



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-06049  
SSN:----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: Pro Se

April 20, 2009

**Decision**

ABLARD, Charles D., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on July 30, 2007. On October 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant 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 November 10, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed, and I received the case assignment on January 30, 2009. DOHA issued a notice of hearing on February 2, 2009, for a hearing on February 18, 2009, which was convened as scheduled.

At the hearing, the government offered four exhibits that were admitted in evidence without objection (Exhs. 1-4). Applicant testified on her own behalf and submitted 15 documents that were admitted without objection (Exhs. A-O). DOHA received the transcript of the hearing (Tr.) on February 25, 2009.

### **Findings of Fact**

Applicant accumulated delinquent debts totaling \$22,000 which were alleged in 22 allegations in the SOR. In her answer, she admitted three of the allegations and denied the remaining ones. She amended her answer after additional information became available to her and submitted it at the hearing (Exh. B). She is a 43-year-old employee of a Department of Defense contractor who has worked for the company since August 2007. She was married in 2005, and has four step-children.

Applicant's delinquent debts arose as a result of major back surgery in 2004 that caused her to be unable to work full time for four years until she began her present job. During that four year period she earned only \$30,000 (Exh. C). She believed her insurance would cover most of the medical costs. However, after a dispute regarding the choice of a doctor, the company paid only half of the \$30,000 in medical and hospital charges (Exh. A and Tr. 17). The result was that she had extensive debts that became delinquent. She has now consolidated all the remaining medical debts and is making monthly payments through a debt consolidation service (Exh. K).

An analysis of the current status of the delinquent debts listed on the SOR indicates that the largest number of debts and the largest amounts of approximately \$18,000 are for the medical expenses incurred as a result of the surgery in 2004. The following is a list of the debts listed on the SOR and their status:

1. SOR ¶ 1.a.: Credit card debt of \$109 paid in full in October, 2008 (Exhs. E and N).
2. SOR ¶ 1.b.: Animal hospital debt of \$73 paid in full in December 2008 (Exh. F).
3. SOR ¶ 1.c.: A second debt to another animal hospital of \$88 paid in full in November 2008 (Exh. G). This is a duplicate of SOR ¶ 1.u.
4. SOR ¶ 1.d.: Medical bill of \$78 paid November 2008 (Exh. G).
5. SOR ¶ 1.e.: Medical bill of \$43 paid November 2008 (Exh. G).

6. SOR ¶¶ 1.f. and g.: Medical bills of \$477, and \$288 settled for \$508 in December 2008 (Exh. H).
7. SOR ¶ 1.h.: Credit card debt of \$528 paid in November 08 (Exh. G).
8. SOR ¶¶ 1.i.: Hospital bill of \$2,664 now included in debt consolidation program (Exh. J).
9. SOR ¶¶ 1.j.,r.,and s.: Three debts totaling \$578 that are not on credit reports and are being disputed by Applicant (Tr. 51 and 52).
10. SOR ¶ 1.k.: Medical bill of \$144 paid in December 2008 (Exh. I, and Tr. 27).
11. SOR ¶¶ 1.l.,m.,n.,o.,and p.: Medical bills totaling approximately \$16,000 now consolidated in debt management program with monthly payments (Exh. K). Before the consolidation program was initiated, Applicant was making partial payments on these accounts through a collection service bureau (Exh. J).
12. SOR ¶ 1.q.: Medical bill of \$259 paid in full in December 2008 (Exh. L).
13. SOR ¶ 1.t.: Medical bill of \$62 paid in full in October 2008 (Exh. N).
14. SOR ¶ 1.v.: Court costs of \$135 for divorce proceeding paid in full in March 2008 (Exh. O).

In summary, Applicant has paid most of the smaller accounts, except for the three that she disputes. She began her payments to the credit consolidation service in November 2008 with payments of \$654 per month for several months. Since a number of bills have now been paid through the program, the monthly payments have been reduced to \$400 which will result in all delinquent accounts being paid in the next five years. Applicant is an hourly rate employee who is paid \$15.50 per hour. She is paid between \$800 and \$1,000 bi-weekly. Her husband is paid \$1,800 bi-weekly. They pay different expenses from their respective incomes. Payments on her debts come from her income which is adequate to make the required monthly payments necessary to resolve the debts (Tr. 63).

Applicant's husband inherited money from his mother recently and some of it was used to pay some of her debts. She also had cosmetic surgery in 2007 before she had fully determined the extent of the medical debts incurred from 2004. That bill was financed with the help of her husband and is paid (Tr. 66).

### **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 overarching 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 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**

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." Applicant incurred delinquent debts over several years and most were unresolved. The government established sufficient facts to raise a security concern.

The guideline also includes examples of mitigating conditions (MC) that could mitigate security concerns arising from financial considerations. Under AG ¶ 20 (b), the security concern 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, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances. Applicant had extensive medical problems which resulted in several years of low income. Those factors were the primary cause of most of the indebtedness. Until recently, her income was insufficient to allow her to resolve all the debts.

While the debts have been owed for several years, I conclude that the Applicant has done all that she could have done with her income to resolve the debts until recently. She has worked since 2007 for her employer and her income is sufficient to allow her to resolve all of the accumulated debts. She understands the impact of debts on her ability to hold a security clearance. Thus, I conclude that she has acted responsibly and the mitigating condition is applicable.

Under AG ¶ 20 (c) the security concern may be mitigated if the person received counseling or the problem is being resolved or under control. Applicant is in a debt consolidation program and the financial problem is being resolved with many debts now paid and the remainder in the program. These facts are sufficient to apply the mitigating condition.

Under AG ¶ 20(d) the security concern may be mitigated when the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts. Although some of the debts have not been paid most of them relate to her medical bills. She has made substantial efforts to resolve the debts, and, from the evidence presented, I find this mitigating condition is also applicable.

### **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 is a mature and responsible person who incurred medical expenses through no fault of her own. She has taken steps to resolve many of them, and has a program to resolve the remainder. She and her husband have adequate income to avoid further indebtedness, and there is little likelihood of a recurrence of financial problems. There is no potential for pressure or exploitation.

The Appeal Board has addressed key element in the whole person analysis for financial cases as being establishment of a "meaningful track record" This does not require that every debt be paid, but that an applicant demonstrated a plan and took significant steps to implement the plan. All outstanding debts do not need to be addressed simultaneously. An applicant may provide for payment of debts one at a time. There is no reason not to trust this applicant to do what she intends to do, or to in any way compromise national security. (ISCR Case No. 07-06482 App. Bd. May 21, 2008).

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), a careful consideration of the whole person factors and supporting evidence, application of the pertinent factors under the adjudicative process, and interpretation of my responsibilities under the guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude she is eligible for access to classified information.

### **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: FOR APPLICANT

Subparagraphs 1.a.-v.: For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Access to classified information is granted.

CHARLES D. ABLARD  
Administrative Judge