



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-04845
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esq., Department Counsel  
For Applicant: *Pro Se*

January 15, 2009

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

On August 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the 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 in writing on September 18, 2008, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on October 9, 2008. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an

opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 15, 2008. As of December 12, 2008, she had not responded. The case was assigned to another administrative judge on December 12, 2008, and reassigned to me on January 8, 2008.

### Findings of Fact

Applicant is a 27-year-old truck driver seeking a security clearance. She attended college for a period but does not have a degree. She is married and has no children.<sup>1</sup>

The SOR alleges 21 delinquent debts, totaling \$21,887. Applicant admitted to owing all the debts with the exception of the debts alleged in SOR ¶¶ 1.k, 1.m, and 1.r. She stated that the debt alleged in SOR ¶ 1.k is a duplicate of the debt alleged in SOR ¶ 1.g; the debt alleged in SOR ¶ 1.q is a duplicate of the debt alleged in SOR ¶ 1.a; and she denied owing the debt alleged in SOR ¶ 1.m. After viewing the credit reports, I find that the debt alleged in SOR ¶ 1.k is a duplicate of the debt alleged in SOR ¶ 1.g, and the debt alleged in SOR ¶ 1.q is a duplicate of the debt alleged in SOR ¶ 1.a.<sup>2</sup>

Applicant disputed owing the \$2,340 judgment alleged in SOR ¶ 1.m. She indicated that her mother-in-law rented a house and Applicant and her husband stayed there for a period, but they never signed anything and were never on the lease. She stated they would dispute it and have it removed from their credit report. The judgment was reported by Experian on the combined credit report of November 2, 2007, which listed a joint judgment of \$2,340, filed in December 2002. The judgment is not listed on the Equifax credit report of April 16, 2008. Applicant may believe that she has a legitimate dispute of this debt. However, the evidence establishes the debt was reduced to a judgment by court action. Without something additional from the court, I find that she is responsible for this debt.<sup>3</sup>

Applicant was unemployed from about 2001 through September 2006. She married in 2002. Her husband was also unemployed in 2001. It is unclear how long he was unemployed. During their unemployment many debts became delinquent and medical bills went unpaid because they did not have medical insurance. Applicant and her husband became independent contractors in September 2006. They bought a truck through financing in September 2007. They have paid almost \$6,500 in repairs to the truck. She indicated that now that the truck is in good shape, they would start saving money for future repairs. Once they have a sum saved up for future repairs, she stated they would start paying their delinquent debts. After expenses, which include an average of \$587 per month in truck repairs, their combined discretionary income at the end of the month is about \$70.<sup>4</sup>

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<sup>1</sup> Item 5.

<sup>2</sup> Items 4, 6-8.

<sup>3</sup> Items 4, 7, 8.

<sup>4</sup> Items 4, 6.

## 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 to be used 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, administrative judges apply the guidelines 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 the 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 adverse 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 *a/so* 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable to pay her obligations for a period of time. The evidence is sufficient to raise both of these potentially disqualifying conditions.

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; and

(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.

Applicant has not made payments on any of the debts alleged in the SOR. AG ¶ 20(a) is not applicable. Applicant attributes her debts to her and her husband's unemployment. That is a condition that was largely beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant did not fully explain all the facts surrounding the unemployment or what she did during the years of unemployment, and she has not presented a firm plan on addressing her delinquent debts. There is insufficient information for a finding that she has acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

There is no evidence that Applicant received counseling. There are no clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is not applicable. She has not made a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable. Two of the debts are duplicates. SOR ¶¶ 1.k and 1.q are concluded for Applicant. She disputed owing the underlying debt in SOR ¶ 1.m, but that debt has been reduced to a legal judgment and she did not produce documentation to refute the judgment. AG ¶ 20(e) is not applicable.

SOR ¶ 1.v alleges that Applicant has approximately \$722 in discretionary income at the end of each month but has made no payments on her delinquent debts. Her family's combined discretionary income at the end of the month is actually about \$70. SOR ¶ 1.v is concluded for 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) 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 common sense 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 has more than \$19,000 in delinquent debt. She went through a long period of unemployment and her husband was also unemployed. They have purchased a truck and have made a serious commitment to that business. However, she has not submitted sufficient information for a finding that her financial house is now in order. She has not mitigated the security concerns raised by her numerous delinquent debts.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

### **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
Subparagraphs 1.a-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r-1.u:	Against Applicant
Subparagraph 1.v:	For Applicant

### **Conclusion**

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

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Edward W. Loughran  
Administrative Judge