



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



In the matter of: )  
)  
) ISCR Case No. 08-03946  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Francisco Mendez, Department Counsel  
For Applicant: *Pro Se*

August 26, 2008

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant owes more than \$30,000 on 43 past due and delinquent accounts. Although she has brought her monthly car payments current the majority remain outstanding. Applicant has not successfully mitigated financial considerations concerns. Clearance is denied.

**Statement of the Case**

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) on May 23, 2008, detailing security concerns

<sup>1</sup> 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

under Guideline F, financial considerations, based on a history of financial problems as shown by delinquent debts.

On June 13, 2008, Applicant answered the SOR, and requested a hearing before an administrative judge. On July 10, 2008, I was assigned the case. On July 10, 2008, DOHA issued a notice of hearing scheduling the hearing held on August 5, 2008. The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on her own behalf.

The record was kept open to allow Applicant to submit additional matters. On August 12, 2008, documents were received. There being no objection, the material was admitted into evidence as Ex. A. On August 16, 2008, Additional documents were received and admitted as Ex. B. On August 14, 2008, the transcript (Tr.) was received.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted 42 of the past due debts listed in SOR ¶ 1. She denies her car note (¶ 1. jj) is past due and states two other debts ¶¶ (1.rr and 1.ss) have been removed from her credit report. The admissions are incorporated herein as findings of fact. After a thorough review of the record, case file, pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 28-year-old executive assistant who has worked for a defense contractor since October 2007, and is seeking to obtain a security clearance. The operations manager believes Applicant to be extremely hardworking, tenacious, honest, forthright, and possessing a strong drive and work ethic. She inspires those around her to strive for greater achievement and is a highly trusted and valued member of the team, who is committed to excellence. (Ex. A) Coworkers believe Applicant is punctual, thoughtful, willing to work late, has impeccable integrity, and is an individual of high moral character. (Ex. B)

Applicant admits owing 42 past due accounts totaling approximately \$31,000. Non-medical debts, totaling approximately \$20,000, account for 18 of the debts. The amount owed on 15 of the delinquent obligations was \$100 or less on each debt, of which many were co-pays for medical treatment. (Tr. 18) She is current on her car loan, has no credit cards, no loans, and no debt in addition to that listed in the SOR, and maintains a monthly budget. (Tr. 18, 44) Her current salary is approximately \$42,000 and her husband's salary is \$43,000. Applicant and her husband's monthly disposable income (gross income less expenses) is approximately \$600. (Exs. A and B) Since 2005, Applicant has paid her rent on time and has never been a problem for either of her two most recent landlords. (Ex. A)

Applicant's debts was contributed to by her unemployment, time lost due to medical reasons, and her husband's unemployment. Applicant underwent two high risk pregnancies resulting in the birth of her children in December 1998 and April 2001. (Tr. 62). Internal bleeding, unrelated to the pregnancies, resulted in a number of hospitalizations for Applicant, one in May 2002. (Tr. 30, 62) She had two additional

surgeries, one to remove her spleen and the other for tubal ligation. (Tr. 29) She has experienced periods of separation from her husband. (Tr. 35)

In July 2000, Applicant and her husband moved to a new state due to her husband's job in the telecommunications field. He was making \$31,000 a year. (Tr. 28) She had a job at a day care for about four months before resigning due to a high risk pregnancy. (Tr. 28) Her husband was laid off from his job.

From February 2001 to July 2004, she was a receptionist and medical assistant. She also had a part time job working in a store. (Tr. 32) In November 2002, she was charged \$2,238 (SOR ¶ 1.c) for breach of lease. Her lease ended, but was charged two months rent for failing to notify the landlord she was terminating the lease. (Tr. 17) The creditor has offered to settle the debt for \$1,200. (Tr. 39) No documentation was provided as to acceptance of the offer. From March 2004 to December 2005, she was a teacher in a private day school. In 2005, her husband was laid off from his telecommunications job.

Applicant and her husband had two cars. When her husband lost his job they had to give up one of the cars. (Tr.18) They voluntarily surrendered the 2001 Nissan, which resulted in an \$11,000 debt. (SOR ¶ 1.q, \$11,615)

Another landlord obtained a \$3,823 default judgment (SOR ¶ 1.ss) against Applicant and her husband. This debt is not the same as the debt owed the apartment complex listed in SOR ¶ 1.c (\$2,238) or the debt owed the apartment complex in SOR ¶ 1.d (\$722).

In 2005, she was evicted from her apartment for non-payment of rent (Tr. 30) and she moved into her mother's house paying \$500 per month. During her two-year stay, Applicant always paid her rent on time and was an excellent tenant. (Ex. A) From December 2005 to October 2006, Applicant was a teacher at a children's center.

From October 2006 to August 2007, she worked as a project accountant. She was unemployed from August 2007 to October 2007, when she secured her present job. Her husband has been working at his current job for two years and his job appears to be stable. Applicant's current net pay is approximately \$600 per week. (Ex. B)

The SOR alleges 45 debts totaling in excess of \$38,000. Applicant asserts that some of the debts may be duplicates, (Tr. 17) but provided no documentation to support which debts reflect the same obligations. In November 2007, she started looking for a financial management company to assist her with her finances and found one in June 2008. (Tr. 40)

Applicant agreed to pay the financial management company \$1,000 per month with the first payment due July 15, 2008. She postponed the first payment when her car was involved in an accident requiring \$2,000 in repairs. (Tr. 19) She provided no documentation showing payment on August 15, 2008. She is currently waiting for

statements from her some creditors to add to the repayment schedule. There is no documentation as to which debts are covered by the repayment agreement.

In 2006, she attended a money management class and has learned to assign priorities to her debts.

### **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. 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 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**

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

Applicant's history of delinquent debt is documented in her credit report, her SOR response, and her testimony at the hearing. Throughout this process, she had admitted responsibility for 42 delinquent debts, totaling approximately \$31,000. She has provided insufficient documentation to show significant progress resolving these debts. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(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.

AG ¶ 20(a) has some applicability. Applicant's financial problems were contributed to by her medical problems and both her and her husband's unemployment. Her husband works in the telecommunications field which has been filled with uncertainty in the recent past. He has been working at his current job for two years and his job appears stable. Applicant's medical problems are unlikely to recur. Her spleen has been removed and additional high risk pregnancies will not reoccur. However, more than 40 debts remain unpaid.

Under AG ¶ 20(b), Applicant experience periods of separation, unemployment, and medical expenses, all of which caused financial problems that were beyond her control. However, Applicant has been employed for ten months and her husband has been employed for more than two years. Their combined income is approximately \$83,000 and the only debt that has been addressed is the monthly car payment, which has been brought current. Fifteen of Applicant's debts are under \$100 each. Nine of the SOR debts are \$50 or less. None of even these smaller debts have been paid. With so little payment made, I find Applicant has not acted reasonably. AG ¶ 20(b) does not apply.

AG ¶ 20(c) does not apply. Although Applicant has received some financial counseling, there is no showing the financial problem is being resolved or is under control.

AG ¶ 20(d) does not apply because there is no good faith effort to repay the delinquent debts. In June 2008, following the receipt of the SOR, Applicant obtained assistance from a financial management company. She has yet to make the first payment to the company. She was to make a payment in mid-July 2008, but car repairs required delaying that payment. The debts included in the financial management company's repayment plan are unknown.

## **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 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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries, but were for medical treatment, rent, utilities, and insurance. Applicant does not appear to have incurred additional obligations not listed in the SOR. She has no credit cards, no loans, or other delinquent obligations other than those listed in the SOR. Applicant has held a part-time job. Maintaining a part-time job while having a full-time job shows a strong desire by Applicant's to address her debts.

However, of the more than 40 past due obligations, her monthly car payment is the only debt she has addressed. Bring her car payment current is insufficient to establish rehabilitation or other permanent positive behavioral changes. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Applicant is highly thought of at her work. Under the current circumstances a clearance is not recommended, but should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the delinquent obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

## **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 – 1.ii:   Against Applicant

Subparagraph 1.jj:       For Applicant

Subparagraph 1.ll – 1.ss:   Against Applicant

## **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge