



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



In the matter of: )  
)  
) ISCR Case No. 07-12190  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 5, 2008

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant owes approximately \$9,000 on seven debts. Applicant has failed to rebut or mitigated the government’s security concerns under financial considerations. Clearance is denied.

**Statement of Case**

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) on March 10, 2008, detailing security concerns under Guideline F, financial considerations.

---

<sup>1</sup> 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On April 7, 2008, Applicant answered the SOR, and requested a hearing before an administrative judge. On May 5, 2008, I was assigned the case. On June 6, 2008, DOHA issued a notice of hearing scheduling the hearing held on June 25, 2008. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on her own behalf. The record was kept open to allow Applicant to submit additional matters. On July 10, 2008, documents were received. Department Counsel did not object to the material and it was admitted into evidence as Ex. A. On July 3, 2008, the transcript (Tr.) was received.

### **Findings of Fact**

In her Answer to the SOR, Applicant admits, with explanation, the factual allegations in the SOR.

Applicant is a 40-year-old administrator who has worked for a defense contractor since July 1996, and is seeking to maintain a security clearance. In 1988, she began working for the company, but was laid off in 1993 and recalled in 1996. (Tr. 56) Applicant states she takes her position in security seriously and says during her 16 and one half years of employment she has never done anything to jeopardize the facility. (Ex. A)

Her supervisor stated Applicant is very trustworthy, an excellent worker. (Tr. 24, 39) Her supervisor knew work he gave her would get done. (Tr. 25) He also knew Applicant was experiencing financial problems because a garnishment was served on Applicant. (Tr. 27) Her supervisor indicated he had long, serious talks with Applicant about her financial situation. (Tr. 27, 29) Every week or every other week, her supervisor told Applicant of the need to take care of her bills or she would not get a clearance. (Tr. 30) Applicant would response she was taking care of business. (Tr. 31) Another co-worker counseled Applicant regarding the importance of maintaining good financial records and satisfying her debts. (Tr. 39) He stressed to her how important it was to the government for her to properly maintain her finances. (Tr. 39, 44)

Applicant was divorced in November 1993, after a six-year marriage. (Tr. 53, Ex. 1) A second marriage ended in April 2002. (Tr. 53) She has a 19-year-old son. She has recently begun taking university classes. (Tr. 55) Class attendance prevents her from obtaining a part-time job. (Tr. 117)

Applicant failed to pay her divorce attorney and, in December 2002, a \$747 judgment (SOR ¶ 1.a) was entered against her. (Tr. 59) In December 2007, a garnishment started and the judgment was paid in March 2008. (Tr. 59) She paid \$215 twice a month for three months paying \$1,300 on the debt. (Tr. 60)

On September 16, 1999, Applicant filed for Chapter 13, wage earner's plan, bankruptcy protection. (Ex. 3) She made \$252 payments every two weeks over the five and one half year of the plan's existence. She paid approximately \$36,000 over the

course of the plan. On February 1, 2005, her debts were discharged. (Tr. 97, Ex. 3) In May 1999, Applicant had purchased a 1999 Chevrolet pickup (\$19,000) and could not afford the payments. (Tr. 87, Ex. 3, Schedule D) The bankruptcy was a way to keep the truck.

In February 2007, when she completed her Electronic Questionnaires for Investigations Processing (e-QIP) she listed a paid \$3,045 judgment from October 2003, and unpaid \$1,800 judgment from January 2007, a paid \$400 to \$500 judgment from October 2005, and a paid judgment from October 2004 for which she did not know the amount. (Ex. 1, pages 26-28) She also stated on the form that her credit was terrible. (Tr. 103, Ex. 1) Applicant says her financial problems arose from making bad judgments. (Tr. 116)

In February 2008, Applicant contacted the collection agency regarding a \$645 credit card debt (SOR ¶ 1.b) and a \$500 telephone bill (SOR ¶ 1.e). Applicant paid \$150 on the debt and the collection agency offered to settle the matter for half of the current balance. (Tr. 62, 63) The same creditor is listed in SOR ¶ 1.b (\$645) and SOR ¶ 1.e (\$518). Applicant had only one credit card with the creditor. (Tr. 72)

Applicant owed another credit card company \$644 (SOR ¶ 1.c). Applicant has attempted to contact this creditor. (Tr. 57) Applicant owed a bank \$180 due to a checking account overdraft. (Tr. 76) The debt is with a collection agency, which offered to settle the matter for half the balance. Applicant never responded to the offer. (Tr. 74)

Applicant and her ex-husband had a number of vehicles repossessed. Even after the divorce, Applicant helped her ex-husband purchase vehicles on which she was solely liable. (Tr. 102) In August 2002, following her divorce, she purchased a 1993 Ford car that was repossessed, a judgment entered, which has been paid. (Tr. 91, 126) In November 2003, a \$15,000 pickup was purchased for her ex-husband. (Tr. 92) The truck was repossessed and Applicant owes the creditor \$6,354 (SOR ¶ 1.i). The creditor has offered to settle this debt for \$4,200, which they wanted as a lump-sum payment. (Tr. 81) Applicant was unable to make a lump-sum payment. Applicant has \$2,443 in her company's 401 (k) retirement plan and when the balance in the plan is sufficient, she will make a lump-sum payment to this creditor. (Ex. A)

In May 2005, another pickup was purchased. (Tr. 92, 126) The vehicle was repossessed leaving a balance after repossession of \$1,759 (SOR ¶ 1.d). In November 2007, the debt was satisfied by garnishment having paid \$4,500 on the obligation. In March 2006, garnishment of \$252 every two weeks started. (Tr. 69) In April 2008, Applicant purchased a 2005 Pontiac with monthly payments of \$420.

Applicant owes an insurance company \$344 (SOR ¶ 1.h) on her ex-husband motor cycle insurance. (Tr. 77) Applicant continued to pay her ex-husband's insurance for four years after the divorce. (Tr. 77)

In October 2007, Applicant completed a personal financial statement listing her gross salary for two weeks as \$1,607 and her net remainder income at approximately \$300. (Ex. 1, Ex. 2, Ex. A) Her rent is less than \$500 per month. (Tr. 109)

A summary of her debts and their current status follows:

	Creditor	Amount	Current Status
a	December 2002 default judgment by her divorce attorney.	\$747	Paid by garnishment started in December 2007. (See Answer to SOR)
b	Collection agency for a credit card debt. Same debt as f.	\$645	Applicant has made a \$150 payment in January 2008 and the collection agency offered to settle the matter for half of the balance.
c	Credit card debt.	\$644	Not paid. Applicant tried to contact the creditor.
d	Automobile repossession.	\$1,759	Paid and satisfied in November 2007. Garnishment started in March 2006 whereby she paid \$252 every two weeks. (See Answer to SOR)
e	Telephone bill.	\$500	Applicant has made a \$150 payment. Collection agency listed in b. has the debt and offered to settle for half the balance.
f	Same creditor as b.	\$518	Applicant has made a \$150 payment and the collection agency offered to settle the matter for half of the balance.
g	Checking account over draft charges.	180	Creditor offered to settle for half the balance. (Ex. 2) Applicant never accepted the offer.
h	Ex-husband's motorcycle insurance.	\$344	Applicant will contact creditor.
i	Pickup truck repossession.	\$6,354	Unpaid. Creditor has offered to settle for \$4,200. Applicant intends to pay the debt when her retirement fund is large enough.
	Total debt listed in SOR	\$11,691	

### 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.

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**

Under Guideline F for financial considerations a security concern typically exists due to significant unpaid debts. 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.<sup>2</sup>

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly safeguarding and handling classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owes approximately \$9,000 on seven debts. Disqualifying conditions AG ¶ 19(a) "inability or unwillingness to satisfy debts" and AG ¶ 19(c) "a history of not meeting financial obligations," apply.

Applicant has been with her company for more than 16 years. In 2002, Applicant was divorced and the financial problems from that marriage continue. Her attorney was forced to garnish her wages to obtain payment for his services in the divorce. Even after the divorce, Applicant continued to pay her ex-husband's motorcycle insurance and purchased vehicles for his use on which she is solely liable. Since 2002, she and her ex-husband have had four vehicles repossessed and she has had two garnishment placed on her pay. One garnishment was to pay her attorney fees and a second was to pay for one of the repossessed vehicles.

In 2005, she completed a Chapter 13, wage earner's plan, bankruptcy and her debts were discharged. Two years later when she completed her security clearance she listed two unpaid judgments and stated her credit was terrible. Applicant knew of the concern over her finances. She answered interrogatories about her finances in November 2007. Her supervisor was aware of her financial problems due to a garnishment. He attempted to stress how important it was to correct any financial problem because such problems could result in the loss of her clearance. He frequently asked her the state of her finances. Applicant stated she was unaware of how important her finances were until the hearing.

---

<sup>2</sup> Revised adjudicative guidelines (AG) ¶ 18.

Other than the garnishments, Applicant contacted one credit collection agency and paid them \$150. Another creditor offered to settle for half of what was owed, but Applicant failed to follow up on the offer.

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, has limited applicability. Since her 2002 divorce she has been gainfully employed, but has made a single \$150 payment to her creditors. Applicant has not acted reasonably under the circumstances. Her income may have been limited, but she should have been able to establish a repayment plan with some of the creditors.

Seven of the debts remain unpaid. Mitigating conditions AG ¶ 20 (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, does not apply. The debts in question went unpaid starting in 2002, they are numerous, and did not incurred under unusual circumstances.

There is no evidence Applicant has sought financial counseling or demonstrated a positive change in her financial management. It is not clear the problem is being resolved or under control. AG ¶ 20 (c) "the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," does not apply nor does AG ¶ 20 (d) "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." The two garnishments do not count because they were initiated by the creditor and not by Applicant.

For AG ¶ 20 (d) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling her debts is needed, which is not present here. Applicant intends to save money in her 401(k) plan and make a lump-sum payment to a creditor. This may or may not occur. There is no repayment plan other than her statement that she will pay the debts.

Applicant has made few efforts to resolve the delinquent indebtedness and has not made any real progress in addressing her debts. Given these circumstances, in light of the unaddressed delinquent debts, her efforts do not amount to a good-faith effort within the meaning of the guideline.

### **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.

Applicant is 40 years old and sufficiently mature to make prudent decisions about her finances. She is saving in her 401(k) plan to pay a creditor. Although her intent to resolve her financial problems appears to be genuine, she has done little to demonstrate that intent. What is missing is: (1) a realistic and workable plan to address her financial problems, (2) documented actions taken in furtherance of the plan, and (3) a measurable improvement in the situation. Given the current circumstances, it is likely that the financial problems will continue.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise suitably addressed the obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept was given due consideration and that analysis does not support a favorable decision.

### **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-1j:      Against Applicant

**Conclusion**

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

---

CLAUDE R. HEINY II  
Administrative Judge

