



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-04205
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel  
For Applicant: *Pro Se*

November 17, 2009

**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on August 9, 2007, as part of her employment with a defense contractor. On May 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns about financial considerations under Guideline F. 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 acknowledged receipt of the SOR on May 21, 2009.

Applicant answered the SOR in writing on June 9, 2009. She admitted 28 and denied two of the Guideline F allegations with explanation, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 22, 2009, and the case was assigned to me on July 24, 2009. DOHA issued a Notice of Hearing on August 13, 2009, for a hearing on September 1, 2009. Applicant signed for

the Notice of Hearing on August 20, 2009. I convened the hearing as scheduled. The government offered nine exhibits, marked Government Exhibits (Gov. Ex.) 1 through 9, which were received without objection. Applicant and one witness testified on her behalf. She offered two exhibits, marked Applicant Exhibits (App. Ex.) A and B which were received without objection. DOHA received the transcript of the hearing (Tr.) on September 10, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Issues**

Applicant signed for the Notice of Hearing on August 20, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of September 1, 2009, prior to the mailing of a Notice of Hearing. Accordingly, actual notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only 11 days prior to the hearing. She waived the 15 days notice requirement (Tr. 8-9).

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 35 year old security specialist working for a defense contractor. She married in 1992, separated in 1999, and her divorce was final in 2002. She has one child. The financial burden from the marriage and the care of her daughter was left to Applicant. Her former husband has not kept current with the child support payments required under the divorce. After marrying in 1992, Applicant worked several jobs for local law enforcement agencies until December 2004. She then worked for a Department of Defense agency in a temporary general service position for two years until the contract was terminated in January 2006. Applicant returned to work with local law enforcement agencies until she started employment with her present defense contractor employer in January 2007. During some of this time, she worked two jobs. During this time, she was continuously employed except for a nine month period. Her yearly salary also fluctuated from about \$36,000 to \$20,000. Applicant is working in a temporary position for her employer awaiting a clearance decision. Her present net monthly salary is approximately \$1,600 with monthly expense of approximately \$1,200. This leaves her with monthly discretionary or disposable funds of \$400 (Tr. 18-19, 54-57, 63-66, and 79-81).

Credit reports and Applicant's admissions show the following delinquent debts: a \$38 credit card account in collection (SOR 1.a); another credit card account in collection with the same creditor for \$466 (SOR 1.b); a student loan more than 180 days delinquent for \$859 (SOR 1.c); a financial company loan charged off for \$1,483 (SOR 1.d); a cell phone account in collection for \$798 (SOR 1.e); a credit card debt in collection for the same creditor listed at SOR 1.a for \$2,131 (SOR 1.f); a utility debt in collection for \$99 (SOR 1.g); a credit card debt to the same creditor list at SOR 1.b in

collection for \$2,762 (SOR 1.h); a furniture company account in collection for \$533 (SOR 1.i); medical accounts in collection to the same creditor for \$95 (SOR 1.j), \$100 (SOR 1.k), \$235 (SOR 1.l), and \$315 (SOR 1.m); a medical account in collection for a different creditor for \$50 (SOR 1.n); a credit card debt in collection for \$3,183 (SOR 1.o); a collection account for \$480 (SOR 1.p); a medical debt in collection for \$1,432 (SOR 1.q); two accounts in collection to the same collection agent for a video store for the same amount of \$42 (SOR 1.s, and 1.t); a medical debt in collection for \$54 (SOR 1.u); a cell phone account in collection for \$1,541 (SOR 1.v); a television service account in collection for \$246 (SOR 1.w); a store account in collection for \$432 (SOR 1.x); two medical debts in collection to the same creditor for \$170 (SOR 1.y) and \$55 (SOR 1.z); a financial company loan in collection for \$328 (SOR 1.aa); a medical debt in collection for \$75 (SOR 1.bb); a photography studio account in collection for \$56 (SOR 1.cc); and a medical account in collection for \$17 (SOR 1.dd; Gov. Ex. 6 Credit report, dated February 12, 2004; Gov. Ex. 7, Credit report, dated September 12, 2007; and Gov. Ex. 8, Credit report, dated December 13, 2008).

The delinquent debts listed at SOR 1.a, and 1.b are for two different credit cards with the same creditor for \$536 and \$466. The delinquent debts listed at SOR 1. f and 1.h are for the same accounts. With interest and penalties added to the original amounts, the debts are now \$2,131 and \$2,762. Applicant had three credit cards issued by this creditor after her divorce. One account was never used. She disputes the amounts owed on the other two accounts, claiming there was never more than \$500 as a balance owed on the cards. She has written to the creditors asking them to verify the accounts but has not received replies. Applicant has not made any payments on the two cards she did use (Tr. 33-37, 70-72; Gov. Ex. 4, Letters, dated June 8, 2009).

The delinquent debt listed at SOR 1.c is for student loans. Applicant's student loans were in deferment, but are now delinquent. Applicant owes approximately \$7,700 in defaulted student loans. She received an offer to pay a certain amount each month for a number of months so the loans can be considered for deferment if she returned to school. She is unable to pay the monthly amount and has not made the payments on the student loans (Tr. 57-63, 73).

The delinquent debt listed at SOR 1.d is for a loan. She stated she is confused by the credit reports and is unsure of the debt and the creditor. Applicant has not made any payment arrangements with the creditor (Tr. 51-54, 73-74).

The delinquent debt listed at SOR 1.e is for a cell phone. Applicant sent a letter to the creditor requesting verification of the amount of the debt owed. She does not dispute that she has a debt, but wants verification of the amount of the debt (Tr. 74).

Delinquent debt SOR 1.g was paid in full (Tr. 23, Gov. Ex. 4, Account history, June 10, 2009).

Delinquent debt at SOR 1.i is to a collection agency for furniture Applicant purchased after her divorce. She sent a letter to the collection company requesting

validation of the amount of the debt. She has not received information in response from the collection agency. She does not dispute the debt but does dispute the amount owed (Tr. 37-39; Gov. Ex. 4, Letter, dated June 8, 2009).

Some of the medical debts are for Applicant's daughter. Her former husband is responsible for the daughter's medical care. The debts at SOR 1.j, 1.k., 1.l, 1.m, are the daughter's medical debts that are the responsibility of her former husband (Tr. 68-70). However, the medical debts at SOR 1.q, 1.r, 1.s, 1.t. and 1.u, 1.y, 1.z, 1.bb, and 1.dd are Applicant's medical debt for her own treatment. She paid the debts listed at 1.r, 1.s, 1.t, 1.u, 1.y, 1.z, 1.bb, and 1.dd. (Tr. 70-72, 78-79; Gov. Ex. 4, Account statement, dated June 10, 2009).

Delinquent debt 1.n is for a medical debt. Applicant tried to resolve this debt but has not been able to locate the creditor. The collection agency informed her that the debt is with the original creditor, but she does not have contact information for the creditor (Tr. 74-75).

Delinquent debt SOR 1.o is for a credit card Applicant and her former husband used while they were married. When Applicant and her husband divorced, he accepted responsibility for only three marital debts. This credit card debt was left with Applicant to resolve. She has not made any payment on the card since she did not have sufficient funds to pay the debt (Tr. 66-69).

The delinquent debt at SOR 1.p is in collection for the original creditor. Applicant wrote the collection agency requesting information on the account. She has not received a reply. She has not made any payments on this account (Tr. 75-76; Gov. Ex. 4, Letter, dated June 8, 2009).

The delinquent debt at SOR 1.v is for a cell phone. Applicant had service in the past with the company. She recently opened a new account with the company. She was not told of any outstanding balance owed. She wrote the creditor asking to verify the amount of the debt. She has not received a reply (Tr. 76-77).

Delinquent debt 1.w is a debt in collection for a cable television company. Applicant admitted that she owes the debt and that she would resolve it in the future (Tr. 77-78).

The delinquent debt at SOR 1.x for \$432 has been paid in full. Department counsel has agreed that the debt was paid in full (Tr. 22, 78; Gov. Ex. 8, Credit report, dated December 13, 2008 at 2-3).

The delinquent debt listed at SOR 1.aa is for a loan. Applicant's mother paid this account in 2006 when Applicant lost her government job. The creditor notes that the debt has been deleted from the credit report as being over seven years old. Since the debt is not over seven years old, I find that the debt was paid by Applicant's mother (Tr. 25-27, 78-79; App. Ex. A, Letter, dated June 30, 2009).

The delinquent debts at 1.bb and 1.dd are medical debts that have been paid as noted above. The delinquent debt at SOR 1.cc is for a photography company. Applicant paid the debt, but does not have a receipt (Tr. 78-79).

Applicant's immediate supervisor testified that he is the program manager for his company's programs dealing with personnel and guard service contracts. He hired Applicant in 2007 as a person ideally suited to work in visitor processing and security screening. Applicant has done an outstanding job and has assisted him with the training of new personnel. She is quite exceptional since she does not make mistakes. She has received written commendation from visitors, government customers, and company personnel. Since her security clearance was questioned, she has not worked in the government area. However, the government contacts that she worked for have asked that she be reinstated into their area as soon as possible. She has excellent rapport with the customers and has assisted them in the past to pass their security screening assessments. He finds her trustworthy, reliable, and believes she should have access to classified information. He attached to his letter of recommendation, letters of appreciation he received from senior government supervisors praising the excellent support they and their staffs received from Applicant (Tr. 94-98; App. Ex. B, Letter of Recommendation, dated August 31, 2009).

Applicant presented four letters of recommendation. Her congressman wrote that he has known Applicant and her family for over 25 years. He notes that she has been trying to resolve her financial problems arising from a broken marriage, raising a daughter as a single mother, without financial help from her former husband. He believes her actions reflect on her good character. The government facility manager at the base supported by Applicant's company notes that Applicant is the one he seeks when resolving any security crisis. Applicant is smart and understands the system. She provides him with excellent customer service and support. The lead contractor for Applicant's employer notes that she is dependable, conscientious, and trustworthy. Whenever she is needed, Applicant is there to help. A security specialist for the government noted that she works closely with Applicant. Applicant's most remarkable trait is her trustworthiness. Applicant has worked with classified information and she has been exceptional in safeguarding the sensitive information. (Gov. Ex. 4, Letters, various dates).

## **`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 still required 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 overarching

adjudicative goal is a fair, impartial, and commonsense 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.

## **Analysis**

### **Financial Considerations:**

Under financial considerations, 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 ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect 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 terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant

with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts as listed on credit reports and admitted by Applicant are a security concern raising Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Twelve of the debts, mostly small medical debts, have been paid. One other debt for which Applicant has no receipt has been paid. Four other debts were for Applicant's daughter's medical care, and the responsibility of her former husband. The twelve remaining debts have not been paid. On one of these debts, Applicant has insufficient information to determining a creditor.

I considered the Financial Considerations Mitigating Conditions (FC MC) raised by Applicant's testimony concerning the delinquent debts. FC MC 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), and FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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) have some application to Applicant's circumstances. The unpaid debts are considered current debts. While Applicant is a single mother raising a teen age daughter, she has not taken sufficient actions to resolve her financial problems so that delinquent debt will not recur. Applicant's former husband did not meet his support obligations, but most of the debts arose after Applicant's divorce and were not incurred during the marriage. Even though Applicant has been continuously employed except for a short period since 1992, she has not been taken sufficient steps to keep ahead of her debts. Applicant has not established that her financial problems were incurred under conditions beyond her control. As noted, she has been almost continuously employed since 1992, and most of the debts were incurred after her divorce. She paid some of the smaller debts, but has not addressed many of the larger debts. She is also still trying to determine the nature of some of the debts and the responsible creditor. She has not demonstrated responsibly actions under the circumstances.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Evidence of past irresponsibility is not mitigated by payment of debt only under pressure of qualifying for a security clearance. Applicant established that she paid some of her smallest debts. But, she still has not made any attempts to pay the largest debts. She only recently sent letters to creditors asking them to verify the amounts of the debts. Since the letters were only sent recently, she has not received return information from the creditors. She does not have payment plans

established for the majority of her delinquent debts. She has not shown a systematic concrete method of managing her delinquent finances. She has not shown reasonable and prudent courses of action to manage her debts. Accordingly, she has not established a good faith effort to resolve her debts. Applicant has not mitigated security concerns based on her finances.

### **“Whole Person” Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An 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 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. I considered Applicant's good reputation at work and in the community for trustworthiness, reliability, and good judgment. I considered that she is a single mother trying to raise a teen age daughter.

Applicant must establish a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. She is not required, as a matter of law, to establish that she paid off each and every debt listed in the SOR. All that is required is that she has a plan to resolve her financial problems and takes significant action to implement that plan. The entirety of her financial situation and her actions can reasonably be considered in evaluating the extent to which her plan to reduce her outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time.

Applicant has not established a meaningful track record of debt payment. While Applicant established that she paid twelve of her smaller medical debts, she still has major delinquent debts from student loans, commercial loans, credit cards, and



telephone service. She has not presented a concrete systematic plan for resolving her debt problems. She has no payment plans in place, and no methods of saving to pay debts. She has not established she has sufficient monthly income to meet her present obligations. Applicant's management of her finances and her past obligations indicates she will not be concerned, responsible, and careful regarding classified information. Applicant is financially overextended. Overall, the record evidence leaves me with questions or doubts as to Applicant's judgment, reliability, and trustworthiness. She has not established she is suitable for a security clearance. I conclude Appellant has not mitigated the security concerns arising from her financial situation.

### **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:	For Applicant (Duplicate of 1.f)
Subparagraph 1.b:	For Applicant (Duplicate of 1.h)
Subparagraphs 1.c - 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant (Duplicate of 1.b)
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j - 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p - 1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraphs 1.x - 1.dd:	For Applicant

### **Conclusions**

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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THOMAS M. CREAN  
Administrative Judge