



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



In the matter of: )  
)  
) ISCR Case No. 07-12970  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 23, 2008

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**Decision**  
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RIVERA, Juan J., Administrative Judge:

Applicant has a history of failing to meet her financial obligations. Her evidence is insufficient to show that she is in control of her finances, is not overextended, and has a track record of financial responsibility. Furthermore, she falsified her security clearance application. She failed to mitigate security concerns regarding Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Clearance is denied.

**Statement of the Case**

On March 21, 2006, Applicant submitted a Questionnaire for Sensitive Positions or Standard Form (SF) 86.<sup>1</sup> On April 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, 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*

<sup>1</sup> GE 3. The record also included a Security Clearance Application (SF 86), dated December 31, 1999 (GE 1).

*Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>2</sup> The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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.

Applicant answered the SOR on May 12 and August 18, 2008, and initially requested to have her case decided on the written record in lieu of a hearing. After receipt of the file of relevant material, she requested a hearing before an Administrative Judge (Tr. 15). The case was assigned to me on September 3, 2008. DOHA issued a notice of hearing on September 12, 2008. The hearing was convened as scheduled on September 29, 2008. The government offered Government Exhibits (GE) 1 through 9, which were admitted without objection (Tr. 38). Applicant testified on her own behalf, and presented one witness and Applicant Exhibits (AE) 1 through 4, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 7, 2008.

### **Findings of Fact**

Applicant admitted all 24 financial allegations under SOR ¶ 1. She denied the two personal conduct allegations under SOR ¶ 2. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 40-year-old administrative assistant working for a Government contractor. She completed high school in 1988, and started working for Government contractors shortly thereafter. In 1990, she received access to classified information at the top secret level (Tr. 5-6). She has been continuously employed since 1990 (Tr. 68-70). She has renewed her security clearance every four years, and has maintained her top secret access up to her hearing date. She has never been married. She has one son, age four. Applicant has custody of her son and receives no financial support from his father.

In her December 1999 security clearance application (GE 1), Applicant disclosed she filed for Chapter 7 bankruptcy protection in October 1999 in the amount of \$151,680. She also disclosed that she had been over 180 days delinquent on 12

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<sup>2</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.

different debts, but indicated the debts were “settled” in bankruptcy court (GE 1). In February 2000, the bankruptcy court discharged Applicant of her debts.

There is no evidence to show that she has compromised or caused others to compromise classified information. Nor is there evidence showing that she has ever failed to follow the rules and procedures required to handle classified information. She has no police record, and there is no evidence she has used or trafficked in illegal drugs.

## **Financial Considerations**

Applicant’s background investigation addressed her financial situation and included the review of her December 1999 and March 2006 SF 86s; her responses to DOHA interrogatories (GE 8); four credit bureau reports (CBRs) (GEs 4 - 7), and her October 2000 sworn statement (GE 2).

The SOR alleges 22 delinquent/charged off accounts totaling approximately \$39,000, which Applicant accumulated after her 2000 bankruptcy discharge. Applicant admitted all the debts alleged in SOR are her debts and have been delinquent for a long period of time. Applicant explained that her financial problems were caused by a combination of factors; i.e., a bad 12-year-old relationship, and she being a single mother and sole provider for her son (Tr. 43-44).

She testified she had to file for Chapter 7 bankruptcy protection in 1999, because she was living with a man who had a serious drug problem and was stealing money from her (Tr. 45-46).<sup>3</sup> She was in that bad relationship for 12 years, and separated from her living-in boyfriend in 2003 (Tr. 46). Her son was born in 2004. His father is not the living-in boyfriend. She receives no financial support from her son’s father. Her financial problems have continued after her 2000 bankruptcy discharge to her hearing day.

The largest of her delinquent debts (SOR ¶ 1.v) was for a 1998-1999 Toyota Land Rover she purchased in 2000 for approximately \$18,000. The vehicle was repossessed in 2000 for lack of payments (Tr. 81-82). She claimed the vehicle was continuously breaking down and she could not afford to make the note payments and pay for the repair bills. She asked the creditor to take the vehicle back knowing it would be reflected in her credit as a vehicle repossession (Tr. 47-48).

Concerning SOR ¶¶ 1.d through 1.j, Applicant believed these were her credit card debts. She had four credit cards with a \$300 limit that became delinquent and accrued late fees, penalties, and interest (Tr. 49). She was not sure whether the SOR alleged duplicated credit card debts. However, she did not contact the creditors to investigate any of her debts.

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<sup>3</sup> This is contrary to Applicant’s 2000 sworn statement (GE 2), where she stated she had resigned her full time job to care for her ill father. She claimed she had to file for bankruptcy protection because of her unemployment, lack of income, and her father’s high medical expenses.

SOR ¶¶ 1.k through 1.p concerned rent Applicant owed for an apartment she lived in with her boyfriend. She testified she did not understand the delinquent charges because she did not remember owing anything when she vacated the apartment (Tr. 50). She did not contact the creditor to investigate or dispute the debts.

In 2006, Applicant was confronted by a Government investigator concerning her charged off/delinquent debts. She promised to consolidate and/or to resolve her financial problems. In October 2007, Applicant started working with a consumer advocate law firm on a debt consolidation/settlement program (Tr. 53, GE 8). She was supposed to start the program in October 2007; however, due to unexpected financial obligations she did not make the first payment until December 2007. Applicant claimed she made three or four payments towards her consolidation. She presented documentary evidence of only two payments. She did not make any payments after March 2008 (Tr. 56).

Applicant's debt consolidation/settlement program did not include the debts alleged in SOR ¶¶ 1.c, 1.h, 1.k-1.o, 1.q, 1.t, 1.u, and 1.w. As of her hearing day, not one of the debts listed in the debt consolidation/settlement program and not one of the debts listed in the SOR have been paid or resolved (Tr. 58). Outside of her participation on the debt consolidation/settlement program, Applicant presented little evidence of efforts to contact creditors, settle, resolve, or to dispute her debts (Tr. 58-59).

In February 2008, Applicant started a second job (part-time) in an effort to generate additional income to pay/resolve her debts (Tr. 59-51). She claimed to follow a monthly financial budget, but presented no document to support her claim. Her current combined take-home income is approximately \$3,000. Her monthly expenses include: \$500 for rent; \$100 food expenses; \$280 car payment; \$500 gas; \$52 insurance; \$100 cell phone; \$142 cable T.V.; and \$700 for day care expenses, for a total of approximately \$2,400 (Tr. 61-65). Applicant appears to have a \$600 remainder after paying her monthly expenses (Tr. 66). She could not explain what she does with the \$600 remainder on a monthly basis.

Although many of her delinquent debts are relatively small (under \$1,000), she made little or no effort to contact her creditors and did not pay any of her debts. Applicant explained she could not afford to pay for her day-to-day living expenses and her past financial obligations (Tr. 80).

Except for her participation in the debt consolidation/settlement program, Applicant did not seek or participate in any financial counseling. She expressed remorse for her past financial problems. She asserted she is doing the best she can under her circumstances. She noted her good job performance for Government contractors since 1990, and that she is responsible and reliable. Applicant presented two character references (AEs 3 & 4): One from a supervisor who has known her for eight years, and the second from her mother. Applicant is considered a woman of integrity and honesty. She is dedicated to her family and her work.

In her March 2008 SF 86, Applicant answered “No” to question 28(a) (asking whether in the last seven years he had been over 180 days delinquent on any debts), and to question 28(b) (asking whether she was currently 90 days delinquent on any debts). She deliberately failed to disclose the debts alleged in SOR ¶¶ 1.c through 1.r.

When she submitted her March 2008 SF 86, Applicant knew she was having trouble paying her debts, but claimed she had no idea her debt was so large (Tr. 52). Applicant claimed her failure to disclose her delinquent/charged off debts was not intentional, but caused by her failure to review the security clearance form prior to its submission (Tr. 85).

### **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 controlling 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>4</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.

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<sup>4</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). “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).

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>5</sup>

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 are under Guideline F (Financial Considerations) and E (Personal Conduct). 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 well documented in her credit reports, her SOR

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<sup>5</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).

response, and her testimony. Since her 2000 bankruptcy discharge, she acquired numerous debts which became delinquent and have remained outstanding for many years. As of the hearing date, she had 22 outstanding debts totaling approximately \$39,000. 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.

Considering the record evidence as a whole,<sup>6</sup> I conclude that none of the mitigating conditions apply. Applicant presented little evidence of efforts taken to contact creditors, or to resolve any of the debts since she acquired them. Nor is there any evidence that she has participated in meaningful financial counseling.

I specifically considered Financial Considerations Mitigating Condition AG ¶ 20(b) and conclude it applies, but only to a limited extent. Applicant's testimony established factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts, i.e., being a single mother and sole provider for her son, the lack of financial assistance from her son's father; and her failed relationship.

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<sup>6</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.

Notwithstanding, Applicant's evidence is not sufficient to show she has dealt responsibly with her financial obligations before, or after receipt of the SOR. Applicant has been consistently employed and earned money for extended periods of time. She presented little or no evidence to show paid debts, settlements, documented negotiations, completed payment plans, budgets, or meaningful financial assistance/counseling with respect to her SOR debts. 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 the available evidence, she is overextended financially and her financial problems are likely to be a concern in the future. Her financial problems are recent, not isolated, and ongoing.

### **Guideline E, Personal Conduct**

Under Guideline E, the security concern is that conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. AG ¶ 15.

Applicant failed to disclose relevant information in her answers to questions 28(a), and 28(b) of her security clearance application. Considering the record as a whole, I am convinced Applicant deliberately failed to disclose the information. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's maturity, her employment history, her familiarity with the security clearance process, her demeanor and testimony, the number and value of the debts, her long term disregard of the debts, and the lack of credibility of her explanations.

Because of her extensive experience working for Government contractors and with the security clearance process, Applicant knew the importance of accurately completing her security clearance application, and nevertheless failed to provide information that was material to making an informed security decision. AG ¶ 16(a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire," applies.

AG ¶ 17 lists seven conditions that could mitigate the personal conduct security concerns. After considering all the mitigating conditions, I find none of the mitigating conditions apply to this case. I specifically considered AG ¶ 17(c), and find it does not apply since her behavior is recent and shows Applicant's lack of reliability, trustworthiness, and judgment.

### **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) the 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 18 years working for Government contractors and holding a security clearance weighs in her favor. There is no evidence to show that she has compromised or caused others to compromise classified information. Nor is there evidence showing that she has ever failed to follow the rules and procedures required to handle classified information. She has no police record, and there is no evidence she has used or trafficked in illegal drugs. Aside from her delinquent debts (which are a civil, non-criminal issue), she is a law-abiding citizen, a concerned daughter, and a caring mother. She expressed regrets for her financial mistakes and claimed she is trying to correct them.

Considering the totality of the circumstances in her case, including Applicant's age, education, and maturity, she demonstrated a lack of judgment and trustworthiness in the handling of her financial affairs. She failed to deal responsibly with her financial obligations. Her failure or inability to live within her means and to meet her financial obligations indicates poor self-control or an unwillingness to abide by rules and regulations. Based on the available evidence, she is overextended financially and her financial problems are likely to be a concern in the future.

Because of her many years holding access to classified information and her experience with the security clearance process, Applicant knew or should have known the importance of the trust placed on her by the government. She failed to be candid and honest, in her security clearance application, and broke the trust placed on her. Her behavior shows she lacks judgment.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns pertaining to financial considerations and personal conduct.

### **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:	For Applicant
Subparagraphs 1.b-1.x:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	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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Juan J. Rivera  
Administrative Judge