



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-04481  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tom Coale, Esquire, Department Counsel

For Applicant: *Pro se*

May 27, 2009

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted her Security Clearance Application, on December 19, 2006 (Item 4). On October 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E concerning the Applicant. 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on November 4, 2008, and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on February 13, 2009. The Applicant received the FORM on February 24, 2009, and was given 30 days to submit any additional information. She submitted an undated statement that was received by DOHA on March 16, 2009. The

case was assigned to me on March 26, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

The Applicant is 39 and single. She is employed by a defense contractor and seeks to retain a security clearance in connection with her employment.

### **Guideline F, Financial Considerations**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds.

The Applicant was served with Interrogatories concerning her debts on June 3, 2008. She elected not to provide documentation verifying payments to the creditors referred to in subparagraphs 1.a.a., 1.a.b., 1.a.c., 1.a.d., 1.a.i., 1.a.j., 1.a.k., 1.a.l., 1.a.m., 1.a.n., 1.a.o., and 1.a.p. (Item 7.) The other debts set forth in the SOR were not referred to in the Interrogatories.

The FORM contained a Credit Bureau report dated January 24, 2007. (Item 5.) That report contains contact information for all of the debts referred to in the SOR, except as noted.

1.a.a. The Applicant denies that she is indebted to a medical practice in the original amount of \$637.00 for a judgment. (Item 5 at 3.) She further states that she is unaware of the judgment. (Item 3 at 5.) There is no evidence that the Applicant has taken any steps to resolve and/or pay this debt.

1.a.b. The Applicant denies owing \$43.00 for a medical debt, stating she did not know "who or when this debt was made." (Item 3 at 5.) There is no contact information in the Credit Bureau report concerning this debt. This allegation is found for the Applicant due to lack of evidence.

1.a.c. The Applicant admits owing a bank \$970.00 on an account opened in 2002. There is no evidence that the Applicant has taken any steps to resolve and/or pay this debt.

1.a.d. The Applicant admits owing a debt to a credit union in the amount of \$171.00 on an account opened in 1998. There is no evidence that the Applicant has taken any steps to resolve and/or pay this debt.

1.a.e. The Applicant admits that she is indebted to a collection agency in the amount of \$11,103.00 for an automobile loan in connection with a car that was repossessed. She states that the car was repossessed because she was laid off from

work and unable to maintain the payments. (Item 3 at 5.) The Applicant has made no payments on this debt and has no current intention to make payments on this debt.

1.a.f., 1.a.g. and 1.a.h. The Applicant admits that she is indebted for three different accounts in relation to student loans with Sallie Mae. The total indebtedness was originally approximately \$10,456.00. In her Answer, she stated that her intent was to bring these accounts current with a bonus check or tax refund. (Item 3 at 5.) In her Response to the FORM, she stated, "Sallie Mae has been paid by Ed Fund. I have set up a monthly payment with them for \$87.00 a month that began on Dec. 15, 2008." She submitted no other documentary evidence showing that the alleged events have taken place.

1.a.i. The Applicant admits that she is indebted to a company in the amount of \$3,070.00 for an account opened in 1998. She states that she became delinquent with this debt because she was laid off. (Item 3 at 5.) There is no evidence that the Applicant has taken any steps to resolve and/or pay this debt.

1.a.j. The Applicant admits owing a debt to a company in the amount of \$182.00 on an account opened in 1998. There is no evidence that the Applicant has taken any steps to resolve and/or pay this debt.

1.a.k. The Applicant denies owing \$1,244.00 for a medical debt, stating she did not know "who or when this debt was made." (Item 3 at 5.) There is no contact information in the Credit Bureau report concerning this debt. This allegation is found for the Applicant due to lack of evidence.

1.a.l. The Applicant denies owing \$159.00 for a medical debt, stating she did not know "who or when this debt was made." (Item 3 at 5.) Contact information concerning this debt is included in the Credit Bureau report. (Item 5 at 11.) There is no evidence that the Applicant has taken any steps to resolve and/or pay this debt.

1.a.m. The Applicant admits that she is indebted to a telephone company in the amount of \$679.00. In her Response to the FORM, the Applicant states that she settled and paid this bill for a lesser amount. This allegation is found for the Applicant.

1.a.n. Based on all of the available evidence, I find that this is a duplicate of the debt set forth under 1.a.m., above. This allegation is found for the Applicant.

1.a.o. The Applicant admits that she is indebted to a company in the amount of \$1,000.00. There is no evidence that the Applicant has taken any steps to resolve and/or pay this debt.

1.a.p. The Applicant admits that she is indebted to a collection agency in the amount of \$4,417.00 for medical bills. There is no evidence that the Applicant has taken any steps to resolve and/or pay this debt.

## **Guideline E - Personal Conduct**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has engaged in conduct which shows questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

2.a.q. The Applicant filled out her Security Clearance Application on December 19, 2006. (Item 4.) Question 28.a. of Item 4 asks the Applicant whether, within the last seven years, she had been more than 180 days delinquent on any debts. She stated, "No." She did not set forth any of the numerous delinquent debts described under Paragraph 1, above. This answer was, therefore, false.

The Applicant denied this allegation and stated, "I would never intentionally lie about owing money. I knew I had old debts past 7 years the only new debt was Sallie Mae. When I originally filled out paperwork I was up to date with them." (Item 3 at 6.) I have considered this response in relation to the rest of the available evidence and find it lacking. The response does not adequately explain the Applicant's conduct.

2.a.r. Question 28.b. of Item 4 asks the Applicant whether, as of the time she filled out the Questionnaire, she was more than 90 days delinquent on any debts. She stated, "No." She did not set forth any of the numerous delinquent debts described under Paragraph 1, above. This answer was, therefore, false.

The Applicant denied this allegation and referred to her response quoted above. I have also considered that response in relation to this allegation and find it lacking. It does not adequately explain the Applicant's conduct.

2.a.s. Question 27.d. asks whether, in the last seven years, the Applicant had any judgments against her which had not been paid. She answered "No." The Applicant has consistently stated that, at the time she filled out the Questionnaire, she had no knowledge of any judgment being filed against her. Based on the available evidence, I find this denial to be both plausible and reasonable. This allegation is found for the Applicant.

## **Policies**

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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**

The security concern relating to the guideline for Financial Considerations is 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. The evidence shows that the Applicant has over \$32,165.00 in past due debts, all of which have been due and owing for several years. This figure excludes the amounts in allegations 1.b., 1.a.k., 1.a.m. and 1.a.n., which I have found for the Applicant. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial difficulties arose primarily between 2001 and 2002. However, she only began paying the debts in 2008 - 2009, during the pendency of this proceeding. While she has made strides in paying her indebtedness, the fact that she had so many bad debts, for so long, and did nothing to pay them until a little over a year ago, is still troubling. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn . . .), and the individual acted responsibly under the circumstances." The Applicant argues that some of these debts came from unemployment or underemployment in the 2001 through 2002 time frame. However, the Applicant has been working at her present employer since June 2006 without making any strides to pay her debts until very recently. I cannot find, under these particular facts, that the Applicant has acted responsibly under the circumstances.

The Applicant has initiated a good-faith effort to pay off some of her creditors. The evidence shows that she has paid off approximately \$1,000.00 to four creditors. However, she continues to owe over \$30,000.00 to at least ten creditors. In addition, there is no evidence that she has contacted any of the creditors, even though the FORM provided her with a Credit Bureau report with that information. AG ¶ 20(d) is arguably applicable.

AG ¶ 20(c) states that it may be mitigating where, "there are clear indications that the problem is being resolved or is under control." Her past due indebtedness appears to all predate 2005. She is slowly paying her past due indebtedness. This mitigating condition is arguably applicable.

I have weighed the Applicant's conduct in paying some of her accounts in the past year. In addition, I have looked at the circumstances in which she allowed this conduct to occur, particularly that she was laid off. While she is paying her debts off, and is to be commended for that, I find that it is still too soon, given the other circumstances of this case, to find that this conduct may not recur in the future. Paragraph 1 is found against the Applicant.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16(a) states that it may be disqualifying where an Applicant engages in the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

The Applicant's Questionnaire contains false answers about her financial situation. I have considered her written statement, wherein she states that she would not falsify a questionnaire about her debts. That bald statement, standing alone, is insufficient evidence to mitigate her conduct. She obviously knew she had bad debts, and for some reason did not tell the Government about them. It is her burden to show that the act was a benign error and not an intentional falsehood. She has not done so. None of the mitigating conditions apply. Based on the record, I find the Applicant intentionally falsified her answers as set forth in subparagraphs 2.a.q. and 2.a.r. Based on all of the information set forth above, Paragraph 2 is found against the Applicant.

### **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 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. Under AG ¶ 2(a)(3), all of the Applicant’s conduct, financial, and personal, is frequent and relatively recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), or that the likelihood of recurrence is close to nil (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from her Financial Considerations and Personal Conduct.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **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:

<b>Paragraph 1, Guideline F:</b>	<b>AGAINST THE APPLICANT</b>
Subparagraph 1.a.a.:	Against the Applicant
Subparagraph 1.a.b.:	For the Applicant
Subparagraph 1.a.c.:	Against the Applicant
Subparagraph 1.a.d.:	Against the Applicant
Subparagraph 1.a.e.:	Against the Applicant
Subparagraph 1.a.f.:	Against the Applicant
Subparagraph 1.a.g.:	Against the Applicant
Subparagraph 1.a.h.:	Against the Applicant
Subparagraph 1.a.i.:	Against the Applicant
Subparagraph 1.a.j.:	Against the Applicant
Subparagraph 1.a.k.:	For the Applicant
Subparagraph 1.a.l.:	Against the Applicant
Subparagraph 1.a.m.:	For the Applicant
Subparagraph 1.a.n.:	For the Applicant



Subparagraph 1.a.o.:	Against the Applicant
Subparagraph 1.a.p.:	Against the Applicant
Paragraph 2, Guideline E:	AGAINST THE APPLICANT
Subparagraph 3.a.:	Against the Applicant
Subparagraph 3.b.:	Against the Applicant
Subparagraph 3.c.:	For the 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.

WILFORD H. ROSS  
Administrative Judge