



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



In the matter of: )  
)  
) ISCR Case No. 08-06044  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Le'i, Esq. Department Counsel  
For Applicant: Duke Woolley

November 9, 2009

**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant has two unpaid judgments and four other delinquent accounts totaling in excess of \$17,500. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations. Clearance is denied.

**Statement of the Case**

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a

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<sup>1</sup> 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.

Statement of Reasons (SOR) on January 28, 2009, detailing security concerns under financial considerations. The SOR was received on April 22, 2009.

On April 29, 2009, Applicant answered the SOR, and requested a hearing. On June 25, 2009, I was assigned the case. On June 26, 2009, DOHA issued a notice of hearing scheduling the hearing, which was to be held on July 14, 2009. On July 13, 2009, Applicant requested and was granted a continuance. On August 10, 2009, DOHA issued a notice of hearing scheduling the hearing, which was to be held on September 1, 2009. On August 31, 2009, another continuance was requested when Applicant's representation stated he had just been retained. A continuance was again granted. On September 14, 2009, DOHA issued a notice of hearing scheduling the hearing, which was held on October 14, 2009.

The government offered Exhibits (Ex.) 1 through 8, which were admitted into evidence. Applicant testified on her own behalf, and offered one document, which was admitted into evidence as Ex. A. The record was held open to allow additional information from Applicant. On October 30, 2009, additional information was submitted. Department Counsel having no objection, it was admitted into the record as Ex. B through Ex. I. On October 19, 2009, the transcript (Tr.) was received.

### **Findings of Fact**

In Applicant's Answer to the SOR, she denied the factual allegations in SOR ¶¶ 1.a., 1.c, 1.d, 1.f, 1.g, and 1.i as she asserts these debts have been satisfied. She admitted the factual allegations, with explanations, in ¶¶ 1.b, 1.e, 1.k, 1.l, 1.m, 1.n, and 1.o of the SOR. Applicant's admissions to the SOR allegations are admitted as fact. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 41-year-old diplomatic security officer who has worked for a defense contractor since August 2007. She is seeking to obtain a security clearance.

Applicant's September 6, 2007, credit bureau report (CBR) lists judgments filed against Applicant by six creditors between August 2002 and June 2005. (Ex. 7) In November 2002, a \$3,896 judgment (SOR ¶ 1.e) was entered against Applicant. (Ex. 3, Ex. 7) In February 2003, a \$639 judgment (SOR ¶ 1.f) was entered against Applicant. (Ex. 4, Ex. 7) In January 2009, this judgment was paid in full. (Ex H) In January 2006, a \$577 judgment (SOR ¶ 1.k) was entered against Applicant. (Ex. 5, Ex. 7) This judgment has not been paid. In January 2006, Applicant satisfied a \$1,908 judgment entered against her for delinquent rent. (Ex. B) The judgment had been entered against her in June 2005. (Ex. 7) This judgment was not alleged as an obligation of concern in the SOR.

On April 14, 2004, Applicant completed a sworn affidavit addressing her past due financial obligations. (Ex. 9) As of April 2004, Applicant's net monthly remainder

(monthly net gross income less monthly expenses and monthly debt payments) was approximately \$1,000. (Ex. 9) She stated she had filed for bankruptcy three times in the past seven years. She stated in 1997, she had taken on too much credit card debt and was unable to manage that debt. (Ex. 9) In December 1997, she filed for Chapter 13 bankruptcy protection. In May 1998, the plan was dismissed due to failure to make her required payments. (Ex. 12) In August 1998, Applicant filed a Chapter 7 bankruptcy resulting in the discharge of her debts. (Ex. 11) In November 2001, she filed for Chapter 13, wage earner's plan, bankruptcy protection. On March 18, 2002, the bankruptcy was dismissed. (Ex. 10)

In April 2005, while working as a civilian employee, the Department of the Navy Central Adjudication Facility (DON CAF) issued a letter of intent (LOI) to Deny Security Clearance and Eligibility for Assignment to a Sensitive Position. An SOR which accompanied the LOI listed nine collection accounts, four judgments, two garnishments, three bad debts, and one account past due. In her response to the LOI, Applicant indicated a number of the listed debts had been paid in full. Her commander's letter of August 2005, stated Applicant asserted she had resolved her outstanding debts, but failed to document her assertions. She provided no evidence that any payment arrangement had been made. (Ex. 8) Applicant left her job after she appealed her denial and before a final denial was issued.

In October 2005, the DON CAF issued a letter of Final Denial (LOD) of Security Clearance and Eligibility for Assignment to Sensitive Position stating Applicant had failed to provide documented proof of her effort to resolve or make arrangements for payment to her creditors. Additionally, her clearance was denied because her financial problems continued after her bankruptcies. (Ex. 8)

On December 8, 2005, Applicant appealed the DON CAF's denial of her security clearance. The DON found her appeal raised no new information to support reconsideration. Applicant failed to show the debts were being resolved and failed to provide evidence she was trying to pay her debts. (Ex. 8) On May 25, 2006, the Department of Navy Personnel Security Appeals Board (PSAB) upheld the denial of her security clearance and eligibility for assignment to sensitive positions.

The April 2005 SOR and the January 2009 SOR list four of the same unpaid obligations. The \$7,670 judgment resulting from an involuntary vehicle repossession (SOR ¶ 1.b) is listed in both. The \$3,897 judgment resulting from a vehicle repossession (SOR ¶ 1.e) is listed in both. The \$639 judgment resulting from a fitness club membership (SOR ¶ 1.f) is listed in both. This debt had been placed for collection (SOR ¶ 1.h) before it went to judgment.

In September 2008, Applicant answered written interrogatories concerning her financial obligations. At that time, her net monthly income was approximately \$1,800, her monthly expenses were \$400, and her monthly net remainder was approximately \$1,400. Ex. 2) In Applicant's response to the written interrogatories, she indicated

certain debts have been fully paid. She attached documents showing her car loan on her 1996 Honda had been paid in full, two medical bills were paid, and payments made to nine other accounts. (Ex. 2)

In September 2008, Applicant sought assistance from a law firm to work with the credit bureaus and her creditors. (Ex. C) It was asserted the CBRs were inaccurate, invalid, or unverifiable. However, no specific basis to dispute the legitimacy of any of the past-due debts in the SOR was shown. Nor did she provide any documentation supporting a disputed debt.

At the hearing, Applicant submitted a document showing she had paid an attorney to file for bankruptcy protection two days prior and that her \$1,929 student loan was paid-in-full. (Ex. A, Ex. G) This was not a debt of concern listed in the SOR. Since April 2009, when Applicant received the SOR, she has not made payment on any of the obligations listed in the SOR.

The SOR lists three unpaid judgments and eight accounts placed for collection, which totaled approximately \$20,000. A summary of those debts follows:

	Creditor	Amount	Current Status
a	Bank account placed for collection.	\$417	On March 12, 2009, \$313.50 was paid. (Ex. D)
b	Involuntary automobile repossession.	\$7,670	Unpaid. This debt was also listed in April 23, 2005 SOR. (Ex. 8)
c	Payday loan placed for collection.	\$400	Applicant asserted the debt has been paid. However, no documentation was received supporting this assertion.
d	Collection firm collection for a overdraft on a bank checking account.	\$173	September 10, 2008, debt was satisfied in full. (Ex. F).
e	November 2002 judgment entered for a vehicle repossession.	\$3,897	Unpaid. This debt was also listed in April 23, 2005 SOR. (Ex. 8)
f	Judgment obtained in February 2003, by fitness club.	\$639	January 23, 2009, judgment was paid in full. (Ex. H) This debt was also listed in April 23, 2005 SOR. (Ex. 8)
g	Collection company collecting a medical account.	\$92	Applicant asserts there is a zero balance on this account. However, no documentation supporting the assertion was received.

h	Collection agency collecting for a bank account placed for collection.	\$431	Collection account later was reduced to judgment and is the same debt as listed in SOR ¶ 1.f.
i	Collection agency collecting for an account placed for collection.	\$617	Paid. November 21, 2008, the claim was released. (Ex. E)
j	Account placed for collection	\$4,892	Asserts this is the same debt as the debt listed in SOR ¶ 1.e, but submitted no documentation supporting her assertion. Applicant stated she would pay \$200 in October 2007 and \$350 every two weeks thereafter. Applicant failed to document that payments have been made.
k	Judgment obtained in January 2006.	\$577	Unpaid.
	Total debt listed in SOR	\$19,374	Applicant has addressed four of the debts (a, d, f, and i), which total \$1,846.

### **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 must be considered 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.

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).

## **Analysis**

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

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be negligent, irresponsible, unconcerned, or careless in properly handling and safeguarding 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 upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk

that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant has resorted to bankruptcy protection three times in the past and two days before the hearing, she paid an attorney to again file for bankruptcy protection. Applicant has two unpaid judgments and four other past due obligations that total approximately \$17,500. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

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.

Prior to receipt of the SOR, Applicant paid five debts totaling approximately \$2,300: ¶ 1.a (\$417), ¶ 1.d (\$173), ¶ 1.f (\$639), ¶ 1.h (\$431), and ¶ 1.i (\$617). AG ¶ 20(d) applies to these five debts. She also paid two obligations not listed in the SOR. In January 2006, she paid a \$1,900 judgment for delinquent rent and in June 2005, she paid her \$1,929 student loan.

The six remaining debts are unpaid. Applicant meets none of the mitigating factors for these obligations. Her financial difficulties are both recent and multiple, and did not occur under circumstances not likely to recur. She failed to demonstrate that her debts were largely due to circumstances beyond her control, or that she has acted

responsibly in addressing her debts. Further, she has not sought credit counseling, or otherwise brought the problem under control as her circumstances permitted.

Applicant should have been acutely aware of the government's concern about her delinquent financial obligations. In October 2005, the Navy denied her a security clearance stating she had failed to provide proof of her effort to resolve or make arrangements to her creditors. In December 2005, she appealed that denial. After she left the Navy, the denial was upheld. This should have put her on notice that her unpaid debts were of security concern.

Two of the debts listed in her most recent SOR were also alleged in the DON CAF SOR. These two debts, SOR ¶ 1.b (\$7,670) and SOR ¶ 1.e (\$3,897), both resulted from vehicle repossessions. One debt (SOR ¶ 1.e) was reduced to judgment in November 2002 and has yet to be paid.

The mitigating factors listed in AG ¶ 20(a) do not apply to the remaining unpaid obligations. The debts are not infrequent, nor did they occur under such circumstances that are unlikely to recur. Applicant's financial problems have existed for a long period of time. She has had to resort to bankruptcy protection four times, the most recent filing being two days before her hearing. Her unpaid obligations do cast doubt on the individual's current reliability, trustworthiness, or good judgment.

There has been no showing her financial problems were caused by events beyond her control. AG ¶ 20(b) does not apply. Under AG ¶ 20(c) and ¶ 20(d), Applicant has paid five of the eleven debts. The total amount of unpaid debt is approximately \$17,500. Since receiving the SOR in April 2009, she has not made a payment on the SOR debts. AG ¶ 20(c) does not apply.

AG ¶ 20(e) does not apply. In September 2008, Applicant retained a law firm to assist her in working with the credit bureaus and her creditors. Applicant failed to document a reasonable basis to dispute the legitimacy of any past-due.

### **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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept. An applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given her circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). Applicant has failed to do this.

Applicant has an unpaid judgment obtained against her in 2002. In 2005, the Navy denied her a security clearance. Her appeal in the matter was denied. This should have put her on notice that her unpaid debts were of security concern and that paying her debts or arranging a repayment plan was necessary. However, since receiving the SOR, she has taken no effective action to resolve her debts, and has not equipped herself to avoid financial problems in the future. She has not made a single payment on her past due obligations. Nor has she contacted her creditors to establish a repayment plan. The mere hiring of an attorney in preparation of filing for bankruptcy protection is insufficient to establish she has taken effective action to resolve her debts. There is no evidence a bankruptcy has been filed. There is no guarantee that even if a bankruptcy petition has been or were to be filed that a discharge of creditors would occur. Applicant has previously had two bankruptcy petitions dismissed.

I find Applicant has not acted responsibly under the circumstances. There is no indication that the problem is being resolved or is under control. Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

### **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, Financial Considerations: **AGAINST APPLICANT**

Subparagraph 1.a:	For Applicant
Subparagraph 1.b and 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Subparagraph 1.h and 1.i: For Applicant  
Subparagraph 1.j and 1.k: Against 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.

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CLAUDE R. HEINY II  
Administrative Judge