



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



In the matter of: )  
)  
) ISCR Case No. 07-11814  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: Pro Se

September 16, 2008

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**Decision on Remand**

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HENRY, Mary E., Administrative Judge:

By decision dated August 29, 2008, the Appeal Board remanded this case to me to issue a new decision consistent with their opinion. Based on a review of the case file, pleadings, exhibits, and remand order, I conclude that Applicant's eligibility for access to classified information is granted.

Applicant submitted her Security Clearance Application (SF 86), on December 22, 2006. On November 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 December 7, 2007. She answered the SOR in writing on December 13, 2007. DOHA received the request on December 20, 2007. She requested a hearing before an administrative judge on January 12, 2008, which DOHA received on January 17, 2008. Department Counsel was prepared to proceed on January 23, 2008, and this case was assigned to another administrative judge on January 25, 2008. Because of workload adjustments, this case was reassigned to me on March 4, 2008. DOHA issued a notice of hearing on March 19, 2008, and I convened the hearing as scheduled on April 10, 2008. The government offered four exhibits (GE) 1 through 4, which were received and admitted into evidence without objection. Applicant testified on her own behalf. She submitted 11 exhibits (AE) A through K. Except for AE D, all were received and admitted into evidence without objection. AE D would be admitted provided Applicant provided an additional document. DOHA received the transcript of the hearing (Tr.) on April 18, 2008. I held the record open for Applicant to submit additional matters. She submitted AE L-N and the additional document for AE D. Department Counsel responded to these submissions on May 8, 2008, which were received and admitted without objection. The record closed on May 8, 2008.

DOHA issued my decision on May 14, 2008. Department Counsel appealed it, alleging error in my findings under AG ¶¶ 20(a), (b), (c), and (e). The Appeal Board remand this case for further findings.

### **Procedural and Evidentiary Rulings**

#### **Notice**

At the hearing, I discussed Applicant's receipt of the hearing notice on April 1, 2008, less than 15 days before the hearing. (Tr. at 9.) I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice. (*Id.*)

#### **Motion to Amend SOR**

Department Counsel moved to amend the SOR by adding ¶¶ 1.m and 1.n, alleging additional debts owed by Applicant. (Tr. at 10-11.) Applicant did not object to the motion, which was granted. (*Id.*)

### **Findings of Fact**

In her Answer to the SOR, dated December 13, 2007, Applicant admitted the factual allegations in ¶¶ 1.d, 1.g, 1.i, 1.j, and 1.k of the SOR, with explanations. She denied the remaining factual allegations in the SOR. She also provided additional information to support her request for eligibility for a security clearance. Her discussions regarding allegations 1.m and 1.n at the hearing are treated as admissions of the debts.

(Tr. 10-12.) At the hearing, Department Counsel agreed that the allegations in ¶¶ 1.a and 1.d of the SOR are the same debt.<sup>1</sup>

Applicant is 50 years old. She works as a trainer for a Department of Defense contractor, a part-time position she has held for three years. The same employer hired her to work another position, which requires a security clearance. With the denial of her clearance, she is unable to work this second position.<sup>2</sup>

In 1982, Applicant entered into a long-term relationship with a man she never married. She ended this relationship in 2000. She has three children from this relationship, ages 23, 17, and 11, who still live at home. The oldest, a daughter, attends college and works part-time.<sup>3</sup>

During the long tenure of the above relationship, Applicant and her significant other purchased and paid for two trailers, where they lived. Most of the time, she placed the trailers on rural land she owned jointly with her mother, who lived nearby. They also purchased and paid for motor vehicles and held joint bank accounts. They had credit cards and other credit. They made the required payments. During this relationship, Applicant work full-time or part-time periodically. She worked when her mother could babysit the children. Her significant other worked intermittently, but never on a continuous basis and was not a reliable babysitter. She received no employment related benefits during this relationship. Her significant other liked to apply for and obtain credit cards, in his name and in her name without her knowledge, which began to cause issues with increased debt. Towards the end of the relationship, credit card debts mounted and past efforts to maintain the credit card payments were abandoned because of sporadic income.<sup>4</sup>

Applicant ended this relationship in 2000 because of debt issues and his infidelity. She immediately closed the joint bank accounts. After her gall bladder surgery, she found employment and has worked steadily since 2000. She has not spoken with her significant other since 2002. She currently works at a fast food restaurant and part-time with a government contractor in a non-clearance position. She completed an associates degree in Applied Science in 2005 and incurred no unpaid debt for her education. She bought a larger modular home for her and her children because they needed new housing. She timely pays her \$40,000 loan on this property. Because public transportation is not available to her, she bought and paid for two cars in the last seven years. She paid the remaining balance on her most recent car loan with her 2007 tax refund. She opened credit card accounts in her own name in the last three years.

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<sup>1</sup>Responses to SOR; Tr. 46-48.

<sup>2</sup>GE 1 (Applicant's security clearance application, dated December 22, 2006) at 1, 6; Tr. 18-20, 118.

<sup>3</sup>Tr. 20-21, 23.

<sup>4</sup>Tr. 24, 60-82, 113.

She timely meets her monthly payments on these cards. Through these efforts, she re-established her commercial credit worthiness.<sup>5</sup>

Applicant currently earns \$7.50 an hour at the fast food restaurant. She works as many hours as the restaurant will give her, usually between 32 and 40 hours a week. Her gross earnings through March 15, 2008 totaled \$2,600, and her net income totaled \$2,320. She works, on average, 10 days every six weeks for the Department of Defense contractor, earning \$12.50 an hour. Her gross income from this job, as of the hearing date, totaled \$1,936 and her net pay totaled \$1,800. With these two jobs, her net monthly income averages \$1,528. Her monthly expenses include a mortgage of \$432, utilities of \$80, car insurance of \$110, \$400 for food, \$62 for telephone, \$80 for gasoline, \$48 for Direct TV, and \$40 for credit cards for a total of \$1,252. Over the last six months, the increases in crude oil prices have impacted the prices of goods and services needed for every day living. As a result, I find that her basic living expenses have increased a \$100 a month. She does not receive any child support for her children. Her current income provides enough to pay her monthly living expenses.

With the exception of the two debts listed in ¶ 1.m and 1.n of the SOR, Applicant's unpaid debts occurred when her long-term relationship ended. She attempted to pay the debts, but between July 2001 and January 2002, she defaulted on the credit card debts, as she received no financial assistance from her significant other who had created much, but not all, of the debt problem. In her response to the SOR, she denied many of the debts because she did not recognize the listed creditor. At the hearing, she acknowledged several debts after the original creditor was identified. She disagrees with the total amount she owes. Her January 23, 2008 credit report reflects she challenged the validity of the \$1,023 (SOR ¶ 1.a, a debt she does not recognize) and \$2,198 (SOR ¶ 1.c.) debts. Contrary to the SOR allegation in ¶ 1.h, the February 6, 2007 credit report indicates this account has a zero balance and a high credit of \$1,234, not an unpaid balance of \$1,234, and the account was transferred to recovery. The record does not indicate which creditor now holds this account and Applicant does not recognize the account.<sup>6</sup>

Applicant paid the debt listed in SOR ¶ 1.m., which arose over a dispute with the creditor over service not performed. The \$57 debt in SOR ¶ 1.n. relates to collect long-distance telephone charges from Mexico made to her home telephone when no one was at home. She spoke by telephone with her long-distance carrier about the charges on several occasions. Her calls led to the removal of one call, but not the other calls. She cancelled her service with this long-distance telephone carrier, which is not the listed creditor. The actual bill is listed as a debt to her local telephone carrier because the long-distance carrier's bill is included in the local telephone carrier's bill. She

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<sup>5</sup>GE 3 (Credit report, dated February 6, 2007); GE 4 (Credit report, dated January 23, 2008); AE A (Copy of bank statement); AE B (February 11, 2008 letter showing final car payment); AE C (Bank statement); Tr. 21-22, 24-26, 79, 81-82, 84, 86, 89-90, 92, 118.

<sup>6</sup>GE 3, *supra* note 5; GE 4 *supra* note 5, at 3; Tr. 49-50.

continues her telephone service with the telephone carrier identified as the creditor and regularly pays her bill.<sup>7</sup>

Applicant enjoys her work as a trainer. Her employer describes her trainer skills as valuable because she demonstrates remarkable adaption skills in her various trainer roles. Former employers provide very favorable recommendations on her work skills and ethics, as do friends and former professors. When she learned that she would be unable to do the security segment of her trainer job, she found other employment which enables her to provide her family with basic necessities including food and housing.<sup>8</sup>

### **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.

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<sup>7</sup>AE A (Copy of bank statement, dated February 14, 2008 through March 13, 2008) at 2; AE C (Copy of bank statement, dated January 16, 2008 to February 14, 2008) at 1; Tr. 53-60.

<sup>8</sup>AE E through AE J; Tr. 22.

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**

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. Towards the end of her long-term relationship, Applicant and her significant other accumulated delinquent credit card debt. She attempted to pay the debt, but eventually defaulted on the obligations. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

In my May 14, 2008 decision, I made the following finding at AG ¶ 20(e):

Applicant did not recognize many of the debtors listed in the SOR, although at the hearing, when the original creditor was identified, she did recognize the debt. When she did not recognize two debts, she challenged the validity with the credit reporting companies as shown by her January 2008 credit report. AG ¶ 20(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” partially applies.

Both the Appeal Board and Department Counsel interpreted this finding as more encompassing than it was. I specifically discussed two debts challenged by Applicant in the facts and my analysis, challenges which are reflected on the January 23, 2008 credit report submitted by Department Counsel (p.3). I did not discuss challenges to any other debts. Thus, AG ¶ 20(3) could only be partially applicable and applies to the two debts Applicant challenged, as verified on the January 2008 credit report. In light of the Appeal Board’s conclusion that none of the mitigating conditions apply because Applicant’s old debts are ongoing, Applicant has not met her burden of proving mitigation under AG ¶ 20(a)-(f). I will, however, consider whether, under all the evidence of record, she has mitigated the government’s security concerns.

### **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’s unpaid debts are a serious problem. During her long-term relationship, continuous and steady income remained elusive because her significant other worked sporadically. Although she also worked, she did not work continuously as she had young children at home and little income for child care expenses. She always paid the mortgage payment, which assured housing for her children, and the car payments, which guaranteed transportation was available for work. Her financial problems first became unmanageable when her significant other started obtaining more credit cards than needed, then charged unnecessarily. She also used the cards for family needs, such as clothes, gas and other items needed for daily living, not extravagant living. She initially paid the minimum or monthly payments on the bills. Over time, however, the bills began to mount. When she

ended her relationship, she tried, but could not continue making payments on the credit card debt, because she received no financial support from her significant other and he refused to pay any of the debt. (See AG ¶ 2(a)(1)-(3).)

Applicant obtained employment in 2000 and has worked steadily since this time. Her income provided basic needs, but left little money to pay her creditors. She returned to school, eventually earning an associates degree. With her additional education skills, she sought better paying employment in order to provide for her children. Her credit reports show no outstanding debt from her education. See AG ¶2(a)(6).

Applicant became the sole financial provider for her three children when she ended her long-term relationship with their father. In determining how to use her limited resources, she made decisions which provided her children with their basic needs, such as livable housing, food and clothes. To meet these needs, Applicant needed transportation to and from work since the rural area where she lives lacks public transportation. She has purchased and paid for two used cars. Her two recent, small debts arose when she disputed the charges, one for services she did not receive and one for telephone calls not made by her family. On her own, Applicant has paid her bills in a timely manner and managed her limited financial resources prudently. She currently works two jobs, one is part-time and the other averages between 32 and 40 hours a week at a wage just above the minimum wage. Her net monthly income from both jobs averages \$1,500. At the time of the hearing, her monthly expenses averaged \$1,252. Since April, gasoline prices have risen dramatically, effecting not only the cost of gas for cars, but the cost of food, clothes, laundry soap, and other basics of life. Her basic living expenses have increased at least \$100 a month, leaving very limited money to pay old debts.

In the last eight years, Applicant had to make choices about using her scarce resources. She always made financial decisions which favored providing for the needs of her children. She made an effort to pay the credit card debt incurred during her long-term relationship, but ultimately decided that she needed to start fresh financially. To achieve financial stability, she stopped her payments on her credit debts, which are now delinquent and the issue before me. Since that time, Applicant has undergone significant behavioral changes. She works steadily and consistently. She is a reliable and dependable employee. She pays her current bills and limits the amount of credit on her credit cards. She pays her bills and fights with creditors over bills she does not believe she owes. Her current resources leave her with little money to pay old debt. To assume she can pay old debt because she pays current debt is unrealistic based on her current limited finances. Should she assume responsibility for repayment of her old debts, she would force herself into financial chaos. She would be forced into choosing which bills should be paid each month and which bills should be ignored. Currently, she timely pays her monthly bills. Given the age of her old debts, a bankruptcy filing to eliminate these debts would wreck havoc on her much improved commercial credit worthiness and actually hinder her ability to manage her life when emergencies expenses occur and credit is needed.



Seven years ago Applicant made a decision to start over financially and not to make any further payments on the credit debts created by her and her significant other. Under the State law where she resides, a creditor has six years to initiate legal action to recover unpaid debts. See State Code. Ann. §44-501. Applicant's creditors failed to do so, thus, waiving any rights to collect these debts forever. Since all of Applicant's debts, except SOR allegations 1.m and 1.n, are barred from civil suit, any civil action to recover these unpaid debts will be dismissed under the statute of limitations. These statutes are longstanding and well-settled law in all 50 states, and are an affirmative defense. Under federal law, actions, including collection of unpaid taxes by the Internal Revenue Service, are barred when the statute of limitations or other specific statutory times lines for the exercise of legal rights have expired.

A State Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[led] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

*Carolina Marine Handling, Inc. v. Lasch*, 609 S.E.2d 548, 552 (Ct. App. 2005) (internal quotation marks and citations omitted).

The Appeal Board has held that the statute of limitations can not be applied to show a good faith resolution of debts, a position with which I agree. However, given our courts and legislatures long recognized purposes for statutes of limitations and in this case, the expiration of the time to seek recovery of monies owed, the characterization of Applicant's old, unpaid debts as ongoing is troublesome. She incurred these debts over seven years ago. She not only has not increased the amount of these debts, she has not incurred any new unpaid debt, which would reflect an ongoing problem with financial and debt management. The question here is whether Applicant can be coerced, pressured, or induced to betray secrets of the United States because of her old, unpaid debts. She cannot, as she is no longer legally liable for the debts. The fact that these debts are very old and not collectible under state law does not negate her past conduct in not paying her outstanding debts, a factor I have considered.

She acts responsibly in all aspects of her life. Her current finances are good. She has no criminal record and her children are doing well. She has focused her attention on

providing a stable domestic environment for her family. She goes to work when scheduled and does her assigned duties. Over the years, she has lacked sufficient resources to pay her old credit card debts in full. Until 2001, she made payments on the debts incurred during her long relationship. Financial hardship forced her to make difficult decisions on how to resolve these debts. She chose to default on these debts, which enabled her to pay basic and necessary living expenses. In the last seven years, she has yet to achieve an income level which would allow her to pay these old, uncollectible debts without creating more financial difficulties for herself. (See AG ¶ 2(a)(8).) Of course, the issue is not simply whether all her debts are paid – it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. An alcoholic who remains sober for three or more years and a drug user who remains drug free for two or more years is considered rehabilitated. Given Applicant has shown the ability to live within her limited income and stay out of debt for over six years, she has rehabilitated her attitude and behavior towards the acquisition of excessive debt. Security concerns are not raised because of these old debts. She has demonstrated that she is a reliable and responsible individual. (See AG ¶ 2(a)(1), (7)-(9).)

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For 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.

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MARY E. HENRY  
Administrative Judge