



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 07-13799  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 25, 2008

**Decision**

WHITE, David M., Administrative Judge:

Applicant admitted owing 19 delinquent debts, totaling \$36,633, and said she was missing work and incurring additional debt. She denied having any financial difficulties in her clearance application and in a previous security questionnaire. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted her electronic Questionnaire for National Security Positions (SF 86), on August 29, 2006. On November 9, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines F and E.<sup>1</sup> 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,

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<sup>1</sup>Item 1.

2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 5, 2007, and requested that her case be decided by an Administrative Judge on the written record without a hearing.<sup>2</sup> Department Counsel submitted the Government's written case on January 9, 2008. A complete copy of the file of relevant material (FORM)<sup>3</sup> was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of her copy of the FORM on January 16, 2008, and returned it to DOHA. She provided no further response to the FORM within the 30-day period she was given to do so, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on March 27, 2008.

### **Findings of Fact**

Applicant is a 42-year-old employee of a defense contractor. She has no prior military service, and has never held a security clearance. She never married, and has two daughters, ages 20 and 19. She was fired from a job she had held for five years in June 2003, and was unemployed until October 2004 when she started her present job. She also began working a second job in April 2006.<sup>4</sup>

In her Answer to the SOR, dated December 5, 2007, Applicant admitted the truth of all factual allegations in SOR ¶¶ 1.a, through 1.s. Her admissions are corroborated by the credit bureau reports (CBRs) in Items 7 and 8 of the FORM, and are incorporated herein as findings of fact. She also admitted, with explanations, to submitting false answers relating to her financial history on her 2006 SF 86, and on the Public Trust Position Application (SF 85P) that she submitted on December 1, 2004. She further stated, "I am off work for the next two months for medical Plus I am in more debt because I get no pay for two months and my insurance did not cover most of my medical bills. [sic]" Her only statement of her intent to address these debts was, "I will do my best to straight [sic] out my debts as soon as I get back on my feet."<sup>5</sup>

The 19 delinquent debts listed in the SOR, to which Applicant admits, total \$36,633. Some became delinquent as long ago as 2000, some as recently as 2006, and some in each year in between. Applicant was fired in June 2003 for missing too much work, and unemployed for the next 15 months. However, her delinquencies both pre- and post-date this period of unemployment, and she did not specifically attribute any of

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<sup>2</sup>Item 4.

<sup>3</sup>The government submitted eight items in support of the allegations.

<sup>4</sup>Item 5.

<sup>5</sup>Item 4 at 5.

them to this time. She offered no evidence that would support application of any financial consideration mitigating condition, either in terms of resolving or disputing these debts, or by seeking counseling or other assistance.

Applicant also admitted to providing false answers on security clearance and trustworthiness determination questionnaires as alleged in SOR ¶¶ 2.a through 2.d. In her 2006 SF 86, she denied having any property repossessed in the last 7 years. In her Answer, she stated that she had forgotten about a vehicle repossession that occurred in 2000, not earlier in 2006 as alleged in the SOR. The FORM contains no direct evidence concerning this repossession, but the two CBRs reflect an auto loan debt in collections that first became delinquent in 2000, and no such delinquencies arising in 2006. In fact, she completed paying off another auto loan “as agreed” in June 2006.<sup>6</sup> Accordingly, there is not substantial evidence supporting the allegation in SOR ¶ 2.a.

Applicant explained her false answers denying 90-day delinquent debts on that SF 86, and denying 180-day delinquent debts on that form and her 2004 SF 85P, by stating that she “just glanced over the questions.” However, she certified the accuracy of her answers by signing each form immediately below the acknowledgment that willful false answers could subject her to criminal penalties, and provided substantial detailed information in response to other questions on each form.

Applicant provided no other evidence of good character, trustworthiness or judgment for consideration in mitigation. Since she elected a determination on the written record, no in-person evaluation of her character or credibility was possible.

### **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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 “Any doubt concerning personnel being considered for access to classified

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<sup>6</sup>Item 7 at 2; Item 8 at 4, 6, 11, 12.

information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **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” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated a significant number and amount of delinquent debts over the past eight years. She was either unable or unwilling to repay these debts, and provided no information that repayment of any of them is probable in the foreseeable future. Applicant demonstrated no effort to resolve any of her \$36,633 of proven delinquent debt. The evidence is sufficient to raise these potentially

disqualifying conditions, requiring a closer examination and balancing of resulting security concerns with any potentially mitigating matters.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions 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.” Applicant’s financial issues have been a continuing problem since at least 2000. Her disregard of these financial obligations is ongoing, and continues to raise concerns about her current reliability, trustworthiness, or good judgment. The evidence does not support this potentially mitigating condition.

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.” Applicant’s delinquencies arose on a regular basis, with new delinquent debt reported in every year since 2000. These delinquencies preceded and followed her 15-month period of unemployment after being fired for missing work, with no evidence of recent responsible action to address them. This potentially mitigating condition is not supported as a factor for significant consideration in this case.

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” 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.” Applicant neither asserted nor provided evidence of either of these conditions. I conclude these potentially mitigating conditions do not apply.

Applicant has made minimal, if any, effort to address or resolve the delinquent debts established by the Government, even after receiving notice of the security concerns raised by these issues. This supports the inference that she remains financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. It further indicates a lack of judgment and unwillingness to abide by rules and regulations, thereby raising substantial questions about her reliability, trustworthiness, and ability to safeguard classified information.

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The disqualifying condition alleged in the SOR and raised by the evidence in this case is:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant provided false denials concerning her lengthy and extensive history of financial delinquencies in response to two questions on her 2006 SF 86, and one question on her 2004 SF 85P. She certified the completeness and accuracy of her answers on each form, acknowledging the obligation to be truthful. Her explanation that she, “just glanced over the question,” in each case is unpersuasive. The weight of evidence in this record leads to the conclusion that her false responses to these three questions were deliberate. Applicant made no assertion of any personal conduct mitigating condition set forth in AG ¶ 17, and the evidence does not raise any of them.

### **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 is a mature individual who is responsible for her choices and conduct. She provided no information to show that any of these debts arose due to circumstances largely beyond her control. Applicant

has been employed for all but 15 months of the period that these debts became delinquent, but has resolved none of them, and continues incurring additional debt she cannot afford to repay. There is no evidence of rehabilitation or permanent behavioral change.

Applicant's falsification of answers seeking disclosure of these debts on security questionnaires not only represents dishonesty and disregard for security concerns, but also demonstrates her susceptibility to pressure concerning their revelation. She submitted no evidence demonstrating that risk of coercion or duress is not significant. Her ongoing disregard of lawful obligations, especially after receiving notice of the security concerns raised thereby, creates continuing doubt about her trustworthiness and reliability. She offered no other evidence to mitigate these concerns.

Overall, the record evidence creates substantial doubt 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 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a:

For Applicant

Subparagraph 2.b:

Against Applicant

Subparagraph 2.c:

Against Applicant

Subparagraph 2.d:

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.

DAVID M. WHITE  
Administrative Judge