



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



In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 07-12550
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i, Esq., Department Counsel  
For Applicant: *Pro se*

September 30, 2008

---

**Decision**

---

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns pertaining to Financial Considerations. Clearance is denied.

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-Qip), on January 30, 2007. On March 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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 April 10, 2008, which was received at DOHA on April 11, 2008. She answered the SOR in writing on May 21, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on June 9, 2008, and I received the case assignment on June

19, 2008. DOHA issued a notice of hearing on June 23, 2008, scheduling the hearing for August 5, 2008. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 7, which were received without objection. The Government also submitted a Government's Exhibit List, which was marked as Exhibit (Ex.) I. Applicant did not offer any exhibits, and testified on her own behalf. I held the record open until August 15, 2008 to afford the Applicant the opportunity to submit additional material. Applicant timely submitted Applicant Exhibits (AE) A through D, which were received without objection. DOHA received the hearing transcript (Tr.) on August 14, 2008.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a. – 1.d., 1.f., 1.j. – 1.z., and denied the allegations in SOR ¶¶ 1.e., and 1.g. – 1.i. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 27-year-old security officer, who had worked for her defense contractor employer since December 2006 until she was laid off in May 2008. She held an interim security clearance which was granted in February 2007 and was withdrawn in March 2008 as a result of these proceedings. She seeks to reinstate her security clearance which is a requirement of her employment. GE 1, Tr. 15-17.

Applicant graduated from college in May 2008 with a bachelor of science degree in criminal justice. Tr. 14-15. She has never been married and has no dependents. GE 1, Tr. 17-18. As of the date of her hearing, Applicant was unemployed and did not have a source of income. Applicant testified she helped support her mother and four brothers, ages 23, 18, 14, and 11. Tr. 18-19.

Applicant's background investigation addressed her financial situation and included among other things the review of her January 2007 e-QIP, her November 2007 Signed Response to Interrogatories and Attachments, her May 2008, February 2008, and March 2007 credit reports, and her January 2004 and January 2007 judgments. GE 1 – 7.

The SOR alleged 26 separate debts approximating \$26,000. Broken down, the debts include one past due account, two judgments, three charged off accounts, and 20 collection accounts. (SOR ¶¶ 1.a. – 1.z.) The majority of debts were for uncovered/unpaid medical bills. Applicant testified she has a history of diabetes for which she has received treatment since 2000/2001. Tr. 20-21.

As previously noted, Applicant is unemployed. She testified she is living off her savings, which consisted of about \$2,000 at the time of her hearing. Tr. 27.

Applicant appeared at her hearing ill prepared to address the debts alleged in the SOR. She only paid three non-medical debts, those being debts alleged in SOR ¶¶ 1.e., 1.g., and 1.i., in the respective amounts of \$715, \$358 and \$705. Tr. 48.

Applicant did not provide evidence that she had contacted or was in contact with any of her creditors or that she had sought financial counseling.

Post-hearing she submitted a form letter intended for creditors which purports to resolve individual debts. There is no indication who was the recipient of this letter, if anyone. AE A. She also submitted copies of three voided checks, which apparently are meant to document payment to debts in SOR ¶¶ 1.e., 1.g., and 1.i., *supra*.

Post-hearing, she submitted two personal reference letters, which provide positive comments about her character. AE B, AE D.

### **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 (Financial Considerations),<sup>1</sup> the Government’s concern is that an Applicant’s “[f]ailure 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.”

Applicant has a history of failing to meet her financial obligations dating back to at least 2001. Apart from making payments on three debts, Applicant’s indebtedness for her remaining 23 debts exceeding \$24,000 remains unpaid. At the time of her hearing, she was unemployed and was living off her savings, which she said consisted of about \$2,000. She does not have a plan to resolve her indebtedness apart from seeking a job and began paying her bills as she is able.

The Government established through Applicant’s admissions and evidence presented a *prima facie* case. Applicant’s financial difficulties remain ongoing. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

---

<sup>1</sup> Guideline ¶ 18.

Considering the record evidence as a whole,<sup>2</sup> I conclude that Applicant is able to receive partial credit under Financial Considerations Mitigating Condition (FC MC ¶ 20(b) *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;* for her uncovered medical expenses related to her diabetes.

However, whatever credit she received by this MC is overcome by her financial mismanagement for the last several years. Applicant presented minimal or no evidence documenting efforts taken to contact or resolve debts with her unpaid creditors.

She presented no evidence to show she has dealt responsibly with her financial obligations before, or especially after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, credible payment plans). Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility, or that she has taken control of her financial situation. Based on her past performance, any prospective assurances ring hollow. Her financial problems are likely to be a concern in the future. Moreover, her financial problems are recent, not isolated, and ongoing.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. 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.

While Applicant's situation is most unfortunate, overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial difficulties.

### **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. – 1.f.:	Against Applicant
Subparagraph 1.g. – 1.i.:	For Applicant
Subparagraph 1.j. – 1.z.:	Against Applicant

---

<sup>2</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

## **Conclusion**

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

---

ROBERT J. TUIDER  
Administrative Judge