



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-09576
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 30, 2009

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

On April 2, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On November 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on or about December 5, 2008, and requested a hearing. DOHA assigned the case to me on February 4, 2009, and issued a Notice of Hearing on March 10, 2009. The case was heard on March 27, 2009 as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence without objection. Applicant testified, called one character witness and offered Applicant Exhibits (AE) A through R into evidence without objection. At the conclusion of the hearing, I left the record open until April 10, 2009, to give Applicant an opportunity to submit additional information. Applicant timely submitted 29 pages of documents that I marked as AE S, and admitted into the record without objection from the Government. DOHA received the hearing transcript (Tr.) on April 3, 2009.

### **Findings of Fact**

Applicant admitted all allegations contained in Paragraph 1 of the SOR, except those included in paragraphs 1.a, o, y, z, and dd.

Applicant is 28 years old and married. She has two young children. She earned a Bachelor of Science in Behavioral and Social Sciences in 2005. After completing her degree, she worked as a teacher's aid for minimal wages, until her supervisor promoted her in 2007 to a substitute teacher position. In February 2008, she obtained her current job with a federal contractor, where she works as a family programs assistant, helping families of mobilized soldiers. Her husband is a captain in the Army, on active duty. He has a security clearance. Prior to being activated, he was deployed in 2005 and stationed away from home until September 2006. From about December 2006 until August 2008, he worked on orders at the command's headquarters. (Tr. 111) Currently, he works in Psychological Operations and is stationed in another state.

Applicant began experiencing financial problems after her husband returned home from deployment in September 2006 and remained unemployed for about three months. At the same time, she was earning \$300 every two weeks. The situation was further exacerbated in May 2008 when she had emergency surgery that required her to remain home for a period of recovery. At the time, she had not accrued enough sick time to cover her time off. (Tr. 112)

The SOR alleges 31 delinquent debts, totaling \$47,931. Many of the debts are related to medical services for Applicant and her children for which she did not have adequate insurance. The largest debt, totaling \$26,817, is owed on her student loans. At this time, some of the debts have been paid in full, others are being repaid, and some have been disputed and subsequently deleted from Appellant's credit bureau report. A couple of them remain unresolved. Applicant submitted a detailed summary of the status of the debts in AE S at 1-3, which notes as follows:

Applicant has paid five debts:

1. SOR ¶ 1.b for \$54 was owed to a telephone company. She paid it on December 3, 2008. (Tr. 44)

2. SOR ¶ 1.g for \$79 was a medical debt. She set up four \$20 payments on the account, beginning in January 2009. It is paid. (AE S at 8; Tr. 56)
3. SOR ¶ 1. h for \$50 and ¶ 1. i for \$50 are medical debts. She sent that creditor \$100 in January 2009. (Tr. 57)
4. SOR ¶ 1. ee for \$181 is a medical debt. She paid \$100 in February 2009 to settle the account. (AE S at 29)

Applicant has established repayment plans for nineteen debts:

5. SOR ¶ 1.c for \$467 was owed to a telephone company. It was settled for \$233 and she began making monthly payments of \$65 in November 2008. It will be paid by the end of April 2009. (Tr. 47; AE A; AE S at 1)
6. SOR ¶ 1.d for \$234 was owed to a telephone company. It was settled for \$163 in November 2008 and will be paid in full by the end of April 2009. (AE S at 1; Tr. 47)
7. SOR ¶ 1.f for \$148 is owed to an unidentified creditor. She paid \$25 in November and will pay the remaining monies in monthly installments by the end of May 2009. (AE B; AE S at 1; Tr. 50-51)
8. SOR ¶ 1.n for \$391 is owed to a credit card company. She set up four payments and the account will be paid by May 8, 2009. (AE S at 2, 11; Tr. 62)
9. SOR ¶ 1.p for \$798 is owed to a credit card company. The balance of \$648 was settled for \$336. She began making \$50 monthly payments in December 2008 through automatic deductions, and intends to make the remaining payments by May 8, 2009. (AE M; S at 14-15; Tr. 66)
10. SOR ¶ 1.q for \$357 is being paid at \$50 per month. She has made two \$50 payments on the balance. (AE S at 16-19; Tr. 67-68)
11. SOR ¶ 1.r for \$287 is owed to a telephone company. It was settled for \$186. Payment is due on May 15, 2009. (AE at 2; Tr. 68-69)
12. SOR ¶ 1.s is a \$12,930 debt owed on a car loan. The account is current (AE S at 20; AE E; AE P at 2; Tr. 72)
13. SOR ¶ 1. j (\$86), ¶ 1.k (\$190), ¶ 1.l (\$215) and ¶ 1.m (\$190) are medical debts. She began making monthly payments of \$50 in January 2009. (AE D & Q; AE S at 10; Tr. 58-61)
14. SOR ¶ 1.x for \$866 is a medical bill. She started paying \$25 in April 2009. (AE S at 26-27; Tr. 89)
15. SOR ¶ 1.t, ¶ 1.u, ¶ 1.v, and ¶ 1.w are school loans. She recently entered into a monthly repayment plan for \$73. (AE S at 22-23; AE F, G; Tr. 76-87)
16. SOR ¶ 1.bb and ¶ 1.cc for \$250 are the same debt that was owed for parking tickets. She made arrangements to pay them in April 2009. (AE S at 29; Tr. 94)

Applicant disputed four debts, which were subsequently deleted:

17. SOR ¶ 1.o and SOR ¶ 1.dd are duplicate listings of a \$152 medical bill that has been deleted. (GE 2 at 42; AE P; Tr. 63-66)

18. SOR ¶ 1.y for \$118 is owed to a medical creditor that she cannot locate. (GE 2 at 37; AE P)
19. SOR ¶ 1.aa for \$945 is no longer on file. (AE P; Tr. 92)

Applicant has been unable to resolve three debts:

20. SOR ¶ 1. a for \$170 (Tr. 44; AE S at 1)
21. SOR ¶ 1.e for \$145 is owed to a cable company. She intends to set up a payment plan in the future after completing payments on some of the other debts.
22. SOR ¶ 1.z for \$273 is a medical debt that she is investigating. (Tr. 91)

In summary, Applicant has paid five debts, is paying nineteen debts, disputed four debts, and has been unable to resolve three debts. Applicant's annual salary is \$39,000 and her husband's is \$40,000. (Tr. 101-102). They live separately, as he is stationed in another state. Both of them rent apartments. They formulated a budget with the assistance of a financial counselor on base. (Tr. 101) After paying their bills, they have about \$600 to \$700 remaining for other expenses. She anticipates a \$6,000 tax return for 2008 that she intends to use to pay off debt. (Tr. 109) She has not used credit cards for the past couple years. (Tr. 114)

Applicant's mother testified. She is 56-years old and has worked for the Federal government for 18 years. She holds a security clearance and has access to classified information. She became aware of her daughter's financial problems after her son-in-law was deployed in 2006 and her daughter asked her for financial assistance because she was between part-time jobs. Her mother helped her pay for food and other daily essentials. (Tr. 25-33)

Applicant's supervisor is aware of her financial problems, and yet entrusts her to manage an agency budget. (Tr. 117) She submitted three character reference letters. The commanding officer for her unit stated, "I would recommend [Applicant] for a security clearance without reservations. She has been a wonderful asset to our command." (AE K) The unit's Sergeant First Class wrote that Applicant "is a very valuable member for this organization; that demands a need of high quality and dedicated individuals. I endorse her candidacy to be granted a security clearance enthusiastically and without reservation." (AE J) A supervising captain notes that Applicant's character has never come into question and she is "honorable and with great integrity." (AE I)

Applicant presented her case in an organized and detailed manner. She has been resolving the debts through her own efforts with the creditors. (Tr. 116) She has a comprehensive understanding of the importance of responsibly managing her finances, in order to maintain her job, which she loves. She hopes to be debt free by the time she turns 30. (Tr. 119) Throughout her testimony, she was candid and very credible. She expressed regret that the debts have not been resolved and takes full responsibility for

paying them. She does not intend to file bankruptcy as a method to dispose of them. (Tr. 126-127).

## **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 commonsense decision. According to AG ¶ 2(a), 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.

Directive ¶ E3.1.14 requires the Government to 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 security decision." 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."

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.

## Analysis

### Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant began accumulating significant delinquent debt in 2005 that increased in amount in 2006, which she was unable to pay or resolve until 2008, after starting work at her current position. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concern. AG ¶ 20 includes six conditions that could mitigate security concerns arising under this guideline:

- (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;

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

(e) the individual has 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; and

(f) the affluence resulted from a legal source of income.

AG ¶ 20(a) cannot apply because Applicant's problems have been ongoing since 2005 and are not isolated, but involve numerous creditors. Some of the delinquent debts arose as a result of her under-employment, her husband's deployment and a subsequent period of unemployment, as well as a medical emergency. Those circumstances were beyond her control. During her husband's deployment, she had some assistance from her mother, but there is no evidence indicating that she contacted many of her creditors while the delinquent debts were accruing. Hence, AG ¶ 20(b) has limited application. She presented sufficient evidence documenting that she has addressed the majority of the debts with some form of action since the fall of 2008 and that there are "clear indications that the problem is being resolved or is under control," warranting the application of AG ¶ 20(c). She has made a good-faith effort to pay five debts and is paying 19 debts on some type of monthly plan, such that AG ¶ 20(d) is applicable. She disputed four debts and provided evidence of the resolution, triggering the application of AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

The Appeal Board in ISCR Case No. 06-12930 at 2 noted "that an applicant is not required to show that she completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has 'taken significant actions to implement that plan.' ISCR Case No. 04-0684 at 2-3 (App. Bd. Jul. 6, 2006)." In this instance, Applicant has presented sufficient credible evidence that she established a plan to pay her delinquent debts and has taken significant steps to resolve those debts over the past six months.

### **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). They include the following:

(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 include an overall commonsense 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 is a 28-year-old woman, who recently began a position with her employer and appears to be headed for a successful career. Both she and her husband work for the U.S. Army, and he is currently deployed and away from home as a consequence. She was a very credible and articulate witness, and is obviously aware of the importance of managing her money and establishing a solid financial track record. There is no other derogatory information in the record that would lead me to believe that her current financial situation would create future security concerns, or that she will renege on her current repayment obligations. To the contrary, I am convinced that she (and her husband) will continue resolving their financial obligations as soon as practical, including her outstanding student loans that constitute more than half of her delinquent debt. The other large debt is an automobile loan, which is no longer delinquent.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under 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

Subparagraphs 1.a through 1.ee 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.

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SHARI DAM  
Administrative Judge