



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-05950
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esq., Department Counsel  
For Applicant: *Pro Se*

July 29, 2009

**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SF-86) dated January 2, 2008. On January 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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, which are effective for SORs issued after September 1, 2006.

In a February 27, 2009, response, Applicant admitted all 17 of the allegations set forth in the SOR. Each allegation concerned a different delinquent debt belonging to Applicant. She later requested a hearing on the matter. DOHA assigned the case to me on June 1, 2009. Department Counsel and Applicant agreed to a hearing date of June 24, 2009. A notice of hearing was issued to that effect on June 4, 2009. I convened the hearing as scheduled. Applicant gave testimony and offered one document, which was accepted without objection as exhibit (Ex.) A. She was given through July 17, 2009, to

submit any additional documentation.<sup>1</sup> Department Counsel offered five documents admitted as exhibits (Exs.) 1-5 without objection. The transcript (Tr.) of the proceeding was received on July 6, 2009. No additional documents were received by July 20, 2009, and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden regarding the security concerns raised. Security clearance is denied.

### Findings of Fact

Applicant is a 52-year-old management assistant who has worked for the same defense contractor since November 2007. Applicant earned a high school diploma. Separated, Applicant is the mother of two children, ages 26 and 17. Her children and a grandchild live with her.

In 1985, Applicant was a county government employee. She stayed in similar positions for 14 years, during which time she married. In 1999, she quit her government job in order to pursue a career in financial services. She acquired several licenses, some of which required background checks and were expensive to obtain. Applicant soon realized she quit her government job too soon. Her position as a financial analyst was commission-based and she earned little money in the beginning. Then, one day in 2000, Applicant's husband of 11 years left her unexpectedly. The couple divorced in 2002. In the interim, Applicant was unemployed from January 2001 through November 2002. She received unemployment benefits at this time. During this time she also met her future husband. Applicant later married the man, a painter, but the relationship was "unsteady" and they eventually separated.<sup>2</sup> She receives no financial support from him.

Applicant worked for one company from June 2004 through February 2005, but quit because she found its business practices to be unethical. She then worked for a public utility from February 2005 until February 2006, when she was laid off. She received unemployment compensation for a period before eventually starting her current job in November 2007. "I was very fortunate to get the job that I have. . . . It affords me the living expenses that I need, but [those expenses] takes (sic) all I make. . . ."<sup>3</sup> While the salary is stable, she recognized that she needed more income to meet her obligations.<sup>4</sup> This need became more urgent when she received the January 2009 SOR. In early June 2009, she met with an attorney who advised her to file for Chapter 13 bankruptcy protection. She sincerely wants to "get on the right track the right way" and resolve her financial problems. Her bankruptcy petition was filed and contains the

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<sup>1</sup> This date was chosen to provide Applicant with additional time to submit her first bankruptcy payment, scheduled for July 15, 2009. Tr. 47.

<sup>2</sup> Tr. 20.

<sup>3</sup> Tr. 15-16.

<sup>4</sup> Tr. 16.

vast majority of accounts at issue.<sup>5</sup> Her payments were to begin on in mid-July 2009, consisting of \$260 a month to be automatically deducted from her July 15, 2009, paycheck.<sup>6</sup> Payments are scheduled to be made for the next 36 months.

At issue in the SOR are 17 delinquent debts. Most were incurred while Applicant was unemployed and after Applicant's first husband left her in 2002.<sup>7</sup> No payments were made on any of the debts in the past year.<sup>8</sup> She knew about many of the debts, although she never consulted a credit report.<sup>9</sup> She blames her lack of progress on "procrastination."<sup>10</sup> She regrets having been "irresponsible," but notes she did not have the income to make any progress on her debts.<sup>11</sup> At one point in the past, she met with a man from her church who helps people with their finances. He advised her that she did "not have the income necessary" to work with him.<sup>12</sup> He also advised her not to contact any of her creditors unless she had the money to make payments.<sup>13</sup> She initially resisted the temptation to file bankruptcy, but eventually felt it "was the only option that [she] had at the time to clear [her] record and start over."<sup>14</sup> She stated: "I am determined to do it the right way, the legal way, so that was my only option as far as I'm concerned to get these debts cleared, because I don't foresee any extra income coming in, other than my employment [salary] at this time."<sup>15</sup>

Applicant currently earns about \$2,200 a month. She receives no portion of her estranged husband's income. She receives no child support. Her monthly expenses are approximately \$2,216. She no longer makes \$290 monthly payments on one vehicle. The money saved will go to the bankruptcy trustee payments.<sup>16</sup> A recent 5% raise

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<sup>5</sup> Without evidence to the contrary, the debts noted at SOR allegations ¶¶ 1.a through 1.d, amounting to about \$800, are either not listed in the petition or were subsumed into other accounts and now unidentifiable based on the petition and credit reports. Likewise, the debt at allegation ¶ 1.l with an individual's name may be the account noted in the petition on Schedule D for an automobile sale.

<sup>6</sup> Tr. 18.

<sup>7</sup> Tr. 22-23.

<sup>8</sup> Tr. 24.

<sup>9</sup> Tr. 25.

<sup>10</sup> *Id.*

<sup>11</sup> Tr. 26.

<sup>12</sup> Tr. 23, 25.

<sup>13</sup> Tr. 24.

<sup>14</sup> Tr. 23.

<sup>15</sup> Tr. 23-24.

<sup>16</sup> Tr. 30-32.

should increase her income. She also will be moving in the near future to a less expensive dwelling where her daughter will be helping with some expenses from her own \$7 an hour part-time job and \$235 state child support supplement.<sup>17</sup> Overall, Applicant lives simply. She has not had a vacation in many years.

Applicant excels at her work. She has received evaluation ratings of “excellent.”<sup>18</sup> Her latest pay raise was the maximum raise provided. She enjoys her current work and notes that some of her past licenses required that she be bonded.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an 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. 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 commonsense decision. Under AG ¶ 2(c), this 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.

The government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>19</sup> The burden of proof is something less than a preponderance of evidence.<sup>20</sup> The ultimate burden of persuasion is on the applicant.<sup>21</sup>

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<sup>17</sup> Tr. 34.

<sup>18</sup> Tr. 39.

<sup>19</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>20</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>21</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>22</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>23</sup>

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to this case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## **Analysis**

### **Guideline F – Financial Considerations**

Under Guideline F, failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.<sup>24</sup> The Directive sets out several potentially disqualifying conditions under this guideline.

Between 2000 and 2007, Applicant acquired an unwieldy amount of debt which became delinquent, resulting in her recent bankruptcy filing. These facts are sufficient to raise financial considerations disqualifying condition (FC DC) AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and FC DC AG ¶ 9(c) (“a history of not meeting financial obligations”). With such conditions raised, the burden shifts to Applicant to overcome the case against her and mitigate security concerns.

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Revised Adjudicative Guideline (AG) ¶ 18.

Applicant's delinquent debt was the result of several significant events that occurred between 2000 and 2007. Her transition to financial services required an unexpected reduction in income. Her first husband abruptly walked out on her one day without notice. After her divorce, she married a man who proved to be unreliable and from whom she is currently estranged. Corporate business decisions caused Applicant to rely on unemployment compensation for two significant periods. While these situations can be said to have given rise to much of her debt, they do not explain her inaction regarding her debts during her times of employment. Applicant testified that she was "irresponsible" and "procrastinated" in addressing these debts. Consequently, financial considerations mitigating condition (FC MC) AG ¶ 20(b) ("the conditions that resulted in the behavior 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") does not apply.

Applicant solicited financial advice and assistance from a member of her church, but their meeting was less than productive. More recently, however, she met with a bankruptcy attorney who has since filed for Chapter 13 bankruptcy protection on her behalf. Her first payment of 36 monthly payments was to begin on or by July 15, 2009, although no evidence of such payment was submitted by July 17, 2009. Regardless, some progress has been made. Further, Applicant appreciates the fact she was previously irresponsible and is now contrite. Consequently, FC MC ¶ 20(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") and FC MC ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") apply. No other mitigating conditions apply.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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, as well as the “whole person” factors. Speaking in Applicant’s favor, she is a credible and mature professional. She completed high school and earned her diploma. Applicant devoted a number of years to government service. She has raised two children and now cares for both her children and her grandchild. Applicant regrets having procrastinated in addressing her debts.

Speaking against Applicant is the fact that her debt, some of it reaching back to 2000, remained unaddressed until several months after the January 2009 SOR was issued and it remained unaddressed until slightly before the June 24, 2009, hearing. Although her bankruptcy filing is a legitimate method for addressing her debts, her procrastination left no time to create a demonstrable pattern of regular payment or a track record of reliable payment minimizing the possibility the petition might later be dismissed. While a year of regular payments on a 36-month plan would go a long way toward showing such diligence and commitment, there is no proof of any payments here. Consequently, there is no persuasive evidence that Applicant has truly made significant progress in actually satisfying her debts. As noted above, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. With security concerns regarding her finances unmitigated, I conclude it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

### **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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant

## **Conclusion**

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 a security clearance. Clearance is denied.

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ARTHUR E. MARSHALL, JR.  
Administrative Judge