



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-00722
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 11, 2009

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 3, 2006. On May 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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.

On June 1, 2009, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on July 1, 2009. Applicant, Department Counsel, and I agreed to a hearing date of August 10, 2009. A Notice of Hearing was issued, and Applicant reported for her hearing as scheduled. However, I was unable to convene the hearing at the appointed time because I was conducting another hearing that ran overtime. Applicant was unable to take part in a later hearing on that day because she had a travel assignment. We went on the record and identified an alternative time for the hearing. Accordingly, Applicant's hearing was continued and rescheduled for August 17, 2009, and, on that date, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced six exhibits, which were marked Ex. 1 through 6 and admitted to the record without objection. Applicant testified on her own behalf and called no witnesses. She introduced five exhibits, which were marked as Ex. A through Ex. E. Applicant's exhibits consisted of letters of character reference. Only one of the five letters of character reference, Ex. E, was signed and dated. I left the record open until close of business, August 31, 2009, so that Applicant could, if she wished, submit signed and dated copies of the letters of character reference conditionally marked as Ex. A through Ex. D. Applicant timely filed signed copies of the letters identified as Ex. A and Ex. B. She timely submitted two additional letters of character reference, which I marked as Ex. F and Ex. G. Ex. F was signed but not dated. Ex. G was neither signed nor dated. Applicant's seven letters of character reference were admitted to the record without objection for whatever probative value they might have.

DOHA received two transcripts (Tr.) related to this hearing. The first transcript, received August 13, 2009, identified the hearing scheduled for August 10, 2009, memorialized the continuance, and identified the date and time of the rescheduled hearing. The second transcript, received August 21, 2009, was made from the recording of the rescheduled hearing conducted on August 17, 2009.

### **Findings of Fact**

The SOR contains 18 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.r.) In her Answer to the SOR, Applicant admitted the 14 allegations at ¶¶ 1.a. through 1.n. She denied four allegations at ¶¶ 1.o. through 1.r. The government conceded that the SOR allegation ¶ 1.o. duplicated SOR allegation ¶ 1.n. and that the alleged debt could not be further identified with specificity. The government also conceded that it was unable to identify the medical debt alleged at SOR ¶ 1.p. Applicant's admissions are included herein as findings of fact.

Applicant is 40 years old and separated from her husband. She lives with her mother, who is retired, and her 16-year-old daughter. Applicant is solely responsible for the support of her daughter. (Ex. 1; Tr. 37, 46-50.)

Applicant is employed by a government contractor as a network data engineer. She has worked for her current employer for approximately four years, and she has worked in the network computer field for approximately 15 years. She seeks a security clearance. (Ex. 1; Tr. 37-40.)

Applicant was unemployed from January 1996 to April 1999, and during that period she attended college. She accrued student loan debt, which at the present time totals about \$16,000. The loans were in delinquent status in the past, but Applicant has rehabilitated the loans and now pays \$185 per month to reduce her student loan debt. The loans are in current status. Applicant was also unemployed between May 2001 and February 2004. During this second period of unemployment, her husband supported her and she drew money from her savings. (Ex. 1; Ex. 3 at 10; 42-43, 69-70.)

During her periods of unemployment, Applicant began to fall behind in paying her debts, and she continues to have financial difficulties. She admits she owes approximately \$110,000 in delinquent debt, including two tax liens to the Internal Revenue Service. The two tax liens together total approximately \$88,000, and they date to 2001. The tax liens remain unsatisfied. Applicant has been in contact with the Internal Revenue Service, but she has not yet worked out a payment plan or made an offer in compromise. (SOR ¶¶ 1.k. and 1.l.; Ex. 5; Ex. 6; Tr. 62-66.)

Applicant owes a judgment creditor a debt of approximately \$13,871 for an automobile she purchased in 1993. The automobile was repossessed in 1996. Applicant last contacted the creditor in 2007. The judgment has not been satisfied. (SOR ¶ 1.a.; Ex. 5; Ex. 6; Tr. 66-69.)

In addition to the judgment and the two tax liens, Applicant admitted responsibility for ten debts alleged at SOR ¶¶ 1.b. through 1.i., 1.j., and 1.m. These delinquent debts totaled \$6,708. She denied the debts alleged at SOR ¶¶ 1.q. and 1.r. She disputed the amount of the debt alleged at SOR ¶ 1.q. and claimed she owed a lesser amount. However, she failed to provide documentation to corroborate her assertion. She also asserted that the debt alleged at SOR ¶ 1.r. had been settled; her credit report of April 14, 2009, corroborated that the debt had been settled. (Ex. 6 at 2; Tr. 52-62.)

In May 2008, Applicant enrolled in a debt consolidation program. She agreed to pay the debt consolidation company \$129 a month for 28 months to assist her in contacting her creditors and resolving her delinquent debt. At her hearing, she expressed dissatisfaction with the services provided by the debt consolidation company. She estimated that the company had paid off about 30% of the debts alleged at SOR ¶¶ 1.b. through 1.l. Applicant agreed to provide a statement from the debt consolidation

company showing how much of her delinquent debt had been satisfied through its efforts. However, she failed to provide this information. (Ex. 4; Tr. 55-60, 93.)

Applicant is a contract employee. Her federal and state income taxes are not deducted from her pay by her employer, and she is responsible for paying those taxes directly to the taxing authorities. (Tr. 72- 73, 87-89.)

Applicant's gross monthly income, before she pays her taxes, is \$6,000. After Applicant pays her taxes, she has a net income each month of approximately \$4,000. She pays her own health insurance. Her monthly rent payment is \$1,665<sup>1</sup> and her monthly payment on the automobile she purchased in May 2006 is \$498. After paying her other fixed monthly expenses, Applicant has a net remainder of approximately \$300 to \$400. In determining her net monthly remainder, she did not include her payment to the debt consolidation program. She does not have a savings account. She reported the balance in her checking account as \$58.46. (Tr. 75-82.)

Applicant reported that she had not yet paid her federal income taxes for tax year 2008. She reported that she had requested and received from the Internal Revenue Service an extension until October 2009 to pay her 2008 income taxes. Applicant has not enrolled in consumer credit counseling. She is reluctant to consider bankruptcy because she feels she is responsible for paying her debts. (Tr. 33, 70, 82-83.)

Several of Applicant's supervisors and co-workers provided letters of character reference on her behalf. They praised Applicant's professionalism, technical skills, and dedication to mission. One of her supervisors had this to say about Applicant: "[Applicant] distinguished herself by her consistent hard work . . . and her ability to adapt to task changes at a moment's notice. [Applicant] is an intelligent, capable [and] dedicated . . . person." (Ex. A; Ex. B; Ex. E; Ex. F.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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<sup>1</sup> Applicant stated that she planned to reduce her monthly expenses by moving to a less expensive apartment. (Tr. 31, 33-34.)

When evaluating an applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense 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 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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Additionally, under AG ¶ 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" may raise security concerns.

Applicant is financially overextended, has accumulated substantial delinquent debt, and was unable to pay her creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. If the financially delinquent 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," then AG ¶ 20(a) might apply. If "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," then AG ¶ 20(b) might apply. If "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," then AG ¶ 20(c) might apply. If "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," then AG ¶ 20(d) might apply. Finally, if "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," then AG ¶ 20(e) might apply.

The record shows that Applicant's financial delinquencies began several years ago and continue to this day. Applicant's current financial delinquencies involve substantial sums of money in proportion to her income and resources, occurred under circumstances that are likely to recur, and cast doubt on her current reliability, trustworthiness, and good judgment.

The record does not include facts that suggest protracted conditions beyond Applicant's control that would explain her failure over a period of years to meet her financial obligations. While she experienced unemployment in the past, she has been steadily employed with her current employer for the past four years. To her credit, Applicant sought to consolidate her debts, and she is current in paying her student loan obligations. She has contacted the Internal Revenue Service to negotiate a payment plan for her \$88,000 tax liens dating to 2001. However, all but one of her debts remain unresolved. She has not enrolled in consumer credit counseling, and she does not have a plan in place to avoid financial overextension in the future. While Applicant's intention to satisfy her creditors in the future is laudable, she has failed to demonstrate a track record of financial responsibility. She has not yet demonstrated that she will repay her creditors and avoid financial delinquencies in the future. I conclude that none of the financial considerations mitigating conditions applies to the facts of Applicant's case.

### **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 relevant 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 considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant's supervisors and co-workers respect and appreciate her professionalism and strong technical skills. She works hard and is a reliable employee. She has been steadily employed with her current employer for four years.

Several of Applicant's financial delinquencies date to the late 1990s and early 2000s, and she has addressed them only recently. Applicant's financial problems began when she was a mature adult, and she failed to address her delinquent debts for a significant period of time, a decision that raises concerns about her judgment and reliability. Applicant is responsible for approximately \$110,000 in delinquent debt. She has failed to demonstrate that she understands her financial problems, and she has not developed a plan to satisfy her creditors.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial delinquencies.

### **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. through 1.m.:	Against Applicant
Subparagraphs 1.n. through 1.p.:	For Applicant
Subparagraph 1.q.:	Against Applicant
Subparagraph 1.r.:	For 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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Joan Caton Anthony  
Administrative Judge