



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-01728
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel

For Applicant: *Pro Se*

September 30, 2008

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**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed and signed a Standard Form 86 (SF-86) security clearance application on November 22, 2005. On April 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) stating 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 for SORs issued after September 1, 2006.

In a response notarized on June 10, 2008, Applicant admitted six and denied four of the ten allegations raised concerning ten allegedly delinquent debts. She also requested a hearing. DOHA received Applicant' request on July 10, 2008, and I was assigned the case that day.

Department Counsel and Applicant agreed to an August 14, 2008, hearing date, and a Notice of Hearing was issued on July 17, 2008, to that effect. The hearing took place as scheduled. Department Counsel submitted six exhibits (Ex.), accepted into the record as Exs. 1-6 without objection. Applicant submitted 9 exhibits, accepted as Exs. A-I without objection. Applicant gave testimony. No witnesses were called. Applicant was given through August 29, 2008, to submit any additional materials. On August 27, 2008, ten additional exhibits were submitted by Applicant via facsimile transmission. On September 2, 2008, Department Counsel noted its receipt of Applicant's documents and declined to make any objections. The transcript (Tr.) was received on September 4, 2008, and the record was closed. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

### **Findings of Fact**

Applicant is a 43-year-old graphics specialist who has worked for the same government contractor since 1990. She has worked in some form of contracting capacity since receiving her high school diploma in 1983, she has worked in some form of contracting capacity. She has been married for 16 years and has two children.

In 1992, Applicant married her current husband. The two lived comfortably and contemplated starting a family. A daughter was born in 1993 and a son was born in 1997. In the late 1990s, with two young children in her care, Applicant bought a modest family car for their safe transport. "[N]ot showing very good decision making," Applicant's husband "decided he wanted a new vehicle at the same time. So he went, unbeknownst to [Applicant], and bought a four-wheel drive and brought it home."<sup>1</sup>

Shortly thereafter, in 1998, the couple separated for about three months. The husband moved into a mobile home he had purchased while Applicant and the children remained in their home. The burden of maintaining two households impacted their ability to timely meet their everyday expenses. Unable to timely pay bills and afford two automotive payments, Applicant had her car returned as a voluntary repossession in about 2002, and later replaced it with an older used car. Meanwhile, her husband kept his new truck until it was repossessed in 2003 with a balance of \$8,218. In 2003-2004, surgery on the children entailed an additional burden of extra co-pays, which resulted in more delinquent debts. From 2004 through 2006, Applicant and her husband underpaid their taxes, which were subsequently repaid through garnishment.<sup>2</sup>

Applicant and her husband again separated in 2006, with the husband again staying in his mobile home. Expenses were even more difficult to meet during this time period because Applicant's husband, a self-employed electrician, was experiencing a period of unemployment. Consequently, it was Applicant who paid to maintain the two households. Applicant's husband is limited in his range of work due to a knee injury

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<sup>1</sup>Tr. 13.

<sup>2</sup> Tr. 30-31; Exs. P-R (Tax documents).

which restricts his mobility, “hurts all the time from going up and down stairs,” and affects his mood.<sup>3</sup>

In 2007, Applicant’s husband completed the project he was working on. In May 2007, exhausted from the physical aspects of his work, he unilaterally decided to take the summer off and not work until September. This decision led to considerable financial distress on the part of Applicant, who became the sole household earner.<sup>4</sup> Applicant was thus unable to address some of their debts until after he returned to work in the autumn of 2007. Since returning to work, he has been hired for supervisory positions. He is happier in a position that does not require him to be as mobile as he was previously, and supervisory positions reduce his vulnerability to knee injury pain. With him now back to work, Applicant has started consumer counseling to help her pay off her debt.

At issue in the SOR, as based on a March 12, 2008, credit bureau report, are debts amounting to approximately \$12,800, including the \$8,218 incurred by Applicant;’s husband for his repossessed truck.

**Collection Account for \$663** – Applicant has started a repayment plan on this account with her first monthly installment of \$25.<sup>5</sup>

**Collection Account for \$585** – Applicant has returned her cable box, reducing her balance to approximately \$157, which she plans on satisfying at the end of September 2008.

**Medical Collection for \$100** – Paid.<sup>6</sup>

**Medical Collection for \$100** – Paid.<sup>7</sup>

**Medical Collection for \$450** – In repayment; balance currently at \$350.<sup>8</sup>

**Collection Account for \$155** – Unpaid.

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<sup>3</sup> Tr. 26.

<sup>4</sup> Tr. 15.

<sup>5</sup> Ex. J (Letter of August 26, 2008); Ex. O (Bank Statement, dated August 26, 2008).

<sup>6</sup> Ex. K (Credit Report, dated June 27, 2008). *Note:* In using Equifax credit reports from 2008, there is insufficient information on the “Medical” accounts to link to specific accounts, particularly when the amounts at issue are the same (\$100). Applicant’s proffer, however, shows that she has satisfied two accounts for \$100 and reduced a balance on a \$450 Medical to \$350. The medical group noted in Exs. K and L, which now is owed no balance, appears to be the medical account last reported with a \$50 balance by Equifax.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

**Charge-off Account for \$8,218** – This account is no longer on Applicant’s credit report and she does not have current contact information for the creditor. She was advised by her credit counselor to shift her concern from this account to satisfying her smaller debts first, then pursuing this account.

**Charge-off Account for \$2,480** – Unpaid.

**Collection Account or \$94** – Unpaid.

**Medical Collection for \$50** – Paid.<sup>9</sup>

Applicant is currently an hourly wage earner working a 40-hour week. Her gross income is approximately \$3,200 per month, based on an hourly wage of \$20 per hour. Her current salary is over double of what it was in the mid- to late-1990s, when she had her car repossessed. Applicant rents her home from her church at approximately \$750 per month. At work, she is known as a hard worker and a woman of faith, noted for her loyalty and good judgment.<sup>10</sup> She has progressed at work, both in terms of title and salary. Her appraisals reflect a quality worker.<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. Under AG ¶ 2(c), this 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.

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<sup>9</sup> *Id.*

<sup>10</sup> Exs. A-D (Letters of Reference).

<sup>11</sup> Exs. G-I (Appraisals).

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>12</sup> The burden of proof is something less than a preponderance of evidence.<sup>13</sup> The ultimate burden of persuasion is on the applicant.<sup>14</sup>

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>15</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>16</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>17</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

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<sup>12</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>13</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>14</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Executive Order 10865 § 7.

## Analysis

Under Guideline F, failure or an 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.<sup>18</sup> The Regulation sets out several potentially disqualifying conditions under this guideline.

Not long after Applicant and her husband had their two children, Applicant's husband bought a four-wheel drive truck the couple could not afford. A while later, the couple separated for a period. These actions set in motion a snowball of unexpected expenses and the acquisition of delinquent debt, some of which remains unpaid. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19©) ("a history of not meeting financial obligations") and FC DC AG ¶ 19(a) ("inability or unwillingness to satisfy debts") apply. With such conditions raised, the burden shifts to Appellant to overcome the case against her and mitigate security concerns.

After the birth of her children, Applicant purchased a reliable and modest family car for their safe transport. Unbeknownst to her, Applicant's husband treated himself to a four-wheel drive truck they could not afford. Recognizing this fact, it was Applicant who had her car voluntarily repossessed and settled on a used car in its place. Surgery for the children was unexpectedly required and the couple was twice separated. During their latter separation, Applicant maintained two household as the sole wage earner during her husband's period of unemployment. When Applicant's husband unilaterally decided to take a break from work for several months, it was left to Applicant to once again support the household. Despite a number of unexpected events of financial significance, Applicant has done her best to keep her family together and make sure that their most essential bills were paid. This included taking full responsibility for the couple's IRS arrearage. Given these facts, Financial Considerations Mitigating Condition (FC MC) 2, AG ¶ 20(b) ("the conditions that resulted in the behavior 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") applies.

Part of the drain on Applicant's finances was compensating for her husband's caprices and periods of unemployment, neither of which reflected badly on her. Now hired for supervisory positions, he is no longer required to be as physically active as he once was. As a result, his bouts of knee pain have diminished and he has an improved attitude and mood. He has been back to work in this capacity for nearly a year without incident. Given his new status as a supervisor, it is unlikely he will repeat his own past behavior. Consequently, Financial Considerations Mitigating Condition (FC MC) 1, AG ¶ 20(a) ("the behavior happened so long ago, was so infrequent, or occurred under such

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<sup>18</sup> Revised Adjudicative Guideline (AG) ¶ 18.

circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment") applies.

Although not noted as a debt of concern in the SOR, Applicant and her husband owed back taxes. Applicant took on those debts directly and satisfied them as her first priority. With her husband committed to his return to work, she feels she can now make significant progress on her delinquent debts. With the help of a credit counselor, she has learned to prioritize her debts. One creditor which she cannot locate has been moved down the list. Meanwhile, she has addressed the delinquent medical accounts. She has commenced work on her cable account by returning the cable box, significantly reducing her balance. She has started a repayment plan with one of the credit cards. Her efforts demonstrate her commitment to satisfying the couple's debt. Such actions give rise to FC MC 4, AG ¶ 20(d), ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") and FC MC 3, AG ¶ 20©) ("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") apply.

### **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) 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 public trust position 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, as well as the "whole person" factors. Applicant is a well regarded employee who shows talent and quality in her work. She is a devoted mother who goes to great lengths to balance her roles as wife, mother, and worker. Money apparently became tight after the birth of her two children, but the couple seemed to manage until Applicant's husband bought a new truck without

first consulting her. The burden of paying car payments on two new vehicles was too much. Rather than have him return the more expensive vehicle, she kept the peace and demonstrated both sound judgment and self control by returning her family car and getting a used model. From that time until late 2007, Applicant served as the family's economic anchor while the couple twice flirted with separation and her husband was twice unemployed. Indeed, she single handedly took on the couple's back taxes as a priority and has paid them in full.

At issue is an amount of delinquent debt under \$13,000. Nearly two-thirds of that debt, \$8,218, is the balance owed on a truck acquired by Applicant's husband without her knowledge or consent. For her part of that debt, none of the balances owed are for frivolous purchases. Applicant has seen her family through hard times with a minimum of delinquent debt. She has systematically reduced the balance owed on the remainder of that delinquent debt by about 20%, demonstrated a good faith effort to address all her obligations, shown that family resources are now improved with her husband's return to full-time employment in a job he can better manage, and shared her insights on how she methodically plans to address the rest of her debt with the help of her credit counselor. Although her efforts are far from complete, Applicant has shown her commitment to meeting her obligations. Throughout the past six years, she has demonstrated that she has self-control, sound judgment, and a commitment to abiding by the rules. With security concerns mitigated, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant



## **Conclusion**

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

ARTHUR E. MARSHALL, JR.  
Administrative Judge