of AG ¶ 18: poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which, both individually and collectively, can raise questions about an individual's reliability, trustworthiness and ability to safely occupy a position of trust.

Applicant's accumulated debts are attributable in part to her dissolution of a longstanding relationship with a boyfriend she relied on for financial assistance. Some of her debts are medically related to treatment she received for a skin cancer condition following her cancer diagnosis in 2002. Applicant's financial difficulties are associated with her reduced support and medical issues. Together, her described difficulties provide enough extenuating circumstances to warrant some application of mitigating conditions covered by AG ¶ 18. 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," has application.

At this time, not all of Applicant's covered debts are documented to have been paid, disputed, or settled. They exceed \$7,000.00 in the aggregate and represent a considerable debt load on her current income sources. Her documented recent settlement arrangement with creditor 1.g entails a recent \$113.00 payment and a commitment to make monthly payments in the future. While encouraging, this payment arrangement is very recent and reflects too little seasoning (just one payment so far) to warrant any significant mitigation weight. In fairness to Applicant, she is able to document payment of several of her other listed debts. These payments cover her smaller debts, except, for creditor 1.a's judgment debt.

Without more documented information to demonstrate she is addressing her listed debts and making use of financial counseling, she cannot safely mitigate all of the Government's financial concerns. Holding a security clearance involves the exercise of important fiducial responsibilities, which include the expectancy of consistent trust and candor. Financial stability in a person cleared for access to classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases.

Use of a whole person assessment that takes into account all of the facts and circumstances surrounding Applicant's debt accumulations is insufficient to enable Applicant to surmount security concerns independent of the express disqualifying conditions covered by AG ¶ 18. Without more exhibited payment seasoning and work-out efforts to demonstrate progress in resolving her remaining debts, it is difficult to draw convincing conclusions about her overall trustworthiness based on factors not covered in the mitigation conditions of the guideline for financial considerations. Based on her current income, it does not appear likely that Applicant will be in a position to make any material reductions in her debts in the foreseeable future.

Taking into account all of the facts and circumstances surrounding Applicant's unsatisfied debts and overall presentation of payment histories, Applicant does not mitigate security concerns related to her still outstanding debts. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.c through 1.e, 1.g,

1.h, and 1.k). Favorable conclusions warrant with respect to sub-paragraphs 1.a and 1.b, 1.f, 1.i., and 1.j.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F: (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Sub-para. 1.a	FOR APPLICANT
Sub-para. 1.b:	FOR APPLICANT
Sub-para. 1.c:	AGAINST APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT
Sub-para. 1.e:	AGAINST APPLICANT
Sub-para. 1.f:	FOR APPLICANT
Sub-para. 1.g:	AGAINST APPLICANT
Sub-para. 1.h:	AGAINST APPLICANT
Sub-para. 1. i:	FOR APPLICANT
Sub-para. 1.j:	FOR APPLICANT
Sub-para. 1. k:	AGAINST APPLICANT

### **Conclusions**

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 Applicant's security clearance. Clearance is denied.

---

Roger C. Wesley  
Administrative Judge

