



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-11479  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
Michael D. McGlinn, Esquire  
McGlinn & McGlinn

February 12, 2009

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**Decision**

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ROSS, Wilford H., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on December 21, 2006, (Government Exhibit 1). On April 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, which detailed security concerns under Guidelines F and E stating 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 the Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked. 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

President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant answered the SOR in writing on May 6, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 21, 2008. This case was assigned to me on May 27, 2008. DOHA issued a notice of hearing on July 10, 2008, and I convened the hearing as scheduled on August 15, 2008. The Government offered Government Exhibits 1 through 6, which were received without objection. The Applicant testified on her own behalf, called one additional witness, and submitted Applicant's Exhibits A through K, also without objection. The record was left open at the Applicant's request for the submission of additional documentation. The Applicant submitted Applicant's Exhibit L on August 20, 2008. This exhibit was also received without objection. DOHA received the transcript of the hearing on August 25, 2008. The record closed on August 25, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

The Applicant is 47, single and has a Bachelor's degree. She is employed by a Defense contractor and seeks a security clearance in connection with her employment in the defense industry. In her Answer to the SOR, Applicant admitted the allegations in Paragraph 1 of the SOR and denied all of the allegations in Paragraph 2. She also provided explanations with her responses.

#### **Paragraph 1 (Guideline F - Financial Considerations)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she is financially overextended and therefore at risk of engaging in illegal acts to obtain funds.

The Applicant was born and raised in State One. In 2004, her brother was diagnosed with a terminal illness in State Two, where he owned a business. The Applicant left her job in State One and moved to State Two, where she took over running her brother's business during the period before his death. After her brother died in 2005, the Applicant wound up the affairs of his company in a successful fashion. (Transcript at 52-54; Applicant's Exhibits D and E.) Needless to say, the Applicant was affected by her brother's death.

1.a. The Applicant was indebted to a bank in State One in the approximate amount of \$1,166.00. This debt was paid in full on May 6, 2008. (Transcript at 49-52; Government Exhibit 2 at 4; Applicant's Exhibit F.)

1.b. The Applicant owed a medical debt in the amount of \$809.00. The evidence shows that the Applicant believed the debt should have been covered by her then

employer's medical insurance. Once she was informed of the debt, the Applicant took steps to pay it, and did so on April 30, 2008. (Transcript at 37-40; Applicant's Exhibit G.)

1.c. The Applicant bought a timeshare in June 1998. She made payments for three years, until June 2001. The Applicant was dissatisfied with the timeshare and felt that the owners had not fulfilled their responsibilities. She stopped paying on the timeshare because of these issues and returned ownership. At that point she had paid \$6,469.79 in principal, interest and fees. According to the documentary evidence provided by the owners, the Applicant's debt was cancelled on November 29, 2001. The Applicant's credible testimonial evidence is that she did not, and does not, believe she owes this creditor any more money. (Transcript at 40-41, 45-47, 54-61; Government Exhibits 6, 7, 8 and 9; Applicant's Exhibit L.)

The two most recent credit reports in the record are Government Exhibit 6 and Applicant's Exhibit J. Both of them reflect that, as of the Summer of 2008, she had no past due indebtedness.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has made false statements to the Department of Defense during the clearance screening process.

The Applicant filled out an e-QIP in December 2006 in which she stated that she was not currently over 90 days delinquent on any debts. She also stated that, within the past seven years, she had not been over 180 days delinquent on any debts. (Government Exhibit 1 at questions 28(a) and 28(b).) These answers were not true, as the Applicant did owe at least two of the three debts discussed above.

The Applicant testified at length on this issue. (Transcript at 36-37, 40-41, 47-48, 60-61.) She was apologetic for not discussing these debts on her questionnaire, but also consistently and credibly testified that she did not intentionally provide false information about them. Rather, based on the available evidence, it appears that she, possibly in the emotion of her brother's illness and death, forgot the debt in 1.a. when filling out the questionnaire; did not know about the debt in 1.b., and legitimately believed she did not owe any money to the creditor in 1.c. Under the particular facts of this case, I find that while her answers were false, she did not intend to mislead the Government in any way.

## **Mitigation**

The Applicant is a highly respected person in her field. A former co-worker and friend testified for the Applicant. The witness stated that the Applicant is very trustworthy and believable. (Transcript at 20-29; Applicant's Exhibit A.)

The Applicant also presented recommendations from a co-worker and supervisor that are very laudatory. The letters describe the Applicant as “professional and ethical,” “honest, responsible,” and “straight forward.” Both of these people recommend the Applicant for a position of trust. (Transcript at 43-44; Applicant’s Exhibits B and C.) Her Performance Reviews show that she “Meets Performance Expectations.” (Applicant’s Exhibits H and I.)

## **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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

### **Analysis**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant had financial difficulties (Guideline F), and that the Applicant made false statements in the clearance screening process (Guideline E.) The Applicant, on the other hand, has successfully mitigated the Government's case.

#### **Paragraph 1 (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. The Applicant failed to pay several of her debts for a period of years. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Mitigating Condition ¶ 20(a) states that the 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.* Two of these debts dated from the 2000-2001 time frame. The Applicant has paid one in full, and reasonably believes that she has no liability towards the other. The evidence raises this mitigating condition.

Under AG ¶ 20(b), the disqualifying conditions may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., . . . death), and the individual acted responsibly under the circumstances.* The Applicant moved from State One to State Two because of her brother's illness and death. She successfully wound up his business, but did not pay in a timely manner a single pre-existing debt amounting to less than \$1,200.00. This debt has since been paid. The evidence raises this potentially mitigating condition.

Evidence that *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* is also mitigating under ¶ 20(d). The Applicant showed that she has successfully paid off two of the three debts alleged in the SOR, in addition to showing a good current credit history. I conclude this potentially mitigating condition applies.

Finally, ¶ 20(e) states that it may be mitigating where *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.* As set forth at length above, the Applicant had a legitimate dispute concerning the debt in 1.c. While this debt was reported to the credit agencies as delinquent, there is evidence that this debt was "cancelled" by the creditor. This mitigating condition clearly applies to the facts of this case. For all the foregoing reasons, Paragraph 1 is found for the Applicant.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The Applicant did provide false information on her questionnaire concerning the three debts alleged in the SOR. However, the evidence is clear that the Applicant did not have a good idea of the extent of her financial difficulties until receipt of documentation from the Government. Despite the Department Counsel's best efforts, and looked at in the manner most favorable for the Government, the evidence does not support a finding that the Applicant intentionally falsified her Questionnaire. Human beings, and not just the Applicant, make mistakes. She told the Government all the information that she knew. That information was incomplete. That is all that has happened here. Guideline E is found for the Applicant.

## 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 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, in particular her payment of two of the debts alleged in the SOR, the fact that the third was "cancelled," and her unintentionally false statements to the Government. Three of the factors have the most impact on this case. First, I find that there is the "presence or absence of rehabilitation and other permanent behavioral changes," as set forth under AG ¶ 2(a)(6). The Applicant has shown that her failure to pay her debts was a temporary situation that has been corrected. In addition, she is an overwhelmingly truthful person. Under the particular facts of this case, there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Finally, the "likelihood of continuation or recurrence" discussed in AG ¶ 2(a)(9) is virtually nil.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

## 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 THE APPLICANT
Subparagraph 1.a.:	For the Applicant
Subparagraph 1.b.:	For the Applicant
Subparagraph 1.c.:	For the Applicant

Paragraph 2, Guideline E:

FOR THE APPLICANT

Subparagraph 2.a.:

For the Applicant

Subparagraph 2.b.:

For the Applicant

### **Conclusion**

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

WILFORD H. ROSS  
Administrative Judge