



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-01679
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John B. Glendon, Esquire, Department Counsel  
For Applicant: Pro Se

November 5, 2008

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted her Security Clearance Application (SF 86), on November 14, 2006. On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 acknowledged receipt of the SOR on July 17, 2008. She answered the SOR in writing on August 11, 2008, and requested a hearing before an administrative

judge. DOHA received the request shortly thereafter. Department Counsel was prepared to proceed on August 28, 2008, and I received the case assignment on September 3, 2008. DOHA issued a notice of hearing on September 12, 2008, and I convened the hearing as scheduled on September 29, 2008. The government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant testified on her own behalf. She submitted ten exhibits (AE) A through E, and G through J, which were received. Nine were admitted into evidence without objection.<sup>1</sup> DOHA received the transcript of the hearing (Tr.) on October 3, 2008. I held the record open until October 20, 2008, for Applicant to submit additional documents. On October 20, 2008, she submitted 10 exhibits, AE K through AE T, which were marked and admitted into evidence, without objection. The record closed on October 20, 2008.

### **Findings of Fact**

In her Answer to the SOR, dated August 11, 2008, Applicant admitted the factual allegations in ¶¶ 1.c, 1.d, and 1.g of the SOR. She denied the remaining factual allegations in the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant, who is 34 years old, works as an administrative assistant for a contractor to the Department of State. She has held this job since March 2006. She is engaged and a single mother, with two daughters, ages 16 and 13, and a granddaughter. She supports all three children.<sup>2</sup>

In 2002, Applicant lost her job. She did not work full-time for three or four months. During this time she received unemployment benefits and worked part-time, no more than 20 hours a week, as a stock clerk. She has worked steadily since this time.<sup>3</sup>

About the time she lost her job, her car was stolen. The police recovered it. She voluntarily returned her car to the creditor after the car was recovered because she could not afford the car payment. She believed she owed about \$5,000 on her loan after the car was sold. She has no information which verifies her belief. The unpaid balance on this car loan is SOR allegation 1.h.<sup>4</sup>

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<sup>1</sup>AE F is a duplicate and was not admitted into evidence.

<sup>2</sup>GE 1 (Applicant's Security Clearance Application) at 2, 9; Tr. 25.

<sup>3</sup>Tr. 39-40, 53, 56-58.

<sup>4</sup>Applicant believed that this debt had been paid. She believed this creditor was the same as another creditor for a vehicle loan she had prior to buying this car. After discussion of the two creditors at the hearing, she realized the creditor in SOR allegation 1.h is not the same as the other automobile creditor. She acknowledged owing this debt. Tr. 38-40, 56-65.

After being advised in April 2008 that her past debts and finances presented a problem with granting her a security clearance, Applicant wrote a letter to the creditors identified in SOR allegations 1.a, 1.b, 1.f, 1.g, and 1.j through 1.r. She also wrote a letter to a creditor she believed held the debt listed in SOR allegation 1.h. After some discussion at the hearing, she realized that the creditor in 1.h was not the same creditor. The letter sent by Applicant to each creditor requested the creditor to provide information under the Federal Debt Collection Act regarding her debt. She also challenged seven SOR debts with one of the credit reporting companies. Following the hearing, Applicant wrote to the creditors listed in SOR allegations 1.c, 1.d, and 1.h.<sup>5</sup>

Applicant earns approximately \$38,000 a year. Her net monthly income is \$2,900 plus children support of approximately \$600 a month. Her monthly expenses total approximately \$2,500, leaving approximately \$1,000 a month to pay debts.<sup>6</sup>

A review of Appellant's credit reports dated December 26, 2006, March 28, 2008, June 19, 2008, September 19, 2008, and the SOR shows the following debts and their current status:<sup>7</sup>

SOR ¶	TYPE OF DEBT	AMOUNT	STATUS, EVIDENCE
1.a	Cell phone bill	\$ 225.00	Challenged, verified, filed fraud claim (Response to SOR; GE 2-5; AE A, C and S)
1.b	Cell phone bill	\$ 612.00	Challenged, verified, filed fraud claim (Response to SOR; GE 2-5; AE A, C and R)
1.c	Check nonpayment	\$ 35.00	Verified; Paid (GE 3, 4; AE L)
1.d	Check nonpayment	\$ 25.00	Verified; Paid (GE 3, 4; AE K)
1.e	Bank account fees	\$ 175.00	Unpaid
1.f	Rent	\$ 2,646.00	Challenged, verified; AE C Response to SOR; unpaid
1.g	Check nonpayment	\$ 27.00	Challenged, verified, paid; GE 2-5; AE N

<sup>5</sup>GE 2 (Answers to Interrogatories and attachments) at 17-45; AE C; AE E; AE G; AE H; AE I; AE K; AE L; AE P.

<sup>6</sup>GE 2, *supra* note 5, at 6. Applicant shares her household expense with her fiancé.

<sup>7</sup>GE 3 (Credit report, dated June 19, 2008); GE 4 (Credit report, dated March 28, 2008); GE 5 (Credit report, dated December 26, 2006); AE A (Credit report, dated September 19, 2008).

1.h	Car repossession	\$10,191.00	Disputes balance; proposed payment plan - \$75 biweekly; paid \$75 on 10/17/08 (GE 3-5; AE P)
1.i	Utility bill	\$ 469.00 (actual amount owed \$174.20)	Payment plan; paid first of three installments (AE O)
1.j	Rent	\$ 1,892.00	Unpaid
1.k	Collection creditor (original creditor unknown)	\$ 832.00	Debt challenged, deleted on credit report (Response to SOR)
1.l	Utility bill	\$ 469.00	Same as 1.i; deleted from credit report after challenge <sup>8</sup>
1.m	Loan	\$ 220.00	Challenged, deleted (Response to SOR)
1.n	Clothing store bill	\$ 214.00	Disputes (GE 5), unpaid
1.o	Cell phone bill	\$ 1,023.00	Same as 1.r; account closed (GE 2, 5) <sup>9</sup>
1.p	Insurance bill	\$ 116.00 (actual amount owed \$193.00)	Payment plan (AE M); paid first of three payments
1.q	Collection account (original creditor unknown)	\$ 96.00	Unpaid
1.r	Cell phone bill	\$ 906.00	Proposed payment plan of \$75.00 a month; Paid \$75 on 10/17/08 (AE Q)

Twice, Applicant co-signed a rental agreement with another person, who defaulted on the rent payments. One rental company declined to enter into a payment plan with her, but advised she could pay them monthly. She would not receive verification of her payments until the debt was paid in full. She sought a loan to pay the \$2,646 debt, but her loan application was denied.<sup>10</sup>

<sup>8</sup>Accordingly, I find "For Applicant" with respect to SOR ¶ 1.l to eliminate the duplication.

<sup>9</sup>Accordingly, I find "For Applicant" with respect to SOR ¶ 1.o to eliminate the duplication.

<sup>10</sup>AE J (Application for loan); AE T (Loan denial); Tr. 34-35, 67, 84.

Applicant acknowledges that many of the debts in the SOR are her fault. She has learned the value of good credit. She misused credit in the past and is now paying for her behavior. She is working to clean up her credit.<sup>11</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 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 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 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.

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<sup>11</sup>*Id.* at 54-55.

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 this guideline 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. Applicant accumulated delinquent debt over a period of time. She has lacked the ability to pay her debts and until recently, has been unwilling to resolve them. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial problems have been ongoing for awhile. Her debt did not occur under any unusual circumstances. This potentially mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant lost her job in 2002, and as a result, she could not afford to make her car payment. She voluntarily returned her car, a reasonable action at the time. Her other debts are not the result of circumstances beyond her control. This mitigating condition partially applies.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Although she did not receive debt counseling, upon learning that her past debts could negatively impact her ability, Applicant initiated

contact with her creditor to obtain information on the status of her debts. Her efforts led to the removal of a few debts from her credit report, the payment of three small debts and an offer to pay several larger debts. Because she is making an effort to resolve her debts, this mitigating condition is partially applicable.

AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant’s post-hearing efforts to pay her debts and develop payment plans for her larger debts is not sufficient at this time to demonstrate that she has made a good faith effort to resolve her old debts because she has not shown a track record for paying these debts. This mitigating condition does not apply.

Finally, under AG ¶ 20(e), Applicant could mitigate the government’s security concerns by showing she had “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 acted reasonably when she challenged the validity of seven debts (allegations 1.a, 1.b, 1.k, 1.l, 1.h, 1.p, and 1.q,) because she did not believe that these debts were hers. Likewise, her decision to challenge the validity of two other debts (allegation 1.g and a debt not on the SOR) on the grounds she had paid the debts was rational. Her challenges resulted in the deletion of four debts from her credit report. She paid one and learned she still owed money to another creditor and is paying this debt under a payment plan. Because the credit reporting agencies verified the debts listed in SOR allegations 1.a and 1.b and she denies these debts are hers, Applicant filed a fraud complaint with the credit reporting agency. The December 26, 2006, credit report reflects that she disputed the debt listed in SOR allegation 1.n, as she paid the bill. This mitigation condition applies only to the mitigation of SOR allegations 1.a, 1.b, 1.k, 1.m, and 1.n.

### **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.

In reaching a conclusion under the whole person concept, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began as a young woman, trying to raise two daughters on her own with limited funds. (See AG ¶ 2(a)(4).) Her accumulated debt from the car repossession occurred because she lost her job and could no longer pay the monthly car payment. In recent years, she has accumulated additional debts, most of which have not been paid. Six months ago, she realized her past debts would prevent her from obtaining a security clearance. She is to be commended for the effort she has taken since then to locate and resolve her debt problems. Now that she knows what debts are valid, she has started to resolve her debt issues. She paid her three smallest debts two weeks ago. She has offered to repay several more debts through payment plans. Two debts will be paid shortly, and the remaining debts will take some time. Given her past record for not paying her debts, her present efforts are not sufficient to establish a track record for good financial management. Applicant needs to demonstrate that she can manage her finances and pay her bills for a period of time. She has not mitigated the government's security concerns regarding her finances.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant



Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	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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MARY E. HENRY  
Administrative Judge