



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-12890
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank Jr., Esquire, Department Counsel  
For Applicant: Pro Se

April 28, 2008

**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on April 4, 2007. On October 15, 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 October 30, 2007, and elected to have her case decided on the record in lieu of a hearing. Department Counsel submitted the Government’s written case on February 19, 2008. Applicant received a complete file of relevant material (FORM) on February 29, 2008, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the

Government's case.<sup>1</sup> Applicant submitted additional information. The case was assigned to me on April 23, 2008. Based upon a review of the case file, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, dated October 30, 2007, Applicant admitted the factual allegations in ¶¶ 1.b, 1.e, 1.g, 1.h, 1.i, 1.j, 1.l-1.p, 1.r-1.t, and 1.v-1.dd, of the SOR.<sup>2</sup> She denied the other factual allegations.

Applicant is a 45-year-old employee of a defense contractor. She graduated from high school in 1982 and attended various college courses in 1998. She is currently separated with four children. She has worked for her current employer since 2007.<sup>3</sup>

In 1990, Applicant separated from her husband of nine years.<sup>4</sup> She accrued medical debts for her children. Although her husband had agreed to pay for the childrens' medical needs, he did not do so. The medical bills total approximately \$5,000. Applicant also incurred substantial debt for her student loans when attending a community college.<sup>5</sup> In addition, she has a delinquent auto loan charged off as a bad debt for \$3,509 in 2001.

Applicant was employed according to her security clearance questionnaire from at least 1996 to the present time. She did not provide any information concerning periods of unemployment or illness.

Applicant was interviewed in May 2007 by Office of Personnel Management (OPM) investigators. She stated the circumstances that led to all her debt was her separation from her husband and her obligation to provide for her four children. She explained that she and her husband did not have a legal separation, but he promised to pay for certain things for the children. She also noted that prior to the separation she spent needlessly and unnecessarily.<sup>6</sup>

Applicant admits she does not have the "greatest credit report." She states that her bills have not been paid over the years because she was raising her children. Now she promises to get on track and pay her delinquent bills.<sup>7</sup> This has not occurred.

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<sup>1</sup>The Government submitted eight items in support of its contentions.

<sup>2</sup>Item 2 (Applicant's answer to SOR, dated October 30, 2007).

<sup>3</sup>Item 4 (Security Clearance Questionnaire, dated April 4, 2007).

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>Item 6 (Interrogatories from Applicant, dated October 2, 2007).

<sup>7</sup>*Id.*

The SOR alleges 31 delinquent debts. The total amount of debt is approximately \$28,741.<sup>8</sup> Applicant admits to debts totaling approximately \$24,922. She submitted paperwork showing that she has recently made payment arrangements for one student loan in the amount of \$188 a month since October 2007. She provided five receipts.

Applicant disputed several debts. She wrote a letter to a management company for a 2007 judgment alleged in 1.ee (\$1,739). She still disputes that the debt is hers despite the fact that the company responded that it is her debt and is on her credit report. Applicant also disputes the 2005 debt in 1.w (\$538) because it belongs to her sister-in-law, but then admits the same debt in 1.w. Applicant's response, to the other admitted allegations in the SOR, is that she "hopes" to have the debts paid off by the end of the year. She also asserted that she will set up a budget and start to pay off the smaller debts first. She promised to see a credit advisory company to help her.<sup>9</sup>

Applicant has two student loans in the amount of \$15,000. She admitted to the delinquent debt in her answer and stated in her security clearance application that her federal income tax return is intercepted each year to pay part of the loan. Her most recent credit report (2007) shows that the student loans are in collection (default status).

Applicant's monthly net income is \$1,758. Her total monthly expenses were \$1,552. Her net remainder was approximately \$206.<sup>10</sup> These figures were current as of May 2007. Applicant did not provide any updated information on her income in response to the FORM.

Applicant's current employer recommends her as an asset to any organization. He attests to her professional demeanor and dedication to excellence.<sup>11</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, the entire process is a conscientious scrutiny of a number of variables known as the

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<sup>8</sup>Item 8 (Credit Bureau Report, dated October 11, 2007).

<sup>9</sup>Item 5 (Letter, dated October 2, 2007).

<sup>10</sup>Item 6 (Interview dated, dated May 2007).

<sup>11</sup>Applicant's submission to FORM.

“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**

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<sup>®</sup> is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations<sup>®</sup> may raise security concerns. Applicant accumulated delinquent debts and was unable to pay her obligations for a long period of time. Her credit reports confirm that she has not paid the charged off collection accounts and judgments. She admits approximately \$29,130 in delinquent debt. 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. Under AG ¶ 20(a), the disqualifying condition 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.<sup>®</sup> Applicant's major financial worries arose after her separation from her husband. From 2000 until 2007, she has had accounts referred for collection and an unresolved judgment. This potentially mitigating condition does not apply.

Under AG & 20(b), it may be mitigating where 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.<sup>®</sup> Applicant's reliance on her marital separation for her financial difficulties is not sufficient mitigation in this case. They separated in 1990 and Applicant has since incurred substantial student loan debt and other accounts since that time. She had medical bills for her children, but she did not act responsibly in resolving her delinquent debts. I find this potentially mitigating condition does not fully apply.

Evidence that 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<sup>®</sup> is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>®</sup> Applicant has only recently (2007) promised to contact a counseling firm. She still has not developed a repayment plan for all her debts. There is insufficient information to establish that Applicant showed good faith in the resolution of her debt. I conclude these potentially mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant disputed some delinquent debts but she has no documentation to substantiate any resolution. I conclude this potentially mitigating condition does not 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." 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 has worked for many years and has provided for her four children. She and her husband separated in April 1990. She explained that he has not kept his promise to help with the medical needs of the children. Thus, Applicant has delinquent medical bills. However, she also has collection accounts for more than 25 debts and has not pursued a payment plan. As to her student loans, she recently provided documentation that in October 2007, she began to pay on one of her student loans. She has made five payments. These circumstances beyond her control exacerbated her difficulties but she did not act reasonably. Failure to pay debts is not prudent or responsible. She has been on notice since October 2007 that her security clearance was under investigation. She did state at that time that she would start a repayment plan. She did not follow through. She did not enroll in a debt resolution plan for the debts. Even an applicant with a good employment record could have security concerns that raise doubts about her good judgment. She has not met her burden of proof in this case to overcome the government's case.

Overall, the record evidence leaves me with questions and 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 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:	AGAINST APPLICANT
Subparagraph 1.a-ee:	Against Applicant

## **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. Eligibility for access to classified information is denied.

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NOREEN A. LYNCH  
Administrative Judge