



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-15767
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John B. Glendon, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 30, 2008

**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on March 12, 2007.<sup>1</sup> On November 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, E and J 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 requested a hearing before an Administrative Judge. I received the case assignment on March 11, 2008. DOHA issued a notice of hearing on March 28, 2008, and I convened the hearing as scheduled on April 17, 2008. The Government

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<sup>1</sup>This is the latest security application that Applicant completed. She also completed one on November 26, 2002, which is relevant in this case.

offered Exhibits (GE 1-18), which were received without objection. Applicant testified in her own behalf, and submitted Exhibits (AE A-M), without objection. DOHA received the transcript on April 23, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, dated December 17, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.g, 1.k, 1.m, 1.p, 1.q, 1.s, 1.t. and 1.v of the SOR. She also admitted the factual allegations in ¶ 2.a-2.j of the SOR but denied any intentional falsification. Applicant denied the other allegations because the debts were paid or she had no knowledge of them. She provided additional information to support her request for eligibility for a security clearance.

Applicant is a 43-year-old employee of a defense contractor. She graduated from high school in 1982. In 1996, Applicant attended a business college full time one year. She also received a certificate in 1997 from a computer center. She has worked for her current employer since December 2006 (GE 1). Applicant held a security clearance from 1997 until 2004 (Tr. 40).

Applicant married in 1986. After 12 years of marriage, she and her husband separated in 1998 and remained separated for a period of 10 years.<sup>2</sup> Applicant's delinquent debts started after her separation from her husband in 1999 until 2001. She was trying to find a place to live for herself and her son. In July 2001, Applicant's lease was not renewed due to unpaid rent, and she was forced to move (Tr. 86).

Applicant had an altercation with the apartment representative one afternoon. When she was picking up her son from school she was told that she could no longer be on the property. An apartment representative presented her with a "piece of paper" and Applicant shoved it back in his hand (Tr.42). The management filed assault and battery charges against Applicant. She did not appear in court for the charge and a warrant for her arrest was outstanding.

From 1997 until 2004, Applicant worked as a contractor (Tr. 54). She was unemployed for six months from March to September 2005, but received unemployment benefits.

Applicant was diagnosed with breast cancer in 2000. She received chemotherapy treatment in 2001. She received disability payments during her treatment period (Tr. 56).

The SOR alleges 22 delinquent debts, including one tax delinquency, five judgments, one car repossession and approximately 14 other delinquent debts. The

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<sup>2</sup>At the hearing, Applicant stated that she was divorced in March 2007 (Tr. 122).

total amount of debt that Applicant owes is approximately \$50,000 (GE 2, 3, 9-11, 13-18).

Applicant admitted that the accounts in allegations ¶¶ 1.a, 1.b, 1.c, 1.d, 1.j, 1.k, 1.l, 1.m, 1.o, 1.q, 1.r, 1.s, and 1.u are not paid. Allegation 1.v for \$11,718 is a student loan in deferment. The loan was in default until she recently reapplied for deferment.

For the following allegations: ¶¶ 1.e, 1.f, 1.h, 1.i, 1.n, 1.p, and 1.t, Applicant provided proof that she paid the accounts/judgments, in 2003, and the tax delinquency in 2005 (AE E-K). Allegation 1.g is in repayment status beginning in April 2008 (\$20 a month) Tr. 72).

The current status of Applicant's delinquent debts is as follows: seven debts are paid and, two debts are in a payment plan. She made an appointment for financial counseling last year, but did not keep the appointment (Tr. 127). She was inconsistent in her testimony regarding creditors that she contacted in the past few months.

Applicant's current monthly net income is \$2,348. She has a part time job that provides an additional \$300 a month. After monthly expenses of \$2,403, and current debt payments of \$140, she has a net remainder of \$245 (AE L).

Applicant completed her November 26, 2002 security application. In that application she answered "no" to question 26. Your Police Record - Other Offenses, and "no" to questions 34, 35, 36, 37, 38, and 39 concerning financial matters (GE 4).<sup>3</sup>

Applicant explained that she completely forgot about the assault and battery arrest in 2001. She was stopped by the police for an expired decal. The police officer then learned that there was an outstanding warrant for Applicant's arrest for assault and battery because she had not appeared in court for the charge. The court found her guilty. She was fined \$125.

Applicant did not answer "yes" to any of the questions regarding financial matters. She had judgments and delinquent debts at the time. She admitted that she had no reason for not listing them. At the hearing, on cross examination, Applicant stated "there was no reason and that she should have answered the questions" in the affirmative on the 2002 security clearance application (Tr. 115-117).

In January 2004, Applicant was interviewed as part of the security clearance process. She reported to the investigator that a police officer stopped her for an expired decal on her car. She then explained that she learned a warrant for her arrest had been issued because the apartment representative had filed charges against Applicant for

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<sup>3</sup>Applicant testified at the hearing that her wages were not garnished for 1.p debt. She made monthly payments and it is now paid. Thus, question 34 concerning wage garnishments would not require Applicant to respond "yes".

Assault and Battery in the incident described above (Tr. 113). She also discussed her financial difficulties and the various debts she had incurred.<sup>4</sup>

In January 2007, Applicant considered purchasing a home. She completed a loan application and again became aware of her outstanding financial difficulties and her credit history. This was only a few months before she completed her March 2007 security clearance application.

When Applicant completed her March 12, 2007 application, she answered “no” to section 23: Your Police Record (which asks about prior arrests) and “no” to section 28: Your Financial Delinquencies. Applicant explained that she had forgotten the 2001 arrest again. She had no reasonable reason for not answering “yes” to the question in section 28(a) and (b) concerning the debts more than 90 or 180 days overdue (GE 1). She was evasive at the hearing and inconsistent with her answers on cross examination. She did not list the delinquencies because she did not want them to be a possible security concern.

Applicant’s current employer recommends Applicant for a security clearance. He reports she has excellent qualities and can be trusted. She is a dedicated worker. He is aware of the security concerns facing Applicant, and believes she is resolving her financial problems. Applicant’s recommendations include one from the acting pastor of her church and one from a friend (AE A-C).

### **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

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<sup>4</sup>Department Counsel withdrew the allegation in 2.b at the hearing. After Applicant testified, Department Counsel noted that he had misread the report of information concerning the interview with the investigator.

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), a history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debts on numerous accounts and judgments and did not meet her financial obligations from the late 1990's until the present time. Her credit reports confirm that she has recent debts as well. 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 worries arose in 1999. She accumulated some delinquent debt due to her separation. 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 13 outstanding delinquent debts. 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, her financial problems initially arose from her separation, her illness and a period of unemployment. Although, she did receive disability payments and unemployment benefits, those benefits were adequate for her to maintain payments on her 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. She had an appointment in 2007 but did not keep the appointment. She paid some of debts and judgments in 2003, the tax in 2005, and has a payment plan for two debts. In light of her 13 delinquent debts, 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 the car repossession as her debt because she thought her husband would make payments on it. I conclude this potentially mitigating condition partially applies.

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

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel 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" is potentially disqualifying.

In this case, when Applicant completed her 2002 security application, she did not list any delinquent debts, garnished pay, repossessions, judgments, or her 2001 arrest for assault and battery. In her 2007 security application, she listed a repossession and garnishment but did not list any delinquent accounts. She answered "no" to all the relevant questions, and did not disclose the debts discussed in the previous section. Her explanations are not credible. She provided deliberately false information. Moreover, just a few months before the 2007 application, when looking for a house, Applicant was reminded of her financial problems when her credit was reviewed. Thus, 16(a) applies.

AG ¶ 17 provides seven conditions that could mitigate personal conduct security concerns in this case. After considering them, none of the mitigating conditions in AG ¶ 17 apply. Applicant's falsification of her SF 86 in March 2007 is recent. She did not promptly inform the government of her falsification. Her interview in 2004 was two years after her 2002 application. She did not receive counseling to improve her conduct. No one advised her to falsify her SF 86. She admitted that she had no reason not to answer the questions. The falsification of her SF 86 is substantiated. The falsification of her 2007 SF 86 cast doubt on her current reliability, trustworthiness, and good judgment.

### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or unwillingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), a "single serious crime or multiple lesser offenses" may be potentially disqualifying. Similarly, under AG 31(c) an allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted" may raise security concerns. As discussed above, Applicant intentionally

falsified her security clearance applications. This is sufficient to raise these potentially disqualifying conditions.

While the falsifications in the 2002 are in the past, they have recurred as recently as 2007. Thus, none of the mitigating conditions apply and they are not sufficient to mitigate the disqualifying conduct. None of the mitigating conditions apply under this guideline.

### **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 has served in various positions with a security clearance for a number of years. She has not had any documented problems with her employment. Her current employer praises her hard work and professionalism. However, Applicant has a long history of financial difficulties and has resolved less than half of them. Moreover, her recent falsification of her SF 86 in 2007 is a violation of Federal law under Title 18, United States Code, Section 1001, which is a felony.

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 her financial considerations, personal conduct and criminal 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





## **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