



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-12166
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 13, 2008

**Decision**

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HARVEY, Mark W., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

**Statement of the Case**

On March 27, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF 86).<sup>1</sup> On January 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (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*

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<sup>1</sup>Government Exhibit (GE) 4. There is no allegation of falsification of the 2006 SF 86.

<sup>2</sup>GE 1 (Statement of Reasons (SOR), dated Jan. 3, 2008). GE I is the source for the facts in the remainder of this paragraph unless stated otherwise.

*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.

On February 4, 2008, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing (GE 3). A complete copy of the file of relevant material (FORM), dated March 4, 2008, was provided to her, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.<sup>4</sup> Applicant did not respond to the FORM. The case was assigned to me on May 9, 2008.

### **Findings of Fact**

Applicant admitted responsibility for five debts (SOR ¶¶ 1.a, 1.c, 1.d, 1.f and 1.g), and said she did not recognize two debts (SOR ¶¶ 1.b and 1.e). Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 46 years old.<sup>5</sup> She married in 1981 and divorced in 1986. Her children were born in 1981 and 1984. She attended college from 1994 to 1997, and from 2000 to 2002. She received a Bachelor of Arts in Environmental Policy in 2002. She was unemployed from June 2002 to January 2004. From January 2004 to the present she has been employed by government contractor as a welder and in quality assurance. She joined the United States Army, but never went on active duty. She did not serve on active duty because the Army did not comply with her enlistment contract. She said she received a General Discharge under Honorable Conditions.<sup>6</sup> She has no police record. She has not used illegal drugs in the last seven years, and has never used illegal drugs while in a sensitive position.

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<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.

<sup>4</sup>Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated Mar. 12, 2008; and Applicant's receipt is signed and dated March 21, 2008. The DOHA transmittal letter informed Applicant that she had 30 days after Applicant's receipt to submit information.

<sup>5</sup>GE 4 (2006 security clearance application) is the source for the facts in this paragraph, unless stated otherwise.

<sup>6</sup> The file does not contain her military or enlistment records.

On her 2006 security clearance application, she disclosed that she had approximately \$6,000 in delinquent debt, resulting from unemployment in 1999. She became a full-time student in 2000. She unsuccessfully attempted to negotiate with her creditors. She was a single mother, and her former husband was not paying child support. She chose to maintain her home and feed her family over repaying her creditors. She concluded, "Since then I have graduated [from] college and now I am responsible for student loans only, as my children are now grown adults and providing for themselves." She did not explain what she was doing to resolve her delinquent debts.

## **Financial Considerations**

The SOR lists seven delinquent debts. Applicant denies the debts in SOR ¶ 1.b (\$4,173) and SOR ¶ 1.e (\$319). The file does not contain any information corroborating the credit report, which is the sole evidence supporting her responsibility for these two debts. These two debts are therefore unsubstantiated because a credit report in the face of any conflicting evidence is simply too unreliable to support an allegation of delinquent debt (for example, the debts in SOR ¶¶ 1.b and 1.e could be duplications of other debts, or relate to other debtors).

Applicant admitted responsibility for five debts totaling \$7,331 in her SOR response (GE 3):

- (1) SOR ¶ 1.a (\$500) was placed for collection in July 2000.
- (2) SOR ¶ 1.c (\$1,563) was charged off in August 2001.
- (3) SOR ¶ 1.d (\$3,367) was placed for collection on a department store account in February 2002.
- (4) SOR ¶ 1.f (\$1,799) was placed for collection on a credit union account in December 2002.
- (5) SOR ¶ 1.g (\$102) was placed for collection on a medical account in April 2003.

Applicant had ample warning about the security concerns pertaining to her delinquent debt. On April 2, 2007, an Office of Personnel Management (OPM) investigator interviewed her concerning her delinquent debts. She explained that because her efforts (mostly in 2000) to work with her creditors were refused, "she will allow these accounts to lapse. She has no intention to pay them." (GE 6). Her gross monthly income is \$7,600, and her net monthly income is \$6,152. She pays \$190 monthly on her student loans, which have a balance of about \$9,700 (GE 6). She does not currently have any credit cards (GE 6). Her two largest monthly expenses are her rent payment of \$975 and her car payment of \$685 (GE 6). After paying her monthly debts and expenses, she has monthly disposable income of \$3,629 (GE 6).

## 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"<sup>7</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>8</sup>

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<sup>7</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). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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>8</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).

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.

### **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 documented in her OPM interview, her 2006 credit report, and her SOR response. She admitted responsibility for five debts totaling \$7,331 in her SOR response. 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.

Applicant's conduct does not warrant full application of AG ¶¶ 20(a) and 20(b) because she did not act more aggressively and responsibly to resolve her delinquent debts.<sup>9</sup>

Applicant admitted responsibility for five debts totaling about \$7,331. Applicant is currently living in the same state where she attended college. She advised the OPM investigator in April 2007 that she thought her delinquent debts would lapse in 2013 (GE 6). It is unclear when her last payments were made on these debts. If no payments were made after May 13, 2002, then some or all of these debts may not be legally enforceable debts because some of the creditors have not filed suit as required by the six-year Washington State statute of limitations. See Rev. Code Wash. § 4.16.040(1) (stating "an action upon a contract in writing, or liability express or implied arising out of a written agreement" must be filed within six years to preserve the creditor's right to collect on the debt). The statute of limitation for contract actions in Washington state begins to run when a party knows or, in the exercise of due diligence, should know of the other party's breach. *Architectonics Constr. Mgmt., Inc. v. Khorram*, 111 Wn. App. 725, 45 P.3d 1142 (2002), *review denied*, 148 Wn.2d 1005, 60 P.3d 1212 (2003).

The South Carolina 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

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<sup>9</sup>“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

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[iled] 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*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). This long-standing legal doctrine may well reduce or eliminate any potential vulnerability to improper financial inducements. The degree that she is “financially overextended,” is also reduced. However, there is a possibility the six-year statute of limitations was tolled or is otherwise not applicable. AG ¶ 20(d) does not fully apply because there is insufficient information to establish that Applicant established the statute of limitations defense to repayment of her debts or that she otherwise showed good faith<sup>10</sup> in the resolution of her debts.

AG ¶ 20(e) is not applicable because Applicant did not provide “documented proof to substantiate the basis of the dispute or [provide] evidence of actions to resolve the issue” with respect to his SOR debts. She disclosed very little information about these five debts. She did not provide proof of her most recent correspondence with her creditors. Based on the low level of evidence required to meet the substantial evidence test for establishment of a disqualifying condition, I conclude these five debts, totaling about \$7,331 are still valid, delinquent debts, and that Applicant is responsible for them.

Applicant did not disclose sufficiently unusual and recent circumstances as a cause for the delinquent debts to mitigate them for security clearance purposes. She did not provide proof of financial counseling. Applicant could easily pay or settle the debts in light of her current, ample income. She has elected not to pay or resolve her five delinquent debts. Her overall conduct with her creditors casts doubt on her current reliability, trustworthiness, and good judgment. Her financial problems are continuing

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<sup>10</sup>The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

and likely to recur. She should have been more diligent and made greater efforts to resolve her delinquent debts, especially after being interviewed by an OPM investigation in April 2007, followed by receipt of the SOR in January 2008. She has not carried her burden of proving her financial responsibility. Based on my evaluation of the record evidence as a whole, I conclude no mitigating conditions fully apply.

### **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.

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 record of good employment weighs in her favor. Her dedication to the welfare of her children supports approval of her clearance. There is no evidence of any security violation. Aside from her delinquent debts (which is a civil, non-criminal issue), she is a law-abiding citizen. She completed her college education, earning her Bachelor of Arts degree. These factors show some responsibility, rehabilitation, and mitigation.

The evidence against mitigating Applicant's conduct is more substantial. Applicant was well aware of her financial responsibilities, and had ample resources to pay her creditors. She learned of the security significance of these delinquent debts in April 2007. Her efforts to resolve her debts were insufficient when compared to available income that she could have used to address her delinquent debts (especially after April 2007 when she became aware of their significance). She did not show adequate actions for timely resolution of her debts. Instead she chose to rely on the creditor's failures to file lawsuits against her income and property. In sum, she did not make sufficient efforts to repay or resolve her debts after the contractor employed her, and her actions were not adequate to fully resolve security concerns.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has not mitigated the security concerns pertaining to financial considerations.



I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”<sup>11</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government’s case. For the reasons stated, I conclude she is not eligible for access to classified information.

### **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:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f and 1.g:	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.

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Mark W. Harvey  
Administrative Judge

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<sup>11</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).