



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-14624  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 26, 2008

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on March 2, 2007. On February 12, 2008, 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 April 23, 2008, and elected to have her case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on June 16, 2008.<sup>1</sup> Applicant received a complete file of relevant material (FORM) on June 26, 2008, and was provided the

<sup>1</sup>The Government submitted seven items in support of its contention.

opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant submitted additional information on July 31, 2008. The case was assigned to me on August 12, 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 April 23, 2008, Applicant admitted the factual allegations in ¶¶ 1.b, 1.c, 1.d, 1.e, 1.h, 1.l, 1.m, 1.n, 1.s, 1.u, and 1.v of the SOR. She denied ¶¶ 1.a, 1.f, 1.g, 1.j, 1.k, 1.l 1.o, 1.p, 1.r, 1.t, and 1.x of the SOR with explanations because she had no knowledge of them. She neither admitted nor denied allegations 1.q and 1.w. Applicant provided additional information to support her request for eligibility for a security clearance.

Applicant is a 45-year-old employee of a defense contractor. She graduated from high school, and attended college for several years from 1981 until 1983. She has taken other courses over the years. She is divorced with one daughter who is 15 years old. She has worked for her current employer since February 2007 (Item 4).

From 1994 until 2001, Applicant worked in a home business (*Id*). She had periods of unemployment for seven months in 2006. She also reported unemployment from April 2004 until June 2005 (more than one year).

Applicant had no financial difficulties until 2003 when her husband divorced her. She did not receive alimony or child support. She used various credit cards to purchase furniture for her apartment and for other essentials. She has student loans in deferment status. Applicant injured her back in 2006, had surgery and resultant medical bills that she could not pay, even with insurance. She could not work for months as described above. This led to more delinquent bills (Item 5).

The SOR alleges 24 delinquent debts, including medical collection accounts (\$17,000) The total amount of other debt that Applicant owes is approximately \$55,286 (Items 6 and 7).

Applicant admitted that the medical accounts in allegations ¶ 1.b, 1.c, and 1.d. are not paid because she is dealing with the insurance company. She provided no documentation for this assertion.

Applicant admitted some of the debts but claimed they were due to periods of unemployment or low paying jobs. There is no evidence of any payments that were made to any accounts.

Applicant stated that she does not know what the debts are in the following allegations: ¶¶ 1.f, 1.g, 1.j, 1.k, 1.l, 1.o, 1.p, 1.q, 1.t, 1.u, 1.w, and 1.x. She did not provide any documentation to support a dispute regarding the debt. Applicant stated she is awaiting an updated account from one of her credit reports (Item 5).

The current status of Applicant's delinquent debts is as follows: all accounts listed in the SOR remain unpaid or in collection. Applicant did not report receiving financial counseling. She claimed she has thought about counseling and obtaining help from a company to establish a repayment plan but has not done so. Applicant also promised to use tax refunds to take care of some of the debts (Item 5).

Applicant's answer and submissions to the FORM explain the delinquent debts from her credit reports and her inability to pay due to making insufficient income. She stated that when she has some extra money, there is usually a car repair or some other unexpected medical expense. She states that she tries to pay her current bills. She emphasized that she disputed the delinquent bills or claimed that the debt was unknown to her. She did not provide sufficient documentation to support her position concerning the disputed debts alleged.

Applicant's current net monthly income is \$2,186. She reported monthly expenses of \$1,628 a month. Her net remainder is listed as \$5.00 (Item 5). She has a car payment of \$376. She listed assets of \$5,000 (miscellaneous).

### **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 "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>o</sup> is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debts on numerous credit accounts and medical collections. She did not meet her financial obligations from 2003 until the present time. Her credit reports confirm the debts. 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 Athe 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>o</sup> Applicant-s

financial worries arose in approximately 2003. She accumulated some delinquent debt due to an inability to pay due to a divorce in 2003 and periods of unemployment. While those circumstances may have precipitated the debt, the inquiry does not end at that point. She has not acted responsibly. Her conduct over the last six months with her creditors does not remove security concerns or doubts about her current reliability, trustworthiness, and good judgment. She has approximately \$55,000 in delinquent debt. 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. As noted above, Applicant reported periods of unemployment in her answer to the FORM and divorce in 2003. She had back surgery in 2006. Although Applicant's divorce may have initially started a downturn for her, she did not provide any explanation as to how this impacted her ability to pay other debts. After she became re-employed, she did not act responsibly in identifying and resolving these debts. I find this potentially mitigating condition partially applies.

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 has not received counseling. Applicant did not provide documentation that the debts alleged have been disputed. Her reliance on lack of knowledge about the debts is not resolution of the financial issue. Her efforts are not sufficient to carry her burden in this case. 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 originally stated that she disputed some debts. She did not elaborate in her response or provide documentation. Her efforts focus on dispute rather than paying them or providing documentation that they are not her bills. 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 and conclude they are insufficient to overcome the government's case. Applicant is a single parent and provides for her daughter without benefit of alimony or child support. She had a medical problem and surgery in 2006. Since her divorce in 2003, she has fallen behind on her bills. She had to use credit for living expenses. She had low paying jobs and some unemployment. However, Applicant has a long history of financial difficulties and has not resolved any debts. The record contains scant information concerning Applicant. She chose to have her case decided on the written record. Her answer to the SOR and submissions to the FORM are not sufficient for her to meet the burden in this 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 the financial considerations guideline.

### **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.x:	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