



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



In the matter of: )  
)  
) ISCR Case No. 07-14462  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

July 11, 2008

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns raised by her financial history. Eligibility for access to classified information is granted.

On March 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations. 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 answered the SOR in writing on April 7, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on April 29, 2008. DOHA issued a notice of hearing on May 19, 2008. I convened the hearing as scheduled on June 3, 2008. The Government offered Exhibits (Ex.) 1 through 7, which were received

without objection. Applicant testified on her own behalf and called one witness, but did not submit documentary evidence. I granted Applicant's request to keep the record open until June 24, 2008, to submit additional matters through Department Counsel. Applicant submitted 91 pages of documents. Department Counsel submitted a memo listing the documents as 1 through 17. The memo is marked Hearing Exhibit (HE) I. The documents were marked Exhibits A1 through A17, and admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 13, 2008.

## **Procedural Rulings**

### **Notice**

I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice.

### **Findings of Fact**

The SOR alleges Applicant was delinquent on ten debts, totaling approximately \$10,742. It also alleges that she declared bankruptcy in 1992, 1998, and 2005. In her Answer to the SOR, Applicant admitted to seven debts alleged in SOR ¶¶ 1.c, 1.d, and 1.f through 1.j, and she admitted to filing three bankruptcies, as alleged in SOR ¶¶ 1.k through 1.m. She denied the three debts alleged in SOR ¶¶ 1.a, 1.b, and 1.e.

Applicant is a 40-year-old employee of a defense contractor. She has worked for her current employer since 2006. She attended college for a period, but did not obtain a degree. She is divorced with two children, ages 17 and 13.<sup>1</sup>

Applicant married in 1990. She had a difficult pregnancy with their daughter who was born in 1991, and she had to quit work. Her daughter had medical issues which led to medical expenses. The combination of the loss of Applicant's salary and the medical expenses caused financial difficulties and falling behind on their debts. Applicant and her husband filed Chapter 7 bankruptcy in 1992. They listed assets of \$6,327 and liabilities of \$42,842. Their dischargeable debts were discharged in 1992.<sup>2</sup>

Applicant's ex-husband worked in law enforcement since the 1970s. He has a long history of medical problems which started before they met. He was diagnosed as diabetic in the early 1990s, and has suffered from many complications from the disease. Portions of a foot and toes have been amputated. He was hospitalized several times for pneumonia and had multiple operations to implant stents. Their daughter also has a medical condition that has led to many medical problems and bills throughout her life. Applicant did not work outside the home from 1992 through 2005. With the high cost of day care and her husband's staggered work hours, it was not considered practical for her to work. He handled the majority of the family finances. Applicant and her husband

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<sup>1</sup> Tr. at 19-21, 111; Ex. 1.

<sup>2</sup> Tr. at 19-21, 77; Applicant's Answer to SOR; Ex. 1, 5.

filed Chapter 7 bankruptcy again in 1998. They listed assets of \$93,110 and liabilities of \$35,837. The assets included \$85,000 in her husband's accrued retirement benefits which were being held by the state pension board. Their dischargeable debts were discharged in 1998.<sup>3</sup>

Applicant's ex-husband had a heart attack in 2004. He was finally told to retire from his law enforcement job, which left him unemployed for a period of six or seven months. He purchased what he thought was medical insurance, but which was actually some sort of medical indemnity that would pay the medical expenses, but would require repayment. Applicant testified they received a bill from the insurance company for \$45,000. Applicant and her husband filed Chapter 13 bankruptcy in May 2005. The bankruptcy was converted to a Chapter 7 bankruptcy in 2006; additional creditors were included in the bankruptcy; and their dischargeable debts were discharged in 2006. The bankruptcy petition includes a debt to an insurance company of \$46,636.<sup>4</sup>

Applicant and her husband separated in late 2005. Their divorce finalized in October 2007. She returned to the workforce, but her employment was sporadic and her salary was low. She was unemployed for several months in 2006.<sup>5</sup>

Applicant's one extravagance was a horse that she and her ex-husband purchased from a friend for their child during a period when their finances were better. The horse was difficult to sell or donate because the horse had medical issues. Additionally, their child was very attached to it, but they finally were able to place the horse in another state. A veterinarian obtained a judgment against Applicant for \$2,647, as alleged in SOR ¶ 1.a, for a vet bill for the horse. The judgment has been fully satisfied.<sup>6</sup>

SOR ¶ 1.b lists a debt of \$1,108 to a bank. Applicant does not deny that she owed this debt, but stated it was discharged in bankruptcy under another name. The debt is listed on the credit reports with the last activity occurring in early 2003. The name in the allegation is a bank and the name of the debt included in the bankruptcy is a credit card. Applicant submitted documentation that the bank issues a credit card under the name listed in the credit reports and the SOR. Applicant would have no reason to omit this debt from the bankruptcy. I find this debt was discharged in bankruptcy.<sup>7</sup>

Applicant admitted owing the debt of \$907 to a collection company on behalf of a credit card company, as alleged in SOR ¶ 1.c. She has agreed to make payments of

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<sup>3</sup> Tr. at 17-21, 72, 100, 117-123; Applicant's Answer to SOR; Ex. 4, A4, A12.

<sup>4</sup> Tr. at 17, 70, 87-88; Ex. A3, A6, A12.

<sup>5</sup> Tr. at 23, 65.

<sup>6</sup> Tr. at 36-37, 66-70, 88-89; Ex. 2, A3, A9.

<sup>7</sup> Tr. at 37-38, 44-50; Ex. 2, 6, 7, A3, A4.

\$100 per month. In her post-hearing submission, she submitted a statement from the creditor as proof of payment. While she did not submit a copy of a cancelled check or a receipt of payment, the statement indicated that the debt was down to \$807. I find she made a payment of \$100.<sup>8</sup>

When Applicant separated from her ex-husband, she moved to a person's home and paid rent. Applicant paid the rent for a period and then was unable to make the rent payments. She moved out owing rent. The landlord obtained a judgment against Applicant for \$924, as alleged in SOR ¶ 1.d. Applicant did not believe she owed the entire amount as she gave the landlord a refrigerator, washer, and dryer. However, she did not fight the lawsuit and agrees that she is legally responsible for the entire judgment. Applicant and the landlord signed an agreement wherein Applicant promised to pay \$100 per month until the judgment was paid. Applicant made the first \$100 payment on June 23, 2008.<sup>9</sup>

SOR ¶ 1.e lists a debt of \$4,145 to a collection company for nine delinquent accounts. The credit report of February 6, 2007, lists the nine accounts to the collection company. The names of the original creditors are not listed. None of the debts are listed on the credit report of February 21, 2008. Applicant stated several of the original debts were discharged in her bankruptcy. She provided a statement from the collection company showing she still owed on four medical accounts. She made five payments of \$100 each between January 2008 and May 29, 2008, with a remaining balance of \$966.<sup>10</sup>

Applicant does not deny that she owed debt of \$372 to a collection company, as alleged in SOR ¶ 1.f, but she stated it was discharged in bankruptcy under a different name. The debt is listed on the credit report of February 6, 2007. It is listed under two different names in the credit report of February 21, 2008. Applicant stated this debt was included in the Schedule of Post-Petition Debt for her bankruptcy. One of the names listed on the credit report of February 21, 2008, is listed to be served a copy of the Petition. The evidence supports Applicant's assertion that this debt was discharged in bankruptcy.<sup>11</sup>

SOR ¶¶ 1.g through 1.j allege four debts totaling \$639. The debts are listed on the credit report of February 6, 2007. The credit report indicates that all the debts were joint debts and were incurred prior to the last bankruptcy. None of the debts are listed on the credit report of February 21, 2008. Applicant and her ex-husband both testified that they believed the debts were medical debts that were discharged in their bankruptcy under the one or more of the many collection companies listed in the bankruptcy. In her post-hearing submission, Applicant stated the debts may still be

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<sup>8</sup> Tr. at 39; Applicant's Answer to SOR; Ex. A3, A9, A12.

<sup>9</sup> Tr. at 24-25, 39, 60-61; Applicant's Answer to SOR; Ex. A3, A9.

<sup>10</sup> Tr. at 39; Ex. 6, 7, A3, A9.

<sup>11</sup> Tr. at 37-38, 72; Ex. 2, 6, 7, A3, A4.

owed, but that they were her ex-husband's responsibility since they arose when they were still married, she was not working, and he carried the health insurance for the family.<sup>12</sup>

Applicant and her ex-husband paid other debts not listed on the SOR. He prepared their income tax returns and they owed the Internal Revenue Service (IRS) \$8,997 for tax years 1997 through 2003, resulting in a tax lien. The IRS was paid and the tax lien released in December 2007. When Applicant filed her tax returns for tax year 2007, she realized she owed the IRS about \$1,061 and the state about \$300. She did not have the funds to pay the taxes at that time. She will pay the state \$50 per month until paid. Her employer will deduct \$100 per month from her pay for the IRS and the IRS will keep her \$600 economic stimulus payment for her tax debt. She changed the number of allowances on her W-4 form, which will increase her withholding, and lower what she will have to pay out of pocket when she files next year.<sup>13</sup>

Applicant and her ex-husband have remained very amicable after their divorce. He testified on her behalf and wrote a letter. He stated she is responsible and a very strong person of character, whose dedication is second to none. She has been an outstanding mother, both during and after their marriage. He believes their entire family is better off now. He likes her boyfriend and feels that he is good for her.<sup>14</sup>

Applicant testified that her finances are now in order. Her employment is stable as long as she obtains a security clearance. Her salary has increased. She is living with someone who is financially secure. He does not charge her rent. They have co-mingled their finances, permitting her to resolve her debts. She bought a used car in September 2007, for \$5,255 in order to commute to work. The car was financed with a \$1,000 down payment and monthly payments of \$709. The car has been paid, freeing extra income for living expenses and to pay other debts. The car is not currently in working order, but Applicant has use of her boyfriend's car. Applicant has not received financial counseling. She credibly testified that she intends to pay all her delinquent debts.<sup>15</sup>

The president of Applicant's company wrote a letter stating she is an exemplary employee and very trustworthy. Other letters describe her as honest, dedicated, competent, professional, efficient, and conscientious. She is recommended for a security clearance.<sup>16</sup>

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<sup>12</sup> Tr. at 39, 72, 100-102; Ex. 6, 7, A3, A9.

<sup>13</sup> Tr. at 25-26, 112-115; Ex. 2, A8, A15.

<sup>14</sup> Tr. at 122-123; Ex. A6,

<sup>15</sup> Tr. at 29-33, 62, 95-97, 102-106; Ex. A6, A8, A9

<sup>16</sup> Ex. A6.

## 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 to be used 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, Administrative Judges apply the guidelines 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 the 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 adverse 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 *a/so* 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay her obligations for a period of time. The evidence is sufficient to raise both of these potentially disqualifying conditions.

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.

Applicant did not work from the time she became pregnant shortly after she married in 1990, until she separated from her ex-husband in 2005. She accepted the traditional role of the wife and mother and he took care of work and the finances. He had a stable job in law enforcement, but was plagued by numerous medical problems, which greatly exacerbated their finances. Their only recourse was to file bankruptcy. He purchased what they thought was medical insurance, but which in reality was medical "assurance" which served as a form of loan. Medical bills were paid by the insurance company, but then he and Applicant were expected to repay the insurance company. A debt of \$46,636 to an insurance company is listed in their bankruptcy petition. Applicant incurred delinquent debts on her own after she and her husband separated in 2005. She worked for little pay and had months of unemployment. She now is in much better financial shape. She has worked for her current employer for about two years and is earning a better salary. She is living with her boyfriend who is established financially. She is diligently paying her debts and working on putting her financial house in order.

Because Applicant is still in the process of paying her debts, I do not find that AG ¶ 20(a) is applicable. I find the conditions that resulted in the financial problem (medical problems with related expenses, unemployment and poor paying jobs) were largely beyond her control. I further find that under the circumstances, filing bankruptcy and working to pay the subsequent debts was responsible behavior. Applicant has not received financial counseling, but there are indications that her financial problems are being resolved and are under control. The debts that were discharged in bankruptcy were never paid, but Applicant is attempting to pay all her debts that have accrued since then. AG ¶¶ 20(b), 20(c), and 20(d) are all partially applicable.

### **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.



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 married a veteran law enforcement officer in 1990. She quickly became pregnant with their first child and had to quit work. She did not work outside the home during the marriage. He had severe medical problems, with numerous complications from diabetes and a heart attack. Their only viable recourse was to file bankruptcy. They separated in 2005, and divorced in 2007. She had financial problems of her own after the separation. She worked low paying jobs and had periods of unemployment. She now is back on track. She is living with her boyfriend who is financially stable. She is well regarded at her place of work, and has received several raises. Her ex-husband spoke very highly of her and her boyfriend and stated that the entire family is now better off.

The Appeal Board has noted that an applicant is not required to establish that she has paid every debt listed in the SOR. All that is required is that an applicant must demonstrate that she has “established a plan to resolve [her] financial problems and taken significant actions to implement that plan.”<sup>17</sup> Applicant’s finances are not perfect. She has paid a number of her debts, some alleged in the SOR and some not, but still has debts to pay. However, she credibly testified that she intends to pay her delinquent debts. I find that she has established a plan to resolve her financial problems and has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial issues.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.m:	For Applicant

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<sup>17</sup> ADP Case No. 06-18900 at 4 (App. Bd. Jun. 6, 2008).

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge