



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-03086
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, 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 a security clearance application (SF-86) on May 9, 2007. On May 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) stating security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 an undated response, received on July 7, 2008, Applicant admitted 14 of 20 allegations regarding delinquent accounts and denied both allegations pertaining to personal conduct. Applicant declined the opportunity to present her case at a hearing. Department Counsel submitted a File of Relevant Materials (FORM), dated August 6, 2008. Applicant received a copy of the FORM on August 29, 2008, and responded to it

by letter dated August 29, 2008. On September 24, 2008, the Director, DOHA, assigned the case to me for administrative determination. Based upon a review of the case file, and exhibits, security clearance is denied.

### **Findings of Fact**

Applicant is a 38-year-old customer support analyst. She has worked for the same defense contractor since 2006. In December 2001, Applicant and her husband secured a mortgage to build a home. Due to a clerical error on the part of the builder, the house delivered was considered an up-grade from the house ordered. While the upgrade did not affect their liability for the home, it impacted their taxes and insurance. The week after they closed on the home purchase, Applicant experienced a brief, two week period of unemployment.<sup>1</sup> At some point in 2002, Applicant's husband's grandmother was dying. Unable to afford to fly to her, they drove to the grandmother's town of residence. Their car hydro-planed during a rain storm and was totally wrecked. Unbeknownst to them, their car insurance policy lapsed days before they started the trip.

Shortly thereafter, Applicant's husband lost his job as a loan officer for a mortgage company.<sup>2</sup> Reduced to one income, bills went unpaid or were paid late. As a consequence of not being timely on their mortgage, their mortgage payments doubled when the loan was accelerated. Applicant could not keep current on the mortgage and, in November or December 2002, Applicant received a letter stating they would have to vacate the home.<sup>3</sup> The couple vacated the home and moved to an apartment in which they continued to live through about 2005. In the interim, the house was foreclosed upon in January 2004. It was sold and no balance is owed on the home. As well, Applicant's car was repossessed in November 2004. Her credit report shows that the finance company is holding her to the full price of the vehicle; Applicant says she has disputed this, but has provided no documentation to that effect.

Over the past few years, Applicant has acquired several minor medical debts which are reflected on her credit report. She characterizes the entries as "grossly inaccurate," because "all payments to my healthcare provider were automatically deducted from my paycheck, and my deductibles were all met."<sup>4</sup> She contests these credit report entries/accounts, but has provided no documentation of formal dispute with either the credit reporting bureaus or medical providers. Indeed, Applicant questions the accuracy of all the delinquent accounts noted in allegations 1.a through 1.t. She states

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<sup>1</sup> Response to the FORM, dated August 29, 2008.

<sup>2</sup> Applicant's husband returned to work in August 2008. Response to the FORM, dated August 29, 2008, at 3. Applicant does not state whether her husband was intermittently employed between 2002 and August 2008 or continuously unemployed throughout that six year period. Moreover, in the event the latter is the case, there is no explanation as to why his period of unemployment was so protracted.

<sup>3</sup> *Id.*

<sup>4</sup> Response to the SOR, undated, regarding allegation 1.c.

that she had planned to validate all the charges on her credit report before she received the SOR in June 2008, but did not because it “would take an incredible amount of time and effort. I believe that simply paying for these items without knowing if they are truly my debts would not be fair. . . . I intend to hire someone to look into my credit for me because with my current workload I simply do not have the time to spend that is needed to validate the charges on my own.”<sup>5</sup>

Applicant states that she is prepared to pay off the medical accounts noted in allegations 1.c (\$97), 1.d (\$124), 1.f (\$70), 1.g (\$64), and 1.i (\$42), as well as the telecommunications debts noted in allegation 1.k (\$190) and 1.m (\$142), to show “good faith.”<sup>6</sup> She plans to pay all debts at issue. She states that she has discussed some of the accounts with her creditors, but has provided no documentation as to these discussions.

In response to Question 27(b) of her 2007 SF-86 (“In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?”), Applicant answered “no.” In response to the allegation noting her denial of “property repossessed,” Applicant stated in her Response to the SOR: “In regards to [the question] because it said ‘property repossessed’ the way this question was worded led me to believe that I was to list the foreclosure since there was no other place to list in on the security clearance application. I know for a fact that . . . repossessions, delinquencies, or charge-offs are all items that would be questioned on an application for credit in regards to employment, etc., therefore I see no reason not to list them.”

In response to Question 28(a) (“In the last 7 years, have you been over 180 days delinquent on any debts?”) and Question 28(b) (“Are you currently over 90 days delinquent on any debts?”), she responded “no.” However, in the space provided for additional comments, Applicant wrote: “I don’t have any known delinquencies, but I am sure that there are some.”

## **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

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<sup>5</sup> Item 7 (Response to Interrogatories, dated May 5, 2008) at 1.

<sup>6</sup> Response to the FORM, dated August 29, 2008, at 4.

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.

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>7</sup> The burden of proof is something less than a preponderance of evidence.<sup>8</sup> The ultimate burden of persuasion is on the applicant.<sup>9</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>10</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>11</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>12</sup> It is merely an indication that the

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<sup>7</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>8</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>9</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Executive Order 10865 § 7.

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) and Guideline E (Personal Conduct) 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.

## **Analysis**

### **Guideline F – Financial Considerations**

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>13</sup> The Directive sets out several potentially disqualifying conditions under this guideline.

Starting in about 2002, a gaffe in the valuation of a new home increased some expenses, such as home insurance and taxes. Applicant was already facing financial problems when she and her husband had to drive to see his dying grandmother in 2002. During that trip their car, no longer covered by insurance, was destroyed. Their ability to timely pay their bills worsened when Applicant's husband lost his job later that year. All of the delinquent accounts cited in the SOR that were acquired in 2002 and since 2002 remain delinquent and unaddressed. Such facts are sufficient to give rise to Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(c) (*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.

In 2002, through no fault of her own, Applicant's home builders inadvertently built her home at a higher standard. While the upgrades were not added to their home price, they would impact Applicant's taxes and home insurance. Shortly after closing, Applicant was unemployed for two weeks. These two factors were apparently enough of a threat to the couple's financial stability that they had to drive, rather than fly, to see Applicant's husband's ill grandmother. Her husband became unemployed later in 2002 and either remained unemployed or worked intermittently until he found a permanent position in August 2008. His unemployment clearly impacted their already tenuous ability to pay their bills. Additionally, a car accident completely wrecked one automobile in 2002, days after their insurance had lapsed. To the extent such facts led to the acquisition of delinquent debt, Financial Considerations Mitigating Condition (FC MC) 2,

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<sup>13</sup> Revised Adjudicative Guideline (AG) ¶ 18.

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.

Of the 20 financial allegations raised in the SOR, there are 18 delinquent debts cited. To date, none have been paid, in full or in part, and there is no documentary evidence indicating any have been formally disputed. As for Applicant's husband's period of unemployment, it understandably contributed to the family's difficulty in meeting their obligations. Applicant failed, however, to document or discuss any unique aspects of his unemployment that kept those accounts delinquent for six years or that prohibited him from returning to stable employment sooner. Moreover, although Applicant is suspicious of the accuracy of her credit report, no explanation is given as to why she has not yet started validating its entries except that it would take "an incredible amount of time and effort" and she does not have such time available. Financial Considerations Mitigating Condition (FC MC) 1, AG ¶ 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*) does not apply.

To date, the accounts at issue remain unpaid and there is no documentary evidence any have been formally disputed with the credit reporting bureaus. At most, Applicant has stated she will soon make payments on some of the smaller balances, most of which are under \$100, to show her good faith. Statements of a future intent to pay debts carry little weight in these analyses<sup>14</sup> and this process cannot be extended indefinitely in order to meet an applicant's payment schedule. In the absence of documented evidence a good faith effort to repay creditors has been made or that Applicant has otherwise initiated some effort to resolve her debts, FC MC 4, AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. Furthermore, because Applicant failed to identify whether she has received financial counseling, FC MC 3, AG ¶ 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*) cannot apply.

Applicant's argument relies largely on the unfortunate incidents that occurred in 2002 and the financial repercussions that have followed her into the present. To the extent her foreclosure, repossession, and delinquent accounts were caused by these unforeseeable events, mitigation has been noted. They do not, however, relieve Applicant of honoring her obligations with some degree of diligence. Several of these debts are for less than \$100. In six years, Applicant has not pursued any of these debts to the extent documentation of negotiation, dispute, or payment exists. Nor is there evidence that Applicant has sought professional counseling to help her address these accounts. Lacking evidence of any concrete efforts to repay or resolve these debts, financial considerations security concerns remain unmitigated.

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<sup>14</sup> ISCR Case No. 07-08049 at 4 (App. Bd. Jul. 22, 2008).

## **Personal Conduct**

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. In completing her SF-86, Appellant marked the box designated as a “no” in response to the question of whether she had any delinquent accounts. In the additional space provided, however, she wrote: “I don’t have any known delinquencies, but I am sure that there are some.” The juxtaposition of these two answers does not, as argued by Department Counsel, show that Applicant was hedging her bets. Rather, it is a clear expression that she could not identify or did not then know of any delinquencies, but that she was “sure” that there were some. Regardless, taken together, her answers clearly put investigators on notice that there were delinquencies which ultimately is the point of the question.

As for the question regarding repossessions, Applicant’s explanation is adamantly written with conviction. It is difficult to understand, however, without multiple readings. It is Applicant’s position that by putting investigators on notice that delinquent accounts existed, investigators could and would examine her credit report. In turn, that report would reveal any and all liens, delinquencies, repossessions, charge offs, etc. more accurately than her own memory could recollect. While this may not be the ideal way to answer the question, it is not dissimilar to the applicant who notes full details about a bankruptcy discharge, but fails to enumerate each account included in the petition. The point is, notice was sufficiently given and there is no indication that Applicant intentionally tried to mislead the government. Lacking evidence that she deliberately omitted, concealed, or falsified relevant facts, none of the disqualifying conditions raised under Guideline E, Personal Conduct, 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 mature woman with a busy work schedule that limits her free time. She and her husband first encountered financial problems in 2002 when an increase in the value of their home was reflected their insurance and taxes, and after Applicant experienced two weeks of unemployment. Their financial problems dramatically worsened when Applicant’s husband lost his job. Consequently, a number of delinquencies, a foreclosure, and a repossession followed.

In the six intervening years, none of the accounts noted in the SOR were addressed in any demonstrable manner. None of the debts have been paid, despite the fact many are for balances of less than \$100. No documentation was introduced showing Applicant ever contacted her creditors, explained her situation, or solicited cooperation in addressing her debt. There is no tangible evidence that Applicant ever proposed a repayment plan on some or all of the accounts. There is no documentary evidence she ever sought counseling that might result in a debt consolidation. Although Applicant suspects some of the balances reflected are incorrect, she provided no corroborative evidence showing she ever formally disputed any of these accounts with either a creditor or one of the credit reporting bureaus.

Applicant cites to her financially bleak past in asking for more time to address these debts. As a measure of good faith, she promises to soon pay off some debts she feels are erroneously represented on her credit report, but has been too busy to validate. The Appeal Board, however, has spoken as to the weight to be given to promises to pay in the future. Moreover, Applicant has already postponed addressing some of these debts for as long as six years and, in that same amount of time, has been unable to find the time to validate her credit report. Such procrastination with regard to one’s financial obligations reflects poor judgment at best. Failing to provide documentation of any good faith efforts to address these debts, Applicant failed to meet her burden in mitigating financial considerations security concerns. In contrast, however, there is no indication that Applicant deliberately attempted to mislead the government in her denial of delinquencies and repossessions on her SF-86. Her comment in the additional space indicating that she was “sure” there were, in fact, delinquencies conceded that delinquent accounts existed. It also put investigators on notice to check her credit report for other financial failures. Absent evidence of a deliberate attempt to mislead, no personal conduct security concerns are raised. With security concerns remaining as to her finances, however, I conclude it is not clearly consistent with the national security to grant Applicant a security clearance. Clearance is denied.



## 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
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Paragraph 2, Guideline E	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For 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. Clearance is denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge