



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-01605 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 22, 2009

**Decision**

---

HEINY, Claude R., Administrative Judge:

Applicant had three past due credit card accounts totaling \$34,000. She is currently making monthly payments on these debts. Applicant has successfully mitigated financial considerations security concerns. Clearance is granted.

**Statement of the Case**

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial security clearance. On October 3, 2008, acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security

---

<sup>1</sup> 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

concerns under financial considerations, based on a history of financial problems as evidenced by delinquent debts.

On October 17, 2008, Applicant answered the SOR, and requested a hearing. On March 10, 2009, I was assigned the case. On March 26, 2009, DOHA issued a notice of hearing scheduling the hearing held on April 22, 2009. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified and submitted Exhibits A and B, which were admitted into evidence.

The record was kept open to allow Applicant to submit additional matters. On April 27, 2009, May 1, 2009, May 27, 2009, and July 2, 2009, additional documents were received. There being no objection, the material was admitted into evidence as Ex. C through Ex. F. On April 30, 2009, the transcript (Tr.) was received.

### **Findings of Fact**

In her Answer to the SOR, Applicant denied the debt listed in SOR ¶ 1.b (\$708). She admitted owing the other three debts, which total approximately \$34,000. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 31-year-old administrative specialist who has worked for a defense contractor since May 2007, and is seeking to obtain a security clearance. Prior to her current job, she worked a couple of months at a day school. (Tr. 31) From July 2006 through February 2007, she was unemployed. (Tr. 31)

In May 2005, Applicant and her husband married, although they lived together and shared expenses starting in college in 1999. They have no children. Applicant's yearly income is \$38,000 and her husband's yearly income is \$72,000. (Tr. 28) He is an electrical engineer. Her net monthly salary is approximately \$2,000 and her husband's is \$3,800. (Tr. 34) In December 2005, they purchased a \$154,000 home on which they have a \$1,400 monthly mortgage. (Ex. C) The fair market value of the home is \$164,500. (Ex. C) They have a 2002 pick-up truck which is paid for and make \$650 payments on a vehicle purchased new in 2007. She has additional credit cards with a balance of \$1,000. (Tr. 38)

Approximately a year and a half ago, Applicant took out a \$10,000 loan to pay taxes. She makes monthly \$200 payments to repay the loan. (Tr. 39) Applicant has not been late on any of her current obligations including her mortgage, car payment, credit card payments, or utility payments. (Tr. 39) Applicant is not being contacted by creditors concerning unpaid debts. (Tr. 43)

Applicant's husband has a credit card with a \$2,000 balance and a second card with a balance of \$5,000, which was used to payoff a number of little debts. (Tr. 40) Her husband pays \$500 monthly on his student loans. (Tr. 41) Applicant has paid off her

student loans. (Ex. 4, Ex B) Her husband has \$8,200 in his thrift savings plan (TSP) account and \$2,700 in an IRA. (Ex. C) Applicant has \$3,000 in her 401(k) retirement plan. (Tr. 42, Ex. C)

Approximately nine or ten years ago, Applicant incurred credit card debt. From September 1997 through December 1999, Applicant attended college. Her husband was a full-time student at the same time. They were 21 or 22 years old at the time. While her husband was a full-time college student, they lived on her part-time income and credit cards. (Ex. 4) The credit cards were used to buy food, gas, and were her means of meeting daily living expenses. (Tr. 22) Applicant acknowledges she and her husband acted irresponsibly and showed very poor judgment in using their credit cards as they did. (Tr. 22)

The largest unpaid debt (SOR ¶ 1.a, \$27,708) is a past due credit card debt, which had a credit limit of \$10,000. (Tr.23) Applicant moved the balance from two other credit cards onto this account. (Tr. 32) Applicant had been paying \$600 per month on this debt, but the balance was not being reduced. (Ex. 4) In 2001, she stopped making payments on the card. (Tr. 32) Following the transfer of the balance to this credit card, she kept the other two cards for emergency use. Eventually, additional charges were made on the other two cards (SOR ¶ 1.c, \$2,788 and SOR ¶ 1.d, \$3,531). (Tr. 32) The credit limit on the two additional cards was \$1,000 each. Late payment fees, overage fees, interest and other expenses have increased the three past due accounts to \$27,708, \$2,788, and \$3,531.

The two smaller credit card debts are with the same creditor. The creditor offered to settle the debts for \$2,091 and \$2,657, which was 75% of the debt. (Ex. 3) However, the creditor required a lump-sum payment. (Tr. 23) In May 2008, when Applicant answered written interrogatories, she stated she was saving to settle the debt with a one-time payment. (Ex. 3) In April 2009, unable to make a lump-sum payment she started making \$50 monthly payments on each of these accounts. (Ex. A, Ex. E, Ex. F) She also started making \$50 on the other credit card debt (SOR ¶ 1.a, \$27,708), the largest of her three past-due debts. (Ex. D, Ex. F) Since April 2009, she has paid \$400 on the three debts (SOR ¶¶ 1.a, 1.c, and 1.d), which total more than \$34,000.

Applicant disputes the \$708 charged off account (SOR ¶ 1.b). She did not challenge the debt with the credit bureau reporting agencies because it did not appear on her May 2009 credit bureau report (CBR). (Tr. 34, Ex. B) She has been unsuccessful in contacting the holder of the remaining obligation. (Tr. 21) In response to the written interrogatories, Applicant stated this was not her account and had been falsely reported on her CBR.

Applicant also suffered from severe migraines and did not have medical insurance. (Tr. 27) Some of the medical bills went unpaid until Applicant started her security clearance process. The medical bills have been paid. (Tr. 27) Applicant and her husband are very concerned the unpaid debts may result in Applicant losing her job. (Tr. 29)

Applicant and her husband were able to pay off a number of past due obligations not listed on the SOR. In May 2008, when Applicant answered written interrogatories, she provided proof she had paid eight debts totaling approximately \$2,000. (Ex. 3) These eight accounts were not listed on the SOR. The written interrogatories did ask her about the three credit card debts included in the SOR. Applicant's April 2009 CBR lists Applicant "pays as agreed" on seven accounts and three additional accounts that were closed were also listed as "paid as agreed."

### **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 must be considered 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 overarching 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain 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**

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Nine or ten years ago, when in college, Applicant—then age 20 or 21—used credit cards for living expenses. She has three credit card accounts totaling \$34,000 that were past due. Disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

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.

Applicant incurred the three unpaid credit card obligations nine or ten years ago making the behavior infrequent and not recent. Until 2001, she was making \$600 monthly payments on the largest account. AG ¶ 20(a) does not fully apply, however, because her failing to pay her credit card obligation in a timely manner does some cast doubt on her current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) does not apply because living on one's credit cards is not an event or condition beyond her control. AG ¶ 20(c) applies in part. Even though Applicant has not received financial counseling, there is a clear indication her financial problems are being resolved. In May 2008, Applicant provided proof she had paid eight accounts totaling approximately \$2,000. Her April 2009 CBR indicates she is currently paying as agreed seven accounts and had three additional, now closed accounts which were also "paid as agreed." She is paying her mortgage, car payment, current credit card accounts, and utilities in a timely manner. She is not being contacted by creditors.

AG ¶ 20(d) applies. Applicant is making \$50 monthly payments on her three old credit card accounts. She has paid \$400 on these accounts, which is not a large amount and the payments have been made for only three months, which is not an extensive payment history. However, she has been paying other accounts in a timely manner for a longer period of time. She has paid her student loan and other debts not listed in the SOR. It is the debts she has already paid, and the payments she makes on other accounts and debts, which leads me to believe she will continue her payments on the three accounts listed in the SOR.

Applicant did not dispute the final debt alleging \$700 being past due because the account does not appear on her current CBR. One cannot dispute an account if it does

not appear on the CBR. Her denial of responsibility for this debt is credible. The size of the obligation is such that it does not raise concerns about her current reliability, trustworthiness, or good judgment.

### **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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant acknowledges she acted inappropriately when she used her credit cards to pay living expenses. However, these debts were incurred when she was 20 or 21 years old and she is now 31 years old. She is more mature and handles her finances in a more mature manner. She no longer uses her credit cards to pay living expenses. She and her husband make approximately \$110,000 a year, are homeowners, and pay their bills as agreed. They have adequate retirement funds available should they experience significant financial problems in the future.

Both Applicant and her husband are keenly aware how serious it is to adequately address their past due obligations. Applicant realizes the impact her finances can have on her employment. Even though her track record in addressing the three past due credit card accounts is not lengthy, she has a favorable record in paying other accounts in a timely manner.

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is

not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 mitigated the security concerns arising from her 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, Financial Considerations: | FOR APPLICANT |
| Subparagraph 1.a—1. d:                 | For Applicant |

### **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

---

CLAUDE R. HEINY II  
Administrative Judge