



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-17659
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

September 12, 2008

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**Decision**  
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CURRY, Marc E., Administrative Judge:

On May 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concern 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.

DOHA received Applicant's answer, requesting a hearing, on May 15, 2008. I received the case assignment on June 26, 2008. DOHA issued a notice of hearing on July 24, 2008, and I convened the hearing as scheduled on August 12, 2008. During the hearing, I received six government exhibits and Applicant's testimony.

I received the transcript on August 25, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is a 50-year-old, married woman with two daughters, ages 30 and 16. Since May 2008, she has been estranged from her husband (Tr. 20). She has a GED. For the past 10 years, she has worked for a defense contractor that manufactures night vision goggles (Tr. 38).

In the last five years, Applicant accrued eight delinquent debts in the approximate amount of \$32,000. They include the deficiencies from two repossessed cars (SOR subparagraphs 1.a, and 1.e), two delinquent credit cards (SOR subparagraphs 1.b and 1.c), and delinquencies owed to a jewelry store (SOR subparagraph 1.d), a cell phone company (SOR subparagraph 1.f), a department store (SOR subparagraph 1.g), and a medical services provider (SOR subparagraph 1.h).

Applicant also owes the IRS approximately \$5,000 of delinquent income taxes from either tax year 1996 or 1997 (Tr. 21). This was not alleged in the SOR.

Applicant and her husband earned \$164,000 in gross income in 2006 (Exhibit 6 at 7). In October 2007, her husband was seriously injured in a car accident rendering him unable to work (Tr. 17). Their joint, gross income for 2007 decreased to \$140,000 (*Id.*). SOR subparagraphs 1.b, 1.c, 1.f, and 1.g were delinquent before her husband's car accident (Answer).

By March 2008, Applicant's monthly expenses exceeded her income by approximately \$630 (Exhibit 6 at 40). She then filed for Chapter 7 bankruptcy protection (Exhibit 6).<sup>1</sup> All of the SOR delinquencies except subparagraphs 1.e and 1.h are scheduled to be discharged through the bankruptcy (Exhibit 6 at 25). Applicant contends that she has satisfied the judgment listed in SOR subparagraph 1.e. She provided no supporting documentation (Tr. 30). Since approximately April 2008, she has been paying SOR subparagraph 1.h through a garnishment (Exhibit 5).

Under the bankruptcy plan, the trustee will sell Applicant's house, use the capital gain to satisfy some of the delinquencies, and discharge the remainder (Tr. 38). Currently, the house is on the market (Tr. 36).

Applicant previously filed for Chapter 7 bankruptcy protection in 1995 (Tr. 35). She "cannot control [herself] with credit cards" (Tr. 35). She has received one hour of financial counseling, by phone, as part of the bankruptcy filing process (Tr. 39).

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<sup>1</sup>Applicant's bankruptcy petition is unclear regarding the amount of delinquencies that she is seeking to be discharged. Schedule F lists \$16,242. However, the schedule includes several creditors that Applicant and her attorney have identified, but have not ascertained the respective amount of the delinquencies.

## **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. According to AG ¶ 2(c), the entire process is a 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. 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.

## **Analysis**

### **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). Moreover, "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds" (*Id.*).

Applicant's ongoing 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."

The ongoing nature of Applicant's financial problems renders AG ¶ 20(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," inapplicable. Several of Applicant's debts were delinquent before her husband was disabled. In the two years

before his accident, their income ranged between \$140,000 and \$164,000 per year. 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,” does not apply.

Applicant’s participation in financial counseling, and her Chapter 7 bankruptcy filing trigger the application of AG ¶¶ 20(c), the person has received counseling for the problem . . .,” and 20(d), the individual initiated a good-faith effort to repay overdue creditors or other wise resolve debts.” Her financial counseling, however, was limited to one, one-hour phone consultation. Also, Applicant’s delinquencies have not yet been discharged. Consequently, any positive inference that could be derived from the bankruptcy filing is merely speculative.

Applicant contention that she has satisfied SOR subparagraph 1.e has little probative value absent any supporting evidence. Although she is paying SOR subparagraph 1.h through a garnishment; this does little to demonstrate financial stability.

Applicant has not mitigated the financial considerations security concern.

### **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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I have considered the whole person factors in the financial considerations section of the Decision, above. I conclude that Applicant’s application for a security clearance must be 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:

AGAINST APPLICANT

Subparagraphs 1.a - 1.h:

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