



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



In the matter of: )  
)  
) ISCR Case No. 08-05622  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John B. Glendon, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 16, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant has a history of failing to meet her financial obligations. Her evidence is insufficient to show that she is in control of her finances and she lacks a track record of financial responsibility. Moreover, she falsified her security clearance application. Clearance is denied.

**Statement of the Case**

On March 20, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).<sup>1</sup> On October 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

---

<sup>1</sup> GE 1.

dated January 2, 1992, as amended, modified and revised.<sup>2</sup> The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR (Answer) on November 10, 2008, and requested a hearing before an administrative judge. The case was assigned to me on November 24, 2008. DOHA issued a notice of hearing on December 8, 2008. The hearing was convened as scheduled on January 6, 2009. The government offered Government Exhibits (GE) 1 through 5. GEs 1 through 4 were admitted without objection (Tr. 23-25). Applicant objected to GE 5, claiming it was not relevant (the judgment referenced did not pertain to her). I admitted GE 5, and considered it in light of the record as a whole. Applicant testified on her own behalf, and presented 12 exhibits, marked Applicant Exhibits (AE) 1 through 12, which were admitted without objection (Tr. 40). DOHA received the transcript of the hearing (Tr.) on January 26, 2009.

### **Findings of Fact**

Applicant admitted the factual allegations under SOR ¶¶ 1.a-1.c, 1.e, 1.f, 1.h, 1.j, and 1.k. She denied SOR ¶¶ 1.d, 1.g, 1.i, and 1.l. She failed to answer the allegations in SOR ¶¶ 3.a and 3.b and I entered a denial. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 50-year-old office manager/receptionist working for a government contractor (GE 1). She married her husband in 1981, they separated in 1989, and were divorced in 1993. Applicant and her ex-husband got back together in 1995, but they never remarried. He died suddenly in December 2007 (Answer). Applicant has a 22-year-old son of this marriage. She attended college from 2004 to 2008, and received her bachelor's degree in management in June 2008 (Tr. 6).

Applicant's work history shows she has been continuously employed from September 1988 to the present, except for two periods of unemployment. She was unemployed from October 2003 to July 2004 and from October 2005 to December 2005 (GE 1, Tr. 47-53). She testified she was underemployed from 1988 to February 2006, when she was hired by her current employer, a government contractor. She believes she received access to classified information around 2005, but by the time her security

---

<sup>2</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

clearance was granted she had left her employment. She has never handled classified information.

She testified that her unemployment from October 2003 to July 2004, did not affect her financially (Tr. 53). In October 2005, she quit her job after realizing she was not qualified for the position. She was unemployed from October 2005 to December 2005 (GE 1, Tr. 47-53). Applicant claimed that around October 2005, her husband broke a leg while working as an independent contractor (carpenter), and was unemployed for two months. He had no insurance and she had to assume all the financial responsibility for the household. In November 2005, she broke her elbow and that injury limited her ability to work. She also claimed her son had an accident on or about 2005-2006. She attributed her current financial problems to this period of unemployment, underemployment, and adverse circumstances.

In 2006, as part of her hiring process, Applicant submitted a security clearance application in which she stated having no unpaid judgments and no debts over 180 days delinquent during the last seven years. She also stated that at the time she filled out the e-QIP, she had no debts over 90 days delinquent. Applicant's background investigation addressed her financial situation and included the review of her e-QIP; her response to DOHA interrogatories (GE 2); two credit bureau reports (CBRs) (GEs 3 & 4); and a LexisNexis report about an April 1995 judgment (GE 5).

The SOR alleges 12 delinquent/charged off accounts totaling approximately \$54,000. Applicant admitted most of the debts alleged in SOR are her debts and have been delinquent for many years. Applicant explained that during the last five years she has had financial problems which were caused by a combination of factors; i.e., two periods of unemployment and her underemployment; her husband being out of work because of an accident; she was not able to work because of a broken elbow; and the expenses associated with her eviction from her mother's home by her sister (Tr. 42-43). Up until she was hired by her current employer, Applicant claimed she did not have the money to pay her delinquent debts and to pay for her day-to-day living expenses. She only had enough money to survive and to pay for her college education (Tr. 43).

Considering the record as a whole I find SOR ¶¶ 1.a and 1.e alleged the same debt in collection by different collection agencies (Tr. 77).

SOR ¶¶ 1.b and 1.d alleged the same debt in collection by different collection agencies (Tr. 76). It alleged a judgment entered against Applicant around June 2008 which is still outstanding. She opened a retail store credit account in 2005, charged merchandise to it, and stopped making payments in 2005-2006 (Tr. 67). The debt went into collection and the creditor obtained a judgment against Applicant. She has made three payments since August 2008 to the collection agency (Tr. 67, 74). She missed her December 2008 payment because she had to shift her money to buy Christmas presents (Tr. 74).

SOR ¶ 1.c concerns a credit card account she opened in 1996, and stopped paying in June 2006. She started making monthly payments of \$125 to the collection agency in August 2008 (Tr. 75).

SOR ¶ 1.f concerns a credit card account she opened in 2003, and stopped paying in 2005-2006. She made payment arrangements with the collection agency around September 2008 and started making monthly payments of \$50 to the collection agency in October 2008 (Tr. 78). She missed her December 2008 payment because she had to shift her money to buy Christmas presents.

Applicant paid the debts alleged in SOR ¶¶ 1.g (Tr. 77) and 1.i (This was a utility debt that had been delinquent since 2005. It was paid on October 2008 (Answer)) (Tr. 84).

SOR ¶ 1.h alleges a delinquent utility debt she has been carrying since 2006. She forgot about the debt when the creditor stopped calling (Tr. 83). The debt is still outstanding.

SOR ¶ 1.j is a delinquent debt for a computer Applicant purchased in 2004. She stopped paying it in November 2005. The debt is still outstanding (Tr. 84).

SOR ¶ 1.k concerns an outstanding delinquent debt acquired by her husband in 2001 to make improvements in their home (Tr. 88). She believed her husband had paid the debt and she forgot about it. The debt is still outstanding.

Applicant disputed the debt alleged in SOR ¶ 1.l. The record evidence is not sufficient to establish the judgment was imposed against Applicant (GE 5, Tr. 88).

Applicant attended college from 2004 to 2008. She borrowed approximately \$45,000 from Sallie Mae to pay for her education. She had to pay \$5,000 in January 2007 to be able to graduate. She is making monthly payments of \$225. She missed her December 2008 payment because she had to shift her money to buy Christmas presents (Tr. 85-86).

SOR ¶ 2.a alleged that Applicant falsified question 27<sup>3</sup> of her March 2008 security clearance application (asking whether in the last seven years she had any unpaid judgments), when she answer “No,” and failed to disclose the judgments alleged in SOR ¶¶ 1.b and 1.l. The judgment alleged in SOR ¶ 1.b was not imposed until June 2008. There record evidence fails to show the judgment alleged in SOR ¶ 1.l pertains to Applicant.

Concerning SOR ¶ 2.b, I find that Applicant deliberately falsified question 28 of her March 2008 security clearance application (asking whether in the last seven years

---

<sup>3</sup> There is a typographical error in SOR ¶ 2.a. It alleged that Applicant falsified e-QIP question 28, when in fact it quoted question 27.

she had been over 180 days delinquent on any debts). She answer “No,” and failed to disclose the debts alleged in SOR ¶¶ 1.a, 1.b (same as 1.d), 1.c (same as 1.e), 1.f - 1.h, 1.j, and 1.k. Almost all the above mentioned debts had been delinquent since 2005-2006.

Applicant admitted she failed to disclose her delinquent debts, but claimed she failed to disclose them because of negligence and not because she intended to mislead or falsify her security clearance application (Tr. 41-42, 44). She knew she had a number of delinquent debts, but when she was filling out her e-QIP she could not remember the details of her debts (Tr. 90). She explained she was rushing when she was filling out the application, did not have access to a CBR, and did not think thoroughly when providing her answers.

Applicant testified she participated in a debt consolidation/settlement program from July 2004 to October 2005 that included all the alleged delinquent debts, except one (Tr. 69-70). She stopped participating because she did not have the means to pay the scheduled payments. Applicant testified that this is not the first time she has had financial problems. She explained that many years ago, she had financial problems and was able to resolve her financial problems through her participation in a debt consolidation program. Other than during her participation in the debt consolidation programs, Applicant has received no financial counseling. She presented no documentary evidence to support her participation in either debt consolidation program.

Applicant did not make any payments on her delinquent debts from February 2006 (when she was hired by her current employer) to August 2008, because she did not have the financial means to pay her old debts and her day-to-day living expenses (Tr. 100-102). She was using all available income to support herself and pay for her educational expenses. In 2008, she took a part-time job to increase her income and pay her delinquent debts.

Applicant believes she is doing all she can under the circumstances to pay her debts. Her plan is to pay the delinquent debts she now has under payment plans first and then address the remainder of her debts. She promised to use any future pay increases to resolve 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 controlling

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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”<sup>4</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>5</sup>

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.

---

<sup>4</sup> See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>5</sup> “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern 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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is well documented in her credit reports, her SOR response, her response to the DOHA interrogatory, and her testimony. On or about 2000, she acquired numerous debts which became delinquent and have remained outstanding for many years. As of the hearing date, she had 7 outstanding debts totaling approximately \$36,000. Additionally, she owes approximately \$45,000 in educational loans. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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.

Considering the record evidence as a whole,<sup>6</sup> I conclude that none of the mitigating conditions apply. Applicant presented little evidence of efforts taken to contact creditors, or to resolve any of the debts since she acquired them until after she received the SOR. Although she participated in two debt consolidation programs, her evidence is insufficient to show that she has participated in meaningful financial counseling.

I specifically considered Financial Considerations Mitigating Condition AG ¶ 20(b) and conclude it applies, but only to a limited extent. Applicant's testimony established factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts, i.e., her periods of unemployment and underemployment; the accidents suffered by her, her husband, and her son; and her eviction from her mother's home.

Notwithstanding, Applicant's evidence is not sufficient to show she has dealt responsibly with her financial obligations from the time she acquired the debt until after her receipt of the SOR. Applicant has been consistently employed since 1988, except for the above mentioned periods of unemployment. Since 2006, she has been meaningfully employed by a government contractor. Nevertheless, she only presented some evidence to show paid debts, settlements, documented negotiations, completed payment plans, or meaningful financial assistance/counseling with respect to her SOR debts. Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility, or that she has taken control of her financial situation. Considering the record as a whole, I find she is financially overextended.

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

Under Guideline E, the security concern is that 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. AG ¶ 15.

Applicant did not omit information in her answer to questions 27 of her security clearance application. The judgment alleged in SOR ¶ 2.a (also alleged in SOR ¶ 1.b)

---

<sup>6</sup> See ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.



was not imposed until June 2008. There record evidence fails to show the judgment alleged in SOR ¶ 1.l pertains to Applicant. I find for Applicant in SOR ¶ 2.a.

Applicant omitted relevant information in her answers to question 28 of her security clearance application. Considering the record as a whole, I find Applicant deliberately failed to disclose the debts listed in SOR ¶¶ 1.a, 1.b (same as 1.d), 1.c (same as 1.e), 1.f - 1.h, 1.j, and 1.k. She acquired these debts and stopped paying them when she quit her job and was unemployed for two months. Almost all the above mentioned debts have been delinquent since 2005-2006. She claimed that all but one of these debts were included in a debt consolidation program she participated in until October-December 2005. She submitted her security clearance application in March 2006. She clearly must have known about all her delinquent debts when she submitted her e-QIP. In light of Applicant's education, maturity, her employment history, and her demeanor and testimony, I find she knew about the debts and chose to ignore them.

Applicant knew or should have known the importance of accurately completing her security clearance application and telling the truth. Nevertheless, she failed to provide information that was material to making an informed security decision and made a false statement. AG ¶ 16(a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire," applies.

AG ¶ 17 lists seven conditions that could mitigate the personal conduct security concerns:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering all the mitigating conditions, I find none applies to this case. Applicant made no effort to correct her omissions. I do not believe her claims that her failure to disclose the information was due to carelessness or rushing when completing her application. Considering the record as a whole, Applicant's explanations are not credible. I specifically considered AG ¶ 17(c), and find it does not apply since her behavior is recent and shows Applicant's lack of reliability, trustworthiness, and judgment.

### **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.

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. AG ¶ 2(c).

Applicant's two years employment with a government contractor weighs in her favor. There is no evidence to show that she has compromised or caused others to compromise classified information. Aside from her delinquent debts (which are a civil, non-criminal issue), she is a law-abiding citizen. She expressed regret for her financial mistakes, and since August 2008 she has been trying to correct them. She has paid some of her debts and contacted creditors to establish payment plans for other debts.

Considering the totality of the circumstances in her case, including Applicant's age, education, and maturity, she demonstrated a lack of judgment and trustworthiness

in the handling of her financial affairs. Although she established circumstances beyond her control that contributed to her financial problems, she failed to deal responsibly with her financial obligations until after receipt of her SOR. Moreover, Applicant deliberately falsified her security clearance application. Applicant knew or should have known the importance of the trust to be placed on her by the government. Notwithstanding, she failed to be candid and honest on her security clearance application. Her behavior shows she lacks judgment, reliability, and trustworthiness.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns pertaining to financial considerations and personal conduct.

### **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.c, 1.f, 1.h, 1.j, and 1.k:	Against Applicant
Subparagraphs 1.d, 1.e,1.g, 1.i, and 1.l:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant

### **Conclusion**

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

---

JUAN J. RIVERA  
Administrative Judge