



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 07-16227  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ray P. Blank, Esquire, Department Counsel  
For Applicant: *Pro se*

July 28, 2008

**Decision**

CURRY, Marc E., Administrative Judge:

On March 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 on April 7, 2008, and requested a hearing. I received the case assignment on April 25, 2008. DOHA issued a notice of hearing on May 1, 2008, and I convened the hearing as scheduled on June 9, 2008. During the hearing, I received four Government exhibits and Applicant's testimony. At the close of the hearing, I left the record open at Applicant's request, to allow her to submit documents. Applicant then submitted seven documents that I incorporated into the

record. DOHA received the hearing transcript (Tr.) on June 16, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

### Findings of Fact

Applicant is a 37-year-old, woman with three children ages 20, 18, and 16. She has been married twice. Both marriages ended in divorce. Her first husband is the father of her three children. Applicant earned a GED in 1994. Currently, she works for a contractor that manufactures night vision goggles.

Applicant is highly respected on the job. Her supervisor characterizes her as “highly upbeat and helpful to other people with whom she comes in contact with” (Exhibit C). A coworker describes her as “a very hard worker with a strong work ethic” (Exhibit E).

Applicant has a history of financial problems that began with the deterioration of her first marriage in the mid 1990s, and continue to the present. In 1997, the year she and her first husband separated, she was hospitalized for three days after a prescription medication overdose (Tr. 45). The treatment costs totaled approximately \$14,000. Applicant did not have health insurance benefits at the time, and was unable to pay it. A judgment was rendered against her on this debt in 2003 (Answer, SOR subparagraph 1.v).

In 1999, Applicant’s divorce was finalized (Exhibit 1 at 17). That year, she also obtained a job with health benefits (*Id.* at 14). In May 2001, she purchased a car (Exhibit 3 at 5). Three months later, she remarried (*Id.* at 17). Her second husband owned a home worth approximately \$200,000 (Tr. 47). Before they married, he had operated a business that generated approximately \$500,000 in yearly revenue (Tr. 48). Although he no longer operated the business when he married Applicant, he had received a significant cash settlement from litigation related to the business’ termination (Tr. 48). He invested it in the stock market, and “decided not to work” (Tr. 17). Applicant then began making mortgage payments on their home without any assistance (Tr. 18).

Applicant purchased another car in February 2002 (Exhibit 3 at 13). Shortly thereafter, her husband’s stock market investments began failing, and he still refused to work. Applicant then lost her job (Tr. 17, Exhibit 1 at 14).

Applicant could no longer afford the car payments for her two automobiles, and she called the car dealer to arrange for their voluntary repossession (Tr. 24). For the next three years, she struggled to make ends meet by working a variety of part-time, menial jobs. None of them provided health insurance benefits (Tr. 43), and she continued to experience health problems.<sup>1</sup>

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<sup>1</sup>Applicant has been taking prescription depression medication since 1997 (Tr. 46).

Over the years, Applicant has received little assistance with child support from her first husband. In 2001, with the help of an attorney, she successfully obtained a modification of the child support order. Her ex-husband continued not to make payments (Tr. 41). Currently, he owes \$43,000 of delinquent child support payments (Tr. 18).

By approximately 2007, Applicant owed creditors approximately \$58,000 of delinquent debt, as listed in the SOR, including medical bills(SOR subparagraphs 1.a through 1.d, 1.f, 1.n, 1.u, and 1.v), utilities (SOR subparagraphs 1.e and 1.g), credit cards (SOR subparagraphs 1.j through 1.q),<sup>2</sup> the remaining deficiencies from two automobile repossessions (SOR subparagraphs 1.r and 1.t, as described above), and a rent delinquency (SOR subparagraph 1.y).<sup>3</sup>

SOR subparagraphs 1.k through 1.m are owed to the same creditor (Exhibit 4). This creditor obtained judgments, as listed in SOR subparagraphs 1.w and 1.x, on two of these accounts (Tr. 51). It is unclear from the record which of the accounts the judgments correspond (Tr. 50-51).

In March 2008, Applicant filed for Chapter 7 bankruptcy. During the bankruptcy process, she received one session of financial counseling by telephone from a credit counseling company (Exhibit B). In the years preceding her bankruptcy filing, she had neither received any counseling nor attempted to make any payment arrangements with her creditors (Tr. 31). On July 8, 2008, the bankruptcy court discharged the debts (Exhibit G).

## **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.

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. 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.

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<sup>2</sup>SOR subparagraph 1.s is a duplicate of SOR subparagraph 1.o.

<sup>3</sup>Applicant acknowledges the delinquencies listed in SOR subparagraphs 1.h and 1.i, but has not been able to determine the original creditors.

## Analysis

### Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant’s longstanding financial problems trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” 19(c), “a history of not meeting financial obligations, and 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.”

Two consecutive troubled marriages, her first husband’s failure to pay child support, a history of health problems, and frequent underemployment have contributed to Applicant’s financial problems. In March 2008, Applicant filed for a Chapter 7 bankruptcy discharge, and in July 2008, a bankruptcy court discharged all of her delinquencies.

Before filing for Chapter 7 bankruptcy Applicant had never sought financial counseling. Also, when her finances improved briefly between 1999 and 2001, she appears to have made no effort to satisfy any of the debts that had accrued to that point. Consequently, Applicant’s efforts at obtaining a discharge of her delinquencies merits some mitigation under AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” but I cannot conclude she acted responsibly enough under the circumstances to apply the mitigating condition listed in AG ¶ 20(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.”

### 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.

Applicant's delinquencies were caused primarily by circumstances beyond her control, and have recently been discharged through the Chapter 7 bankruptcy process. Absent a demonstrated track record of financial reform, and the age, number and the amount of the discharged delinquencies, it is too soon to conclude that Applicant's financial problems no longer pose a security risk.

The awarding of a security clearance is not a once in a lifetime occurrence, but is based on current disqualifying and mitigating conditions. Although Applicant's current circumstances do not warrant the granting of a security clearance, she may well establish the requisite track record of financial reform to obtain a security clearance in the future. Such a judgment at this point, however, would be premature. Clearance is denied.

### **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.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t - 1.y:	Against 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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MARC E. CURRY  
Administrative Judge