



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-06117
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg Cervi, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 22, 2009

**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed her Security Clearance Application (SF-86), on January 11, 2008. On February 26, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E. 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.

On May 9, 2009, Applicant answered the SOR and requested a hearing. DOHA received the request and the case was assigned to me on July 2, 2009. Applicant and Department Counsel agreed to an August 27, 2009, hearing date. On July 27, 2009, a Notice of Hearing was issued scheduling the hearing for that date. The hearing was convened as scheduled. Department Counsel submitted seven exhibits (GE) 1-7, without objection. Applicant introduced one exhibit (AE) A, without objection. She

testified on her own behalf. I left the record open so that Applicant could submit additional information. She submitted an additional packet which was marked as AE B, without objection. The transcript (Tr.) was received on September 5, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, dated May 1, 2009, Applicant admitted the factual allegations in ¶¶ 1.a through 1.k of the SOR. She also admitted the factual allegations in ¶¶ 2.a through 2.d of the SOR.

Applicant is a 35-year-old employee of a defense contractor. She graduated from high school in 1992, and has attended college on a part-time basis since 2003. Applicant has a young child from a long-term relationship that ended in 2006. She has been with her current employer since September 2007 (Tr. 18).

Applicant enlisted in the U.S. Army in 1992. Applicant served as a supply technician from 1998. She was in charge of ordering supplies for the base hospital. She was the primary government credit card holder (Tr. 40). She made unauthorized personal purchases while holding this position. She received a General Court-Martial on or about December 2001 (GE 5). Applicant was charged with: 1) Conspiracy to Commit Larceny (Article 81 of the UCMJ); 2) False Official Statements (Article 107 of the UCMJ); 3) Multiple Counts of Larceny (Article 121 of the UCMJ); and 4) Obtaining Services Under False Pretenses (Article 134 of the UCMJ).

Applicant pled guilty to four charges involving larceny and signing a false document. She was represented by counsel (Tr. 34). She was sentenced to a reduction in grade of E1; forfeiture of all pay and allowances, confinement for 42 months and a Bad Conduct Discharge. She was incarcerated from December 2001 until June 2003. She received a sentence of 42 months but served only eighteen months.

The Final Order from the U.S. Army Criminal Court of Appeals confirmed her sentence, but remitted part of the confinement. In addition, the Army Clemency and Parole Board suspended the Bad Conduct Discharge (GE 5).

In 2003, a short while after her release, Applicant began working as a waitress. She ended this position due to a pregnancy in 2005. From February 2005 until July of 2006, Applicant attended college courses full-time (Tr. 22). During that time she did not work.

The SOR alleges ten delinquent debts, including a voluntary repossession of a vehicle (GE 6, 7). She turned in her vehicle in 2001 due to the pending court martial (Tr. 44). She realized that she would not be able to pay the monthly payment on the car. Prior to 2001, Applicant was current on her various accounts.

The current status of Applicant's delinquent debts is as follows: Applicant paid the debt in SOR ¶ 1.b for \$67 in 2009 (GE 4). She settled the \$90 debt in SOR ¶ 1.h for \$72. Applicant paid the \$149 debt in SOR ¶ 1.j for \$72. She settled the \$742 debt in SOR ¶ 1.e for \$226. Applicant settled the \$1,098 debt in SOR ¶ 1.d for \$450 (AE B). These debts were paid in May 2009.

Applicant recently contacted Cavalry for the involuntary repossession collection account that totals approximately \$4,286 (SOR ¶ 1.c). She explained that she is trying to arrange payments (Tr. 56). She also called Providian for the collection account debt of \$1,773 (SOR ¶ 1.k). She recalls that it may have been approximately six months ago that they offered her a monthly payment plan, but she has not been able to make any payments to them. The last two debts in the SOR ¶ 1.f (Plains) and ¶ 1.i (Zenith) are both for \$506. Applicant believes they are duplicates. She has telephoned several creditors but has not located the collection agent (Tr. 58). The SOR debt in ¶ 1.g (Presidio) for \$1,329 has also not been located.

Applicant's net monthly income is approximately \$3,400. She receives a VA disability of \$581 monthly (Tr. 60). She has a car note for \$450, but last year she co-signed for another vehicle with the father of her child (Tr. 62). This car loan is for approximately \$40,000. She is current with her monthly expenses of \$2,700 (Tr. 75). She is paying on other credit accounts for a monthly total of approximately \$560. She has a student loan in the amount of \$2,250. Her net monthly remainder is approximately \$200. Applicant has a retirement account in the amount of \$2,500 and \$600 in a savings account (Tr. 76). Her mother lives nearby and helps her with food costs.

Applicant has not attended financial counseling to help her with her delinquent debts or manage her budget. She tried to obtain a consolidation loan in 2003, when she was released from the Army, but she did not follow through on the plan (Tr.78).

In response to Section 23 - Your Police Record, on her January 2008 security clearance application, Applicant did not disclose her 2001 General Court-Martial. Section 23(a) asks whether one has ever been charged with or convicted of any felony offense and emphasizes this includes those under the Uniform Code of Military Justice and also asks in 23(e) if one has been subject to Court-Martial in the last seven years.

In response to Section 27 – Your Financial Delinquencies, on the same security application, Applicant answered “No” and did not disclose her 2001 involuntary repossession of her vehicle.

Applicant answered “No” to Section 28(a) concerning financial delinquencies in the last seven years of over 180 days (GE 1). She also answered “No” to Section 28(b) concerning financial delinquencies in the last seven years of over 90 days.

On November 20, 2008, Applicant answered DOHA interrogatories. She stated that her 2001 larceny charge was dismissed and that she had been “cleared.” In 2009, in her answer to the SOR, Applicant explained that when she completed the SF-86 in

2008, she did not disclose her 2001 court-martial because she had ultimately received an honorable discharge in 2005. She also explained that she was told that the incident would not appear on her record because she had been “cleared.”

At the hearing, Applicant said she “perceived” the question based on the following facts. She was already investigated in a background check and nothing appeared (Tr. 80). She said the honorable discharge meant that all had been “remitted”. She elaborated that she called the Office of Personnel Management (OPM) in 2005 and was told that hers was a unique situation and the person could not tell her how to answer any questions about the court-martial and confinement (Tr. 80). She also called the prosecuting attorney in her case, and she related that he could not tell her how to answer the question either (Tr. 82). He told her he could not give her any advice.

Applicant responded to questions at the hearing concerning her non-disclosure of the 2001 court-martial in another manner also. She knew she pled guilty and served an 18-month sentence but she believed that because it was not within the seven-year period, she did not have to disclose it (Tr. 95). She did not forget about the 2001 court-martial but she chose not to disclose it. She did not disclose anything about the conviction with her employer (Tr. 97). She acknowledged at the hearing that even if she thought that she did not have to disclose the conviction due to a seven year time frame that it was clearly within the seven years (Tr. 99).

Applicant supervises three employees in her current position. She received a promotion in less than one year of employment. In her position, she manages more than four million dollars of equipment for battalions that are in Iraq (AE A).

Applicant is described by colleagues as personable with a positive attitude. Her supervisor describes her as a strong leader, who is very responsible. She follows rules and regulations. She shows attention to detail. Applicant works long hours and is a great asset to the organization. She is a great friend, co-worker, full-time student, mother, and woman (AE B).

The prosecuting attorney in Applicant’s 2001 Court-Martial case submitted a letter for Applicant and described her as honest and forthright during the investigation in 2001. He elaborated that she served as a witness during the prosecution of a co-party to her case. He believes she has paid her debt to society and has significantly transformed her life. He followed her progress and states she is a thoughtful and productive citizen. He recommends her for a security clearance (AE B).

## **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 required 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 over-arching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2, 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<sup>o</sup> is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debts on several accounts for many years. She voluntarily turned in her vehicle to a dealership in 2001, because she could not make any payments. Her credit reports confirm the debts. Under AG ¶ 19(d), "deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust: raises security concerns. Applicant's Court-Martial in 2001 and subsequent conviction falls in this category. "The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the concern may be mitigated where 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.<sup>o</sup> Applicant still has unresolved debts. She has no immediate plans to pay the unresolved debts. She co-signed a car loan for \$40,000 last year. This mitigating condition does not apply in this case.

Under AG & 20(b), it may be mitigating 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.<sup>o</sup> I find this is not a factor for consideration in this case. As noted above, she recently paid some small debts after receiving the SOR in 2009. She did not act responsibly in paying her accounts.

Evidence that 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<sup>o</sup> is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>o</sup> Applicant has not received financial counseling, but in 2003, she attempted a loan consolidation, but she did not follow through. She still has unresolved debt. She paid or settled several accounts in 2009. She does not have a sufficient track record or an organized plan to resolve the remaining debts. Her efforts are insufficient to carry her burden in this case. I conclude these mitigating conditions apply in part.

## **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. Of special interest is any failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" is potentially disqualifying.

In this case, when Applicant completed her 2008 security application, she did not disclose her 2001 conviction for larceny in response to Section 23. She knew she pled guilty to the charges despite the fact that later she ultimately had part of the sentence remitted and received an honorable discharge. She asked advice and no one told her she did not have to disclose the 2001 incident. She chose to do so because she believed it would not show up on her security clearance investigation. She also explained that she thought she did not have to disclose the Court-Martial because it did not fall within the seven-year time frame. However, she acknowledged at the hearing that it is within the seven years. Applicant admitted in her answer to the SOR that she deliberately did not disclose the 2001 Court-Martial in her 2008 security clearance application. She also admitted that she falsified material facts with respect to the DOHA interrogatories in 2008. I find she intentionally falsified her security clearance application by omitting her general Court-Martial conviction (¶¶ 2. a and 2.b).

Applicant knew she had returned her car in 2001 and had not made anymore payments. She was not sure until later that it was a voluntary repossession but she knew it was a repossession. She knew she had delinquent debts. She knew they were on her credit reports. I find against her on the remaining allegations under personal conduct. After considering the mitigating conditions under this guideline, I find that none of them apply.

## **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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has worked for defense contractors for several years. She is rated highly by her employers and her colleagues. She is managing a responsible position. She is caring for her daughter as a single parent. She is attending college to gain better employment opportunities. She is paying some of her bills. She is on the right track financially. She is highly regarded by her colleagues and friends.

Applicant was convicted of several charges relating to larceny while in the U.S. Army in 2001. She served an 18-month sentence. She ultimately received an honorable discharge in 2005. She did not disclose this information on her 2008 security clearance application. She deliberately omitted this material information. She also did not disclose her financial situation. She recently co-signed a loan for \$40,000 with her estranged partner. She will be legally responsible for this debt if he defaults. She still has significant unresolved delinquent debt of her own. I find this casts doubt on her judgment and reliability at this time.

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 security concerns arising from her 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant



Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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NOREEN A. LYNCH  
Administrative Judge