



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



In the matter of:	)	
	)	
	)	
	)	ISCR Case No. 08-03256
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer Goldstein, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 29, 2009

**Decision**

WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On August 12, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on September 22, 2008, and requested a hearing. The case was assigned to me on October 30, 2008, and was scheduled for hearing on December 17, 2008. A hearing was held as scheduled, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of eight exhibits; Applicant relied on one witness (herself)

and two exhibits. The transcript (R.T.) was received December 29, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Procedural Rulings and Evidentiary Issues**

Before the close of the hearing, Applicant requested leave to supplement the record with documentation of payment of her two medical bills (covered by creditors 1.b and 1.c). For good cause shown, Applicant was granted seven days to December 24, 2008 to supplement the record. The Government was granted to December 30, 2008, to respond. Within the time permitted, Applicant provided copies of her payment receipts for the two medical bills referenced at the hearing. Department counsel did not object to the admission of the submissions. The submissions were admitted as exhibits C and D.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have (a) accumulated four debts exceeding \$20,000.00. For her answer to the SOR, Applicant admitted all of the allegations. She claimed that her medical debt covered by creditor 1.a represented a billing for emergency room treatment in 2005, at a time when she had no insurance. She claimed that she has since paid a major part of this debt and has worked out a payment plan for the balance. She claimed the two small debts covered in the SOR represent bills that should have been covered by her ex-husband's Tricare insurance. She claimed it was her intention to pay these debts herself. And she claimed her car repossession (covered by creditor 1.d) occurred in August 2001, and resulted from her family's diminished household income following her ex-husband's military relocation, and inability to make the scheduled car payments. She claimed her ex-husband made no effort to help Applicant settle this joint debt, which no longer appears on he credit report.

### **Findings of Fact**

Applicant is a 38-year-old equipment attendant for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant married husband one (H1) in 1989 and divorced him in 1993 (R.T., at 38). She married H2 in 1994 and divorced him in October 1995 (R.T., at 38). She has a son (age 18) from her marriage to H1 (R.T., at 39). She married H3 in July 1996, separated from him in 2002, and divorced him in 2008 (R.T., at 37). She has a daughter (age 8) by H3 (R.T., at 29). Following her divorce from H3, she sent her son to live with her parents while she looked for work. Currently, both children reside with her (R.T., at 39).

Between 2004 and 2005, Applicant accumulated several medical debts; three altogether totaling just under \$2,000.00. She attributes her medical debts to medical visits for herself and children after she became a single parent (R.T., at 43-45). The two smaller debts were supposed to have been covered by H3's Tricare benefit program, but were not paid by Tricare, or H3. Applicant asked H3 to look into these two bills, but has heard nothing back from him (R.T., at 30, 43-44). He is now deployed overseas, which makes it difficult for him to correspond (R.T., at 30).

When H3 abandoned her in 2002, she had no medical insurance for herself or her children. Her daughter was born with a multi-cystic left kidney and an enlarged right kidney that caused developmental delays and ensuing learning disabilities (R.T., at 28). So, when her daughter developed a kidney infection, Applicant had no alternative but to take her to an emergency hospital for treatment (R.T., at 26-27). The cost bill for treating her daughter was \$1,545.00. Unable to pay the bill at the time with the limited resources at her disposal, and no assistance from H3, Applicant ignored the bill. The medical provider, in turn, assigned its claim to a collection agency, who initiated suit against her in state court to recover its costs. Applicant later worked out a payment plan with the creditor to repay the debt and documents full settlement of the claim (see ex. B).

Applicant's fourth listed debt represents the largest of her covered debts. While she and H3 were living on an Air Force (AF) duty installation, and were anticipating the birth of their daughter, they jointly acquired a 1998 Mercury in July 1999 for about \$18,000.00 (R.T., at 65-66). They traded in their leased van on this vehicle and added the \$9,000.00 still owing on the van lease to the aggregate amount of their available credit from the lender. Applicant's accepted car payments on the vehicle were \$382.00 a month (R.T., at 66-67). Applicant's 2008 credit report cites an available credit line of \$27,297.00 (see ex. 4). It is not clear from Applicant's testimony and credit report how much she and H3 were credited (if anything) from their return of their leased van (R.T., at 66-67).

After Applicant, H3 and her children relocated in 2001 (necessitated by H3's duty re-assignment), Applicant encountered difficulties finding work in H3's new base community (R.T., at 31). Faced with family income reductions, Applicant and H3 asked the seller to refinance their Mercury purchase to better square their car payments with their reduced income (R.T., at 31, 46-47). The seller declined and threatened to repossess the car if they did not make their payments in a timely way (R.T., at 32). At Applicant's request, the seller repossessed the vehicle in August 2001 and disposed of the vehicle at public auction (R.T., at 46, 76). The seller then billed Applicant for the owed deficiency (reported to be \$18,959.00 in Applicant's credit reports and the SOR).

Depending on whether the \$27,297.00 credit ceiling covered in Applicant's credit reports was intended to take account of any and all credits on the lease return, or not, Applicant's reported \$18,959.00 deficiency may represent a net figure currently owed by Applicant and H3 after accounting for the vehicle's auction sale. By Applicant's accounts, she and H3 owed around \$18,000.00 on the purchase price of the car and

apparently another \$9,000.00 on the rolled in remaining obligation on their van lease (R.T., at 69-70). Between the time they purchased the Mercury vehicle and when the seller repossessed it in August 2001, they made little progress in reducing the owed principal on the vehicle (R.T., at 69, 76). So, by Applicant' account, when the vehicle was repossessed, she and H3 still owed about \$18,000.00 towards the purchase price of the vehicle, and potentially another \$9,000.00 on the rolled-in remainder still owed on their lease agreement.

Applicant assures she was later informed by the seller that their Mercury produced \$9,000.00 at the auction sale, leaving a \$9,000.00 deficiency balance on the purchase price, which the seller offered to take in full settlement of its deficiency claim (R.T., at 69, 81-82). This offer does not explain, however, what happened to the rolled-in \$9,000.00 from Applicant's leased van. To be sure, Applicant does not seriously dispute the government's theory that the remaining \$18,959.00 reported in Applicant's credit reports and covered in the SOR (admitted) represents the net of the initial \$27,297.00 credit line on their Mercury purchase, less the \$9,000.00 in proceeds produced from the auction sale. She simply could not confirm this version without access to her paperwork from their purchase (R.T., at 76-79). Whether the seller's \$9,000.00 net offer represented the legal state of the account at this time, or simply a settlement offer from the creditor is not clear.

Without any more information in the record to document a lower net figure owing on Applicant's repossessed vehicle, the reported sum carried in Applicant's credit reports and not seriously disputed in Applicant's answer and testimony will be accepted as the aggregate net deficiency owed to creditor 1.d after allotting for all credits for Applicant's payments on the account and the sale of the vehicle at public auction. So, considering all of the circumstances, it is settled that the net deficiency owed by Applicant jointly and severally is the \$18,859.00 figure drawn from Applicant's credit reports and listed in the SOR (admitted by Applicant). Applicant still believes, though, that H3 has primary responsibility for the payment of this repossession deficiency, and has undertaken no efforts herself to contact the seller and/or its assignee (R.T., at 48-49)

Applicant holds two other jobs besides her defense job to support herself and her family. Since 2004, she has worked as a bartender at a local AF base while trying to find a better job. She continues her bartending job to provide adequate support for her family, and holds another job at a base post as a club operations duty manager (R.T., at 34-37).

Applicant has some community college education and travel school training (R.T., at 36). She currently receives some child support from H3 for her daughter but nothing from H1 for her son. She did seek child support enforcement of child support arrears (estimated to be about \$10,000.00) owed by H1 for her son), but without any notable success to date (R.T., at 40).

Applicant's earnings have increased some over the past year (R.T., at 50-51). But so have her monthly expenses (R.T., at 51). In September 2007, Applicant purchased a 2004 Buick vehicle for around \$16,000.00 for transportation to and from her prime job and her other two jobs (R.T., at 41, 52-54). She spends about \$312.00 a month for gas and insurance and \$384.00 for her car payment (R.T., at 53-54). Her other monthly debts include her rent (currently \$1,300.00), medical expenses for her daughter's medications that are not covered by her insurance (R.T., at 54), \$384.00 a month for her daughter's day care, monthly payments on a personal loan (\$145.00), and small monthly payments on several credit card accounts (see ex. 7; R.T., at 54-64). She reports little or no monthly net remainder (ex. 7), and estimates to have about \$700.00 in her checking account on average.

Applicant contacted a debt consolidation company to try and reduce her overall debt payments but was told she did not qualify because she does not have at least \$10,000.00 in unsecured debt (R.T., at 62). She intends to close her credit card accounts after she has paid them off and avoid credit card indebtedness in the future (R.T., at 62-63). She and her children have learned to economize and budget their resources (*e.g.*, they have canceled their telephone land lines and internet service) and manage her current finances with her three jobs. She is currently looking to get a roommate to cut her rental expenses.

Applicant is highly regarded by her program manager who describes her customer relations and equipment management to be high quality (see ex. A). He characterizes her as hard working, honest, dependable, and very conscientious. Coworkers describe her as trustworthy, truthful, honest and reliable (see ex. A). She is equally well regarded by operations and senior program analysts who know her personally and professionally since she began her current employment 14 months ago (ex. A).

### **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

## **Financial Considerations**

*The Concern:* "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. 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." Adjudication Guidelines, ¶ 18.

## **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

## **Analysis**

Applicant is a highly regarded equipment attendant for a defense contractor who accumulated several delinquent debts following her separation and divorce from H3 in 2004. Three of the four debts are relatively small and have since been paid. The last debt is considerably larger (around \$9,000.00 still owing on a deficiency balance following a repossession and public sale of the vehicle), and remains unpaid. Three of

the four listed debts are medically-related and have since been paid by Applicant. Without resolution, though, her remaining car deficiency raises security significant concerns.

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and her past inability to pay these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines¶ DC 19(a), inability or unwillingness to satisfy debts, and ¶19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to her divorces and ensuing single parenting with little help from her ex-husbands. She has been working three jobs to make ends meet and make sure her family is cared for. Records reflect that she is managing to keep current with her most recent creditors, and has since paid all but one of her listed creditors. Only the \$18,959.00 settled deficiency on the Mercury vehicle she and H3 purchased in 1999 remains unpaid. The seller repossessed this vehicle in 2001 and sold it at public auction (leaving the settled deficiency balance of \$18.959.00). This creditor has mounted no enforcement efforts to collect this debt from Applicant, and shows no signs of doing so in the foreseeable future. With a family to support as a single parent since 2004, and reliance on three jobs to support her family, she continues to struggle to stay current with her debts and expenses. Faced with so many pressing challenges to keep her family together, she has succeeded in not only favorably impressing her supervisors and coworkers at work, but she has been able to stay current with her monthly debts and expenses.

Based on her evidentiary showing, extenuating circumstances are associated with Applicant's inability to take care of past medical debts and vehicle deficiency. Available to Applicant is ¶ MC 20(b) of the financial considerations guideline, "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," has some applicability to Applicant's situation. Albeit, some judgment problems persist over the amount she and H3 jointly expended on a late model car in 1999 without certain available resources to sustain their agreed monthly payments, she satisfied that her separation and divorce from H3 was unanticipated at the time and not indicative of any manifest judgment lapses on her part.

Because of the limited income available to Applicant over the past five years, she has not heretofore been in a position to address her large deficiency balance with creditor 1.d (disputed in amount or obligation or otherwise). This creditor has made no collection demands on Applicant in the past four years at least, and there is no evidence that Applicant has ever reaffirmed the debt. Based on this record, Applicant's covered deficiency debt with creditor 1.d appears to be barred from collection by the pertinent

four-year statute of limitation in her state. See CCP §§ 337 (stating suit on written obligations must be filed within four years) and 343 (stating suit for which no period previously provided must be filed within four years).

Statutes of limitation, while considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, have never been equated with good-faith efforts to repay overdue creditors. See, e.g., ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). Still, they provide effective collection barriers and, like bankruptcy, serve to insulate the debtor from pressures to raise cash to satisfy his or her creditors.

To be sure, Applicant does not assert relevant state statutes of limitation in her defense. With her limited income she has had difficulty making individual or collective progress in paying the remaining car debt, and continues to look to H3 for payment of the debt as the principal obligor. At this time it is not clear what steps Applicant might consider in the foreseeable future, if any, to resolve this debt with her limited resources. If this creditor (creditor 1.c) is not willing to detail pertinent debits and credits with the credit reporting agencies or otherwise provide Applicant with an historical accounting of her assumed obligations, credits and debts, then it is pretty clear that this creditor is not interested in the debt or Applicant's working to pay it off. At this time, she is legally insulated from any collection action by applicable state statutes of limitation, and for all practicable purposes, is no longer at risk to having to raise large sums of money to resolve her debts.

Mitigation credit is also available to Applicant based on her credible proofs of good faith repayment efforts and good-faith disputes with two of her medical creditors (over Tricare coverage). Age of each of the covered debts is covered by two of the mitigating conditions for financial considerations: ¶ MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," has applicability, while not dispositive. ¶ MC 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," has some applicability as well.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Whole person assessment permits mitigation of Applicant's accumulated delinquent debts. Extenuating circumstances associated with her husband's abandoning her and leaving her to care for herself and her children without medical insurance are the principal source of Applicant's delinquencies. Judgment lapses do not play any material role in her debt accumulations. Since her separation and divorce, she has done all she



could be reasonably expected to do to pay her debts and responsibly care for her children's needs. She has worked three jobs to support her family and, with the exception of the vehicle deficiency that is time barred, she has paid her old debts and is current with her new ones. Her good judgment and trustworthiness draw reinforcement from her program manager and senior operations and program analysts who work closely with her and attest to her strong character.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources she has had to address them with, her documented steps taken to resolve them, the responsibility and trustworthiness she is credited with in her work and personal life as a struggling single parent, and the statute of limitation protections now available to her, she mitigates judgment and trustworthiness concerns related to her debts. Favorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2(a) factors enumerated in the Adjudicative Guidelines of the Directive.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS):      FOR APPLICANT

Sub-paras. 1.a through 1.d:                              FOR APPLICANT

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge

