



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-15203
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro Se*

June 25, 2008

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on January 22, 2007 (Government Exhibit 1). On December 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted Answers to the SOR on February 1, 2008, and March 3, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on March 25, 2008. I received the case assignment on April 1, 2008. DOHA issued a notice of hearing on April 4, 2008, and I convened the hearing as scheduled on April 21, 2008. The Government offered Government Exhibits 1

through 3, which were received without objection. Applicant testified on her own behalf, called one witness, and submitted Applicant's Exhibits A through F, without objection. Pursuant to her request, the record remained open until May 2, 2008, for the submission of additional documentation. The Applicant submitted Applicant's Exhibit G on May 5, 2008, which was admitted without objection. DOHA received the transcript of the hearing on April 30, 2008. The record closed on May 5, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

The Applicant is 48, married and has a high school diploma. She has two older children, neither with her current husband. She is employed by a defense contractor as a Warehouse Specialist and seeks to obtain a security clearance in connection with her employment.

### **Guideline F, Financial Considerations**

The Applicant admits all of the allegations in the SOR, with the exception of 1.f. She further submits that there are two duplicate debts referred to in the SOR (1.g. and 1.k.; 1.h. and 1.i.). The Applicant submits that the majority of her financial problems began when she was divorced from her first husband and trying to support her children (one of whom is mentally disabled). She and her new husband both submit that they are getting their family finances under control.

1.a. The Applicant admits that she is indebted to the Internal Revenue Service (IRS) for back taxes. A credit report dated March 1, 2007, shows a Federal tax lien in the amount of \$16,322.00 for tax years 1992, 1993, 1994, and 1995. (Government Exhibit 2 at 3.) There is no evidence that this lien has been released or that this amount has been paid. During her testimony, the Applicant stated that she is currently making payments to the IRS on a \$1,587.24 tax bill for 1997. She submitted evidence showing that she has been paying the IRS an amount between \$75.00 and \$150.00 every month since November 2007. (Applicant's Exhibits B and G at 4-6; Transcript at 41-56.) The Applicant has requested a current statement from the IRS, but as of the time the record closed she had not received it. (Applicant's Exhibit H at 4.)

1.b. The Applicant submitted documentary evidence showing that she had successfully paid off her State tax liability in 1999. (Applicant's Exhibit A; Transcript at 56-58.) This subparagraph is found for the Applicant.

1.c. The Applicant admits that she is indebted to Capital One Bank on an account placed for collection by K-Mart in the amount of \$1,293.00. The Applicant has made no payments on this debt, and has no current intention to make payments on this debt. (Government Exhibits 2 at 4; Transcript at 58-59.)

1.d. The Applicant admits that she is indebted to Capital One Bank for a credit card in the amount of \$1,452.00. The Applicant has made no payments on this debt, and has no current intention to make payments on this debt. (Government Exhibit 2 at 4, and Government Exhibit 3 at 2; Transcript at 60-61.)

1.e. The Applicant admits that she is indebted to CITGO/CBSD in the amount of at least \$295.00. The Applicant has made no payments on this debt, and has no current intention to make payments on this debt. (Government Exhibit 2 at 3; Transcript at 61.)

1.f. The Applicant has paid off this \$108.00 cable bill. (Government Exhibit 3 at 1; Transcript at 61-63.) This subparagraph is found for the Applicant.

1.g. The Applicant admits that she is indebted to Midland Credit Management on an account placed for collection by Providian National Bank in the amount of at least \$2,750.00. The Applicant has made no payments on this debt, and has no current intention to make payments on this debt. (Government Exhibit 2 at 5, Government Exhibit 3 at 2; Transcript at 63.)

1.h. The Applicant admits that she is indebted to a collection agency in the amount of at least \$1,190.00 for an Aspire Visa. The Applicant has made no payments on this debt, and has no current intention to make payments on this debt. (Government Exhibit 2 at 8-9; Transcript at 63-67.)

1.i. The Applicant denies this additional debt for an Aspire Visa. The available documentary evidence and the Applicant's testimony supports this statement. Accordingly, this subparagraph is found for the Applicant.

1.j. The Applicant admits that she is indebted to PRM Financial Services on an account placed for collection by Chase in the amount of at least \$7,283.00. The Applicant has made no payments on this debt, and has no current intention to make payments on this debt. (Transcript at 67-68.)

1.k. The Applicant denies this additional debt for Providian. She has consistently stated that she only had one credit card with them. The available documentary evidence and the Applicant's testimony supports this statement. Accordingly, this subparagraph is found for the Applicant.

1.l. The Applicant admits that she is indebted to Merchants Credit Guide on an account placed for collection by Montgomery Ward in the amount of at least \$1,863.00. The Applicant has made no payments on this debt, and has no current intention to make payments on this debt. (Transcript at 69.)

1.m. The Applicant admits that she was late in filing her **Federal** income tax returns for 1997, 1998, 1999 and 2000. She further testified that all the returns have been filed, she is now timely on her income tax returns, and she submitted copies of her

1999, 2000 and 2001 returns. (Applicant's Exhibits E, F and G; Transcript at 42-48.) This subparagraph is found for the Applicant.

1.n. The Applicant admits that she was late in filing her **State** income tax returns for 1997, 1998, 1999 and 2000. She further testified that all the returns have been filed, she is now timely on her income tax returns, and she submitted copies of her 1999, 2000 and 2001 returns. (*Id.*) This subparagraph is found for the Applicant.

She has talked with two consumer debt consolidation agencies and to a bankruptcy attorney, but has not made arrangements with any of these entities concerning her past due indebtedness. (Applicant's Exhibits C, and H at 4; Transcript at 59-60.)

The records indicate that the past due debts discussed above total \$16,126.00. This excludes subparagraph 1.a. The current total that she owes the IRS for past due Federal taxes is not known.

## **Mitigation**

The Applicant's supervisor submitted a statement. He described the Applicant as a "very conscientious, reliable and loyal employee." (Applicant's Exhibit H at 7.) She has received personal recognition from the Armed Forces in relation to her employment. (Applicant's Exhibit D.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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(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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . 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.” 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” is potentially disqualifying. Similarly under AG ¶19(c), “a history of not meeting financial obligations” may raise security concerns. The Applicant has over \$16,000.00 in past due debts, not including a

potentially large Federal tax debt, which have been due and owing for several years. 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.” Applicant’s financial difficulties arose primarily before 2000. In addition, AG ¶20(b) states that it may be mitigating where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., . . . divorce or separation), and the individual acted responsibly under the circumstances.” However, the Applicant made no attempt to even begin to try to pay these debts voluntarily until just before the hearing. This mitigating condition is not applicable to this case.

The Applicant has not done anything to pay any of her debts, other than her tax debts. Even there, she is uncertain as to how much she currently owes the IRS. Under the particular facts of this case, I cannot find that the Applicant has initiated a good-faith effort to pay off her creditors. Accordingly, AG ¶20(d) is not applicable. As stated under Findings of Fact, above, subparagraphs 1.b., 1.f., 1.i., and 1.k. are found for the Applicant.

### **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 commonsense 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. The Applicant is a hard-working, highly respected, professional person who has made poor decisions concerning her debts. She has just now begun to resolve her debt situation.

Of course, the issue is not simply whether all the Applicant’s debts are paid - it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. Given the Applicant’s complete failure to begin to resolve these debts, I

cannot find that there have been permanent behavioral changes under AG ¶2(a)(6). Accordingly, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)8)); or that the likelihood of recurrence is close to nil (AG ¶2(a)9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from her financial considerations.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **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 THE APPLICANT
Subparagraphs 1.a.:	Against the Applicant
Subparagraphs 1.b.:	For the Applicant
Subparagraphs 1.c.:	Against the Applicant
Subparagraphs 1.d.:	Against the Applicant
Subparagraphs 1.e.:	Against the Applicant
Subparagraphs 1.f.:	For the Applicant
Subparagraphs 1.g.:	Against the Applicant
Subparagraphs 1.h.:	Against the Applicant
Subparagraphs 1.i.:	For the Applicant
Subparagraphs 1.j.:	Against the Applicant
Subparagraphs 1k.:	For the Applicant
Subparagraphs 1.l.:	Against the Applicant
Subparagraphs 1m.:	Against the Applicant
Subparagraphs 1.n.:	Against the Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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WILFORD H. ROSS  
Administrative Judge