



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-02529

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 16, 2009

**Decision**

WHITE, David M., Administrative Judge:

Applicant had some delinquent debts incurred more than three years ago that she could not afford to repay. All these debts were finally discharged in bankruptcy in January 2009. She is now solvent, financially responsible, and debt-free. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on October 5, 2007. On August 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. 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 (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on September 30, 2008. She answered the SOR in writing on the same date, and originally requested a decision without a hearing before an administrative judge. After preliminary discussions with Department Counsel, she changed her mind and requested a hearing. Department Counsel then requested a hearing pursuant to Directive ¶ E3.1.7, to accommodate this request. (Tr. at 17-20.) Department Counsel was prepared to proceed on November 19, 2008, and DOHA assigned the case to me on November 21, 2008.

DOHA issued a notice of hearing on December 2, 2008, and I convened the hearing as scheduled on January 9, 2009. Department Counsel offered Government Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on her own behalf, and offered Applicant's Exhibits (AE) A and B, which were also admitted without objection. I granted Applicant's and Department Counsel's joint request to leave the record open to permit Applicant to obtain and submit additional documents concerning her bankruptcy. This evidence was submitted and admitted as AE C, without objection by Department Counsel, on February 12, 2009. DOHA received the transcript of the hearing (Tr.) on January 26, 2009.

### **Findings of Fact**

Applicant is a 38-year-old employee of a federal contractor, where she has worked for two years as an administrative assistant. She is a single mother of two teenage children. In her answer to the SOR, she admitted to all of the allegations in SOR ¶¶ 1.a through 1.e, describing 5 delinquent credit card debts totaling \$25,954. Those admissions are incorporated in the following findings.

Applicant and the father of her children ended their long-term relationship around 2002. She was emotionally hurt and became increasingly unhappy with her previous line of work in the tourism industry. Through what she describes as weakness and stupidity, she ran up unpaid maximum totals on the five credit cards in question. She spent this money on many gift items for her children and other family members, as well as twice-yearly trips to Las Vegas. At the end of 2006, she left her former job, and was unemployed until starting her current job in April 2007. She made her last payments toward each of those credit card debts in late 2006. About this time she also realized her financial irresponsibility had to end. She incurred no additional delinquent debts after that point. (GE 2; GE 4; GE 6; Tr. at 28-32.)

Applicant talked to several credit counseling services in order to attempt to repay her debts, but could not afford the proposed payments. Her family members did not have excess funds to help her either. Finally, an attorney advised her to file for Chapter 7 bankruptcy protection and start over. She found this to be her only realistic option, and filed the bankruptcy papers on October 23, 2008. She listed all of the SOR-listed debts and a \$1,629 debt to a computer company as unsecured, non-priority dischargeable debts. She also completed the required credit counseling and debtor education course on personal financial management. On January 26, 2009, the bankruptcy court issued a final order discharging her debts. (GE 2; AE A through C; Tr. at 32-33.)

Applicant and her children currently live with her mother, where she pays household utility costs in lieu of rent. She does not own a car, and rides to work with her mother. She earns \$1,200 every two weeks, and has started a regular savings program now that she no longer owes payments on any outstanding debts and has monthly surplus income. She receives minimal, if any, regular child support assistance from her children's father, but her brother helps with tuition payments for her daughter. She testified credibly and convincingly that she never intends to incur delinquent debt again, and will continue the responsible budgeting and spending pattern she has followed over the past two years. She also highly values her present employment opportunity, is very sensitive to security issues and requirements, and knows well that future irresponsibility will not be tolerated. (Tr. at 36-41, 46-47.)

### **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 used to evaluate 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Applicant's admissions and the Government evidence raised three of these potentially disqualifying conditions: "(a) inability or unwillingness to satisfy debts;" "(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;" and "(c) a history of not meeting financial obligations." There was neither any allegation nor proof of compulsive, addictive, or problem gambling. Nor was there any evidence of drug abuse, alcoholism, tax evasion, or illegal financial practices. Simply, Applicant went through a period of three or four years during which she carelessly ran up credit card debt without regard for the long-term implications. She was willing to satisfy those debts, but unable to do so because of a period of unemployment after which her income was insufficient to afford substantial debt payments while avoiding new debts. She finally realized that bankruptcy was her only practical option. She availed herself of that lawful manner to resolve her delinquent indebtedness, and incurred no new debts since returning to work in April 2007. Accordingly, AG ¶ 19(a) no longer applies to Applicant, leaving only potential concerns under AG ¶¶ 19(b) or (c). She is no longer at any risk of having to engage in illegal acts to generate funds, since her income more than meets her regular living expenses, and all of her former debt has

been lawfully discharged. Only if her history of not meeting financial obligations incurred through frivolous spending indicates current poor self-control, lack of judgment, or unwillingness to abide by rules and regulations should those admitted facts support present security concerns.

AG ¶ 20 provides conditions that could mitigate security concerns arising from a history of unpaid debt or frivolous spending. Since Applicant did not dispute the legitimacy of any SOR-listed debt, the four potentially pertinent conditions are:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's formerly delinquent debts all arose more than two years ago, as a result of a period in her life when she responded to emotional distress by spending more than she earned on herself and remaining loved ones. She left a bad work situation and found much more satisfying work two years ago. About that time she also realized she needed to stop spending irresponsibly and did so. She has taken all possible measures to minimize her regular living expenses and maintained gainful employment to remain self-supporting. Her initial efforts to pay off the debts were unworkable. Accordingly, she sought and received resolution of all her outstanding debt through Chapter 7 bankruptcy proceedings, discharged in January 2009. These actions by Applicant establish mitigation under AG ¶ 20(a), since the debts arose long ago and under circumstances she realized were wrongful and voluntarily stopped. She has maintained financially responsible conduct and incurred no new debts for two years, reflecting her good judgment and trustworthiness. Her improved work situation, emotional acceptance of single motherhood, and appreciation for the requirement to maintain responsible behavior going forward all support the conclusion that her period of frivolous spending is unlikely to recur.

Applicant freely admitted that her period of excessive spending, while triggered by separation from her former long-term partner, was her own fault and "stupid." Accordingly, she did not assert mitigation under AG ¶ 20(b). After finding debt

consolidation plans impractical, Applicant sought the counsel of an attorney and followed his advice that filing for Chapter 7 bankruptcy relief was her best option. Her debts were successfully and fully resolved through bankruptcy effective January 2009. This establishes substantial additional mitigation and resolves remaining security concern under AG ¶ 20(c).

### **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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's conduct of potential concern involves formerly delinquent debts for which she accepted responsibility, but could not afford to repay while avoiding new debt and supporting two teenage children as a single mother. She realized that the frivolous spending that caused these debts could not continue, and stopped such conduct. She sought and followed the advice of an attorney to resolve her situation lawfully through bankruptcy. She has incurred no new debt for several years, and is living in a frugal and solvent manner on her current income. There is little likelihood of recurrence of this problem, based on her past responses to such troubles and her current desire to avoid any repeat of them. Her bankruptcy discharge has completely alleviated any potential for pressure, coercion, exploitation or duress from her former debt situation, and her enthusiastic desire to maintain eligibility for her present job provides very strong motivation for continued responsibility. The likelihood of recurrence of her relatively brief period of financial irresponsibility is very low under her changed and improved life circumstances, and recently demonstrated maturity.

On balance, Applicant presented sufficient evidence to fully mitigate reliability and trustworthiness security concerns arising from her former failure to satisfy frivolously incurred debts, and history of not meeting financial obligations. Overall, the

record evidence leaves no doubts as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, Applicant has 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:	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

**Conclusion**

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

DAVID M. WHITE  
Administrative Judge