



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-01357
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

February 12, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant has a history of failing to meet her financial obligations. Her evidence is insufficient to show that she is in control of her finances and she lacks a track record of financial responsibility. She failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

**Statement of the Case**

On May 9, 2007, Applicant submitted a Questionnaire for Sensitive Positions or Standard Form (SF) 86.<sup>1</sup> On September 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2,

<sup>1</sup> GE 1.

1992, as amended, modified and revised.<sup>2</sup> The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR on October 13, 2008, and requested a hearing before an administrative judge. The case was assigned to me on December 4, 2008. DOHA issued a notice of hearing on December 9, 2008. The hearing was convened as scheduled on December 29, 2008. The government offered Government Exhibits (GE) 1 through 5, which were admitted without objection (Tr. 28). Applicant testified on her own behalf, and presented one exhibit, marked Applicant Exhibit (AE) 1, which was admitted without objection (Tr. 31). DOHA received the transcript of the hearing (Tr.) on January 6, 2009.

### **Findings of Fact**

Applicant admitted all the financial allegations under SOR ¶ 1, except for SOR ¶¶ 1.c and 1.e, which she denied. She challenged some of the admitted allegations because they were duplicates (*See infra* p. 3). Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 30-year-old information technology systems security analyst working for a government contractor. She completed high school in 1997, and through the years has taken some college courses. In 2005, she received a systems administration network management certification (GE 1).

She enlisted in the U.S. Army in 1997, and served honorably until April 2002, when she was discharged. She is currently serving in the Army Reserve as a sergeant, pay grade E-5 (Tr. 44). She received access to classified information at the secret level in 1998 while she was on active duty (Tr. 7). She has continuously held a security clearance to the day of her hearing. She also received access to classified information at the top secret level from another government agency (Tr. 46). There is no evidence to show that she has compromised or caused others to compromise classified information. Nor is there evidence showing that she has ever failed to follow the rules and procedures required to handle classified information. In 1998, she received non-judicial punishment for driving while intoxicated. Except for this incident, she has no police record, and there is no evidence she has used or trafficked in illegal drugs.

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<sup>2</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

Applicant has been continuously employed since 2002 (Tr. 92-94). Although she has worked for numerous employers, her job progression shows continuous professional development, highlighted by a substantial increase of her yearly salary. In her first job after leaving the Army her salary was approximately \$38,000 a year. She left that job for another job paying \$45,000 a year. In her next job (as a security analyst), she earned \$55,000 during the first six months, and then, her salary was increased to \$65,000. She then moved to a job paying \$68,000. In November 2006, she changed to a job paying \$85,000 a year. Around January 2008, she was hired by her current employer and has been earning approximately \$95,000 a year.

Applicant married in May 1997, and was divorced in March 1998. She had no children of this marriage. She has two children, ages seven and three conceived out of wedlock. Applicant has custody of her two children. She receives almost no financial support from the father of her children. She has taken no legal action to force him to provide support for his children. She met the father of her children while in the Army, and they have been engaged to be married and living together on and off through the years. He is currently unemployed. She believes he is doing all that he can do under the circumstances to provide financial assistance to her children.

In her May 2007 security clearance application (GE 1), Applicant disclosed that she had been delinquent on numerous debts. Applicant's background investigation addressed her financial situation and included the review of her SF 86; her responses to DOHA interrogatories (GE 3); and two credit bureau reports (CBRs) (GEs 2 & 4).

The SOR alleges 27 delinquent/charged off accounts totaling approximately \$19,000. Applicant admitted most of the debts alleged in SOR are her debts and have been delinquent for many years. Applicant explained that her financial problems were caused by a combination of factors; i.e., her abuse of her credit because she was young and immature; she is a single mother and sole provider for her two children; her children receive almost no financial support from their father; the expenses associated with her many moves due to her change of jobs; and her lack of financial responsibility (Tr. 34).

Considering the record as a whole I find SOR ¶¶ 1.a, 1.b, 1.c, and 1.z alleged the same debt in collection by different collection agencies. I also find the following SOR allegations are duplicates of the same debt: SOR ¶¶ 1.f and 1.o; 1.j and 1.m; and, 1.n and 1.p. Applicant also claimed SOR ¶¶ 1.k and 1.l are alleged as one debt in SOR ¶ 1.aa. She did not present documentary evidence to establish this last claim. She admitted the debt alleged in SOR ¶ 1.q; however, she is disputing the total amount of the debt. She denied SOR ¶ 1.e, claimed she paid the debt and she disputed it. She presented no evidence to support these claims about SOR ¶¶ 1.e and 1.q.

In early 2003, she participated in a debt consolidation/settlement program (Tr. 35). After a couple of months, she stopped participating because the consolidation program was not working well. She was making payments, but could not see any progress in the settlement or payment of her debts. She also claimed she took a part-

time job to increase her income and pay her delinquent debts. She had to quit her part-time job because she was not able to work two jobs and take care of her children.

Around March-April 2007, Applicant entered into a gestational carrier contract seeking additional income to pay her delinquent debts without taking time away from her children (Tr. 23). She anticipated earning approximately \$20,000 in nine months; however, she had a miscarriage and did not earn any money (Tr. 23, 39). In September 2008, Applicant entered into a second gestational carrier contract (AE 1). At the time of the hearing, she was pregnant pursuant to her gestational carrier contract, and believed she would start earning approximately \$2,000 a month in January 2009 (Tr. 24). Applicant promised to use all her earnings from the contract (\$20,000) to pay her delinquent debts (Tr. 40). She also wants to clean up her credit to purchase a home for her children (Tr. 42).

As of her hearing day, not one of the debts listed in the SOR have been paid or resolved (Tr. 58). Applicant testified she paid other small debts first (not alleged in the SOR). She intends to pay her large delinquent debts with the anticipated gestational carrier contract earnings. Outside of her 2003 participation on the debt consolidation/settlement program and her two gestational carrier contracts, Applicant presented little evidence of efforts to contact creditors, settle, resolve, or to dispute her debts (Tr. 72, 90).

When asked why she made no effort to resolve her delinquent debts, Applicant explained she convinced herself she did not have sufficient money to pay her debts. She did not want to spend the money because she was afraid something else would go wrong (Tr. 91). Applicant wanted her children to grow up in a nice, quiet neighborhood. With additional income earned, she chose to live in the nicer places, and consequently, the higher her expenses (Tr. 105). This resulted in her not having the money to pay her delinquent debts.

Applicant claimed to follow a monthly financial budget, prepared by her with the assistance of her dad. Her current yearly gross income is approximately \$98,000 (Tr. 76). Her monthly expenses total approximately \$4,630 (GE 3). Applicant appears to have a \$360 remainder after paying her monthly expenses. Except for her participation in the 2003 debt consolidation/settlement program, Applicant did not seek or participate in any financial counseling.

Applicant expressed sincere remorse for her past financial problems. She has learned her lesson and she is now well aware of what it is required of her to show that she is reliable, trustworthy, and financially responsible. She is very concerned about the adverse impact losing her security clearance will have on her family and her career. Her plan is to pay all her delinquent debts with the income from her gestational carrier contract. She noted her military service and her good performance for government contractors, and that she is considered a responsible and reliable employee.

## 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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"<sup>3</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>4</sup>

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<sup>3</sup> See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>4</sup> "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is well documented in her credit reports, her SOR response, her response to the DOHA interrogatories, and her testimony. Since around 2000, she acquired numerous debts which became delinquent and have remained outstanding for many years. As of the hearing date, she had 21 outstanding debts totaling approximately \$17,500. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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.

Considering the record evidence as a whole,<sup>5</sup> I conclude that none of the mitigating conditions apply. Applicant presented little evidence of efforts taken to contact creditors, or to resolve any of the debts since she acquired them. Nor is there any evidence that she has participated in meaningful financial counseling.

I specifically considered Financial Considerations Mitigating Condition AG ¶ 20(b) and conclude it applies, but only to a limited extent. Applicant's testimony established factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts, i.e., being a single mother and sole provider for her children, the lack of financial assistance from her children's father; her failed relationship; the expenses associated with her many moves due to her change of jobs; and her unsuccessful attempt to earn additional funds from her gestational carrier contract.

Notwithstanding, Applicant's evidence is not sufficient to show she has dealt responsibly with her financial obligations before, or after receipt of the SOR. Applicant has been consistently employed since 1997. Since leaving the Army she has substantially increased her earnings from around \$40,000 a year in 2003 to \$98,000 a year in 2008. Nevertheless, she presented little evidence to show paid debts, settlements, documented negotiations, completed payment plans, or meaningful financial assistance/counseling with respect to her SOR debts. Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility, or that she has taken control of her financial situation.

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<sup>5</sup> See ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

I considered that Applicant entered into a gestational carrier contract and that she promised to use her anticipated income from it to pay her delinquent debts. Applicant's promises to pay her debts in a future day, however, are not sufficient to mitigate the financial considerations security concerns. As mentioned above, she has substantially increased her earnings during the last five years and she took little action to resolve her delinquent financial obligations. Applicant's current financial track record does not provide any assurance that she will act responsibly with her anticipated earnings.

### **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.

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. AG ¶ 2(c).

Applicant's honorable service in the Army and her years working for government contractors and holding a security clearance weigh in her favor. There is no evidence to show that she has compromised or caused others to compromise classified information. Nor is there evidence showing that she has ever failed to follow the rules and procedures required to handle classified information. Other than a DWI offense, she has no police record, and there is no evidence she has used or trafficked in illegal drugs. Aside from her delinquent debts (which are a civil, non-criminal issue), she is a law-abiding citizen, a concerned daughter, and a caring mother. She expressed regrets for her financial mistakes and claimed she is trying to correct them.

Considering the totality of the circumstances in her case, including Applicant's age, education, and maturity, she demonstrated a lack of judgment and trustworthiness in the handling of her financial affairs. She failed to deal responsibly with her financial obligations. Her failure or inability to live within her means and to meet her financial obligations indicates poor self-control.



After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns pertaining to financial considerations.

### **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.b, 1.c, 1.m, 1.o, 1.p, and 1.z:	For Applicant
Subparagraphs 1.a, 1.d-1.l, 1.n, 1.q-1.y, and 1.aa - 1.cc :	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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Juan J. Rivera  
Administrative Judge