



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-02908
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: Pro Se

August 26, 2008

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on September 13, 2007. On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, 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.

On May 29, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 13, 2008. The case was assigned to me on June 25, 2008. On July 15, 2008, a Notice of Hearing was issued, scheduling the hearing for August 5, 2008. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4. Applicant testified. She offered no exhibits. The transcript was

received on August 12, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, Applicant admits to all of the allegations.

Applicant is a 45-year-old employee with a Department of Defense contractor seeking a security clearance. She has been employed with her company since August 2007. She is a high school graduate. She is a widow and has four children, a 24-year-old son who supports himself, 17-year-old twin boys, and a five-year-old daughter. The three youngest children live with Applicant. (Tr at 5, 24-25, 74; Gov 1)

On September 13, 2007, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in order to apply for a security clearance. She answered "No" in response to question 28(a) "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" She also answered "No" in response to question 28(b) "Are you currently over 90 days delinquent on any debt(s)?" (Gov 1.)

A subsequent background investigation revealed that Applicant had the following delinquent accounts: a \$516 judgment related to a medical account entered in December 2003 (SOR ¶ 1.a: Gov 3 at 2; Gov 4 at 1); a \$129 medical account placed for collection in November 2001 (SOR ¶ 1.b: Gov 3 at 10); a \$243 account placed for collection in April 2007 (SOR ¶ 1.c: Gov 3 at 6; Gov 4 at 2); a \$389 credit card account that was charged off in April 2007 (SOR ¶ 1.d: Gov 3 at 8; Gov 4 at 2); a \$161 account that was charged off in March 2007 (SOR ¶ 1.e: Gov 3 at 10; Gov 4 at 2); a \$1,465 credit card account that was charged off in December 2001 (SOR ¶ 1.f: Gov 3 at 5; Gov 4 at 2); a \$1,751 account that was charged off in December 2001 (SOR ¶ 1.g: Gov 3 at 9; Gov 4 at 2); a \$1,070 credit card account placed for collection in March 2002 (SOR ¶ 1.h: Gov 4 at 2); a \$687 department store credit card account charged off in May 2002 (SOR ¶ 1.i: Gov 3 at 8; Gov 4 at 2); an \$867 credit card account that was charged off in April 2007 (SOR ¶ 1.j: Gov 4 at 2); a \$215 delinquent cell phone account placed for collection in September 2002 (SOR ¶ 1.k: Gov 4 at 2); a \$501 jewelry store account charged off in July 2002 (SOR ¶ 1.l: Gov 3 at 8; Gov 4 at 2); a \$3,409 mail order catalogue account placed for collection in July 2002 (SOR ¶ 1.m: Gov 3 at 10); a \$942 account placed for collection in September 2007 (SOR ¶ 1.n: Gov 3 at 9); and a \$289 judgment filed against Applicant in December 2003 related to a medical account (SOR ¶ 1.o: Gov 3 at 3).

At hearing, Applicant admitted that she owes all the bills. She is unable to pay off any of the accounts alleged in the SOR. She has not contacted any of the creditors listed in the SOR. (Tr at 18-19.)

Applicant works four days a week and does not have extra money to apply towards her debts. She is a diabetic. She does not have health insurance because she cannot afford it. Her net monthly income is \$832 a month. She receives \$788 a month

from social security for her twin sons. Her total household income is \$1,620. Her total monthly expenses is \$1,535. She has \$85 left over each month after expenses. (Tr at 19-21.)

In 2003, when Applicant was pregnant with her youngest daughter, she was hospitalized off and on as a result of complications related to her diabetes. She was on Medicaid when she was hospitalized. She currently takes insulin which costs approximately \$80 per month and sugar pills which are approximately \$50. (Tr at 23, 29.)

Her husband passed away in 1999. Prior to his death, his monthly income was approximately \$1,200 a month. Applicant previously worked in a convenience store that went out of business. She had no gap in employment between her last job and her current job. Her income is about the same. She is thinking of getting a part-time job. Her supervisor was going to try to give her more hours. She currently works four eight hour shifts. (Tr at 24-26.)

Applicant testified that she was aware that she had delinquent debts at the time she completed her e-QIP application in September 2007. She told her supervisor that she had poor credit. She did not list her delinquent accounts on her e-QIP application. She is not sure why she did not list her delinquent accounts on her security clearance application. (Tr at 26-27, 31-32.)

### **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.

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.

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 the guideline for Financial Considerations 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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has accumulated approximately 15 delinquent accounts from 2001 to 2007. The total approximate balance of the delinquent debt is \$12,634. Applicant is unable to pay these debts due to her limited income.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 20(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) is not applicable. Applicant's history of financial irresponsibility is too recent to apply this mitigating condition. All of the delinquent accounts alleged in the SOR remain unresolved.

FC MC ¶ 20(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) applies, in part. Applicant struggled financially after he husband passed away in 1999. Three of the accounts are medical bills. Applicant suffers from diabetes and has no health insurance. There were circumstances beyond her control that adversely affected Applicant's finances. However, Applicant has made no attempt to resolve her delinquent accounts. It cannot be concluded that Applicant acted responsibly under the circumstances.

FC MC ¶ 20(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) does not apply. Applicant has not attended financial counseling. She does not earn enough income to resolve her delinquent accounts. None of the delinquent accounts alleged in the SOR have been resolved. It is unlikely that her financial situation will be resolved in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has not taken steps towards resolving her delinquent accounts. Primarily, because she does not have the income to pay her delinquent debts.

Applicant has not mitigated the concerns raised under Guideline F.

## **Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Personal conduct concerns are raised because Applicant failed to list her delinquent debts in response to questions 28(a) and 28(b) on her security clearance

application, dated September 13, 2007. Applicant admits that she was aware that she had delinquent debts at the time she completed her security clearance application. She admits that she did not list her delinquent accounts on her security clearance application. She could not explain why she failed to list her delinquent accounts on her security clearance application. Under Personal Conduct, Disqualifying Condition (PC DC) ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) applies to Applicant's case.

The personal conduct concern can be mitigated. The following Personal Conduct Mitigating Conditions (PC MC) have the potential to apply to Applicant's case:

PC MC ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts)

PC MC ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment)

PC MC ¶ 17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur)

PC MC ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress)

PC MC ¶ 17(e) applies because in response to the SOR, Applicant admits that she has delinquent debts and that she intentionally did not list her delinquent accounts on her security clearance application. Her admissions reduce her vulnerability to exploitation, manipulation, or duress. However, she has not met her burden to completely mitigate the security concerns raised under personal conduct. She did not make a prompt, good-faith effort to correct her omissions before being confronted with the facts. She was unable to explain why she failed to indicate that she had delinquent accounts in response to sections 28(a) and 28(b) on her security clearance application, even though she admits to being aware that she had delinquent accounts at the time she completed the application. There is insufficient evidence in the record to apply the other personal conduct mitigating conditions to Applicant's case.

Applicant has not mitigated the concerns raised under Guideline E.

## 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 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. I considered Applicant's medical condition, and that she is a single mother supporting three minor children. I also considered Applicant's limited income which prevents her from resolving her delinquent accounts. An inability to pay one's debts remains a security concern under financial considerations. Her deliberate omission of her delinquent accounts on her security clearance application raises concerns about her trustworthiness and reliability. The financial considerations and personal conduct concerns are not mitigated.

## 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant

Subparagraph 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

### **Conclusion**

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

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ERIN C. HOGAN  
Administrative Judge