



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



In the matter of: )  
)  
) ISCR Case No. 08-00556  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Tom Coale, Esq., Department Counsel  
For Applicant: *Pro Se*

April 29, 2009

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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 August 21, 2008 and December 16, 2008, and elected to have the case decided on the written record in lieu of a hearing. On February 19, 2009, she changed her request to a hearing before an administrative judge. The case was assigned to another administrative judge on March 4, 2009, and reassigned to me on March 11, 2009. DOHA issued a notice of hearing on March 16, 2009, and the

hearing was convened as scheduled on April 9, 2009. The Government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on her own behalf, and submitted Exhibits (AE) A through O, which were received without objection. DOHA received the transcript of the hearing (Tr.) on April 17, 2009.

### **Findings of Fact**

Applicant is a 44-year-old employee of a defense contractor. She is the administrative assistant to the commanding officer of a military command. She has worked for her current employer or another contractor since May 2007. She is applying for her first security clearance. She has a Bachelor of Science degree awarded in 2006. She was married from 1991 until her divorce in 1998. She married again in 2004. She has four children and two stepchildren. Three of her children are adults and one is a minor who lives with Applicant and her husband. The stepchildren live with their mother.<sup>1</sup>

Applicant started having financial problems after her divorce. She was a single parent with four children. She was self-employed as a cosmetologist and was not earning a large income. She attended college in hopes of making a better life for her and her children. She married in 2004, and her financial situation brightened for a period. Her husband then became unemployed in about 2006, and was out of work for about a year.<sup>2</sup>

The SOR alleges 11 delinquent debts, including that she was behind on her mortgage and car loan. There is also an allegation that she was not paying her delinquent debts despite having the income to do so. In her Answer to the SOR, Applicant denied the general allegation that she was not paying her delinquent debts. She admitted to all the specific debts, with explanations and additional information, except she denied the debt alleged in SOR ¶ 1.k as a duplicate of the debt alleged in SOR ¶ 1.g. After considering all the evidence, I conclude that Applicant is correct that the debt alleged in SOR ¶ 1.k is a duplicate of the debt which is correctly alleged in SOR ¶ 1.g. Of the remaining debts, Applicant has brought her mortgage and car loan current; she has paid five debts; and she is working on payment plans or arrangements for the remaining three debts. Individual debts are addressed below.

Applicant submitted documented proof that she paid the five delinquent debts totaling \$1,501, as alleged in SOR ¶¶ 1.a, 1.d, 1.e, 1.f, and 1.j. She also paid a delinquent debt of \$501 in April 2006. This debt was not listed on the SOR because it was paid before the SOR was issued.<sup>3</sup>

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<sup>1</sup> Tr. at 25-30; GE 1.

<sup>2</sup> Tr. at 20-24, 45, 52-53.

<sup>3</sup> Tr. at 31-32, 35, 46; Applicant's response to SOR; GE 2-4; AE A, D, E, F, J.

SOR ¶ 1.b alleges a debt of \$25,610. This is Applicant's car loan. The basis of this allegation is a credit report from June 29, 2007, that reported the debt as 60 days past due. The total balance on the loan at that time was \$25,610. Applicant acknowledges that she was late on several payments. The creditor granted her several extensions, and the loan is now current. The current balance of the loan is \$21,658. Her monthly payments are \$576 and the loan is scheduled to be paid in November 2012.<sup>4</sup>

Applicant admitted that she was behind on her mortgage payments, as alleged in SOR ¶ 1.i. The June 29, 2007 credit report indicated that she had previously been past due 60 days, but at that time was 30 days, or \$889, past due. The credit report of June 19, 2008 did not list the mortgage as past due. Applicant admitted that she was past due on her mortgage a few years back. The mortgage company permitted her to catch up by paying an additional amount each month. Her mortgage is now current.<sup>5</sup>

SOR ¶ 1.c alleges a medical debt of \$903. Applicant admitted to owing this debt. Two of the debts that she paid have been collected by the same collection company seeking payment of this debt. She has paid \$50 to the creditor and has maintained contact with the collection company throughout the process. She intends to pay or settle the debt.<sup>6</sup>

Applicant admitted to owing the delinquent debt of \$4,420 to a collection company, as alleged in SOR ¶ 1.g. This debt resulted from the deficiency owed on a car loan after the car was voluntarily repossessed. Applicant negotiated a payment plan with the collection company in July 2008, in which she would pay \$50 per month starting in August 2008. She made the first \$50 payment. The collection company that Applicant arranged the payment plan with is the second collection company to hold the debt after it was transferred from the original lender. Applicant then had contact with still another collection company stating that it owned the debt. She stopped making payments because she wanted to verify exactly who owned the debt. She will resume payments once it is ascertained who owns the debt. She plans to negotiate a lump sum settlement in the future.<sup>7</sup>

SOR ¶ 1.h alleges a delinquent debt of \$2,908 to a collection company on behalf of a jewelry company. Applicant acknowledged responsibility for this debt. She negotiated a settlement with the collection company in August 2008, in which she would pay \$50 in August 2008, followed by three monthly payments of \$492. She made the first payment of \$50, but not the subsequent payments. She believed that she could make the payments using funds she would earn in her second job as a real estate agent. She has not sold a house since then and has not earned the commission that

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<sup>4</sup> Tr. at 32-33; Applicant's response to SOR; GE 2, 3; AE B, C, M, O.

<sup>5</sup> Tr. at 44-46; Applicant's response to SOR; GE 2, 4; AE I, N.

<sup>6</sup> Tr. at 33-34; Applicant's response to SOR; GE 2, 4.

<sup>7</sup> Tr. at 36-42; Applicant's response to SOR; GE 2, 4.

she was hoping to use for the settlement. She has maintained contact with the collection company and intends to pay or settle the debt.<sup>8</sup>

Applicant retained the services of a professional in 2006, to assist in cleaning her credit report. It involved minimal financial counseling. She was not receiving much value from the professional and decided to address her finances on her own. Her financial situation is now in much better shape. Her husband is working and she has been steadily employed for almost two years.<sup>9</sup>

### **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 to be used 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, administrative judges apply the guidelines 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.

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 the 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

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<sup>8</sup> Tr. at 42-44; Applicant's response to SOR; GE 2-4; AE H.

<sup>9</sup> Tr. at 53-55.

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 adverse 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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;

(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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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.

Applicant still owes three of the debts alleged in the SOR. She is in the process of resolving her financial issues, but has not yet completed the task. AG ¶ 20(a) is not applicable at this time. After her divorce in 1998, she was a single mother with four children, struggling to get by on her earnings as a cosmetologist. She married again in 2004, and things were better until her husband lost his job and was unemployed for about a year. These qualify as conditions that were outside her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant went to school and earned a degree. She obtained a good job. She started addressing her delinquent debts before they became an issue for her security clearance. She paid six delinquent debts, one of which was not listed on the SOR because it was paid in 2006. She brought her mortgage and car loan current. She still has three debts to be addressed. She candidly and credibly discussed the debts and her intentions to pay all her delinquent debts. I find that she has acted responsibly under the circumstances. AG ¶ 20(b) is applicable. She received minimal financial counseling, but there are clear indications that her financial problems are being resolved and are under control. She has made a good-faith effort to repay her overdue creditors. AG ¶¶ 20(c) and 20(d) are applicable.

Applicant established that the debt alleged in SOR ¶ 1.k is a duplicate of the debt alleged in SOR ¶ 1.g. AG ¶ 20(e) is applicable to the SOR ¶ 1.k debt.

### **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 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. I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant struggled financially as a single mother of four children. She remarried and things were better until her husband became unemployed for about a year. She earned a degree and obtained a good job. He is back to work. As a result, her income improved, enabling her to address her debt issues. She has taken positive action on her debts. She paid six debts; brought her mortgage and car loan current; and fully intends to satisfy the last three remaining delinquent debts.

The Appeal Board has noted that an applicant is not required to establish that she has paid every debt listed in the SOR. All that is required is that an applicant must demonstrate that she has "established a plan to resolve [her] financial problems and taken significant actions to implement that plan."<sup>10</sup> Applicant's finances are not perfect. She has paid a number of her debts, some alleged in the SOR and one not, but still has debts to pay. However, she credibly testified that she intends to pay her delinquent debts. I find that she has established a plan to resolve her financial problems and has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

### **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.i: For Applicant

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<sup>10</sup> ADP Case No. 06-18900 at 4 (App. Bd. Jun. 6, 2008).

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge