



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-07359
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie Mendez, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 17, 2009

**Decision**

---

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be denied.

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on March 5, 2008. On February 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 acknowledged receipt of the SOR on February 26, 2009. She answered the SOR in writing on March 3, 2009, and requested a hearing before an administrative judge. DOHA received the request on March 20, 2009. Department Counsel was prepared to proceed on April 15, 2009 and I received the case assignment

on April 16, 2009. DOHA issued a notice of hearing on April 20, 2009, and I convened the hearing as scheduled on June 4, 2009. The government offered three exhibits (GE) 1 through 3, which were received and admitted into evidence without objection. Applicant testified on her own behalf. She submitted three exhibits (AE) A through C, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on June 11, 2009. I held the record open until June 29, 2009, for Applicant to submit additional matters. On June 16, 2009, she submitted 14 exhibits, AE D through AE Q, without objection. The record closed on June 26, 2009.

## **Procedural and Evidentiary Rulings**

### **Notice**

At the hearing, Applicant indicated she received the notice of hearing more than 15 days before the hearing date. (Tr. at 12.) Thus, Applicant received the notice of hearing date within the requirements of ¶ E3.1.8 of the Directive.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.f, 1.i, 1.j, 1.p, and 1.q of the SOR. She denied the remaining factual allegations of the SOR.

Applicant, who is 37 years old, works for a Department of Defense contractor as a claims analyst. She began her current employment in November 2007 in a temporary position and became a permanent employee in June 2008.<sup>1</sup>

Applicant graduated from college in 2003 with a degree in general studies. She enrolled in a Master's degree program in 2003, but has not completed the program. Applicant married in 2002. She and her husband have two children, a son, age 4 and a daughter, age 2. Her husband is a civil engineer.<sup>2</sup>

In 2003, after her son was born, Applicant lost her full-time job. She dropped out of her master's degree program as she could not afford to pay her tuition. She worked a variety of part-time jobs for the next four years while taking care of her children. In 2007, she ran a licensed day care center for seven months. She also worked as a part-time fashion designer, work she still performs occasionally. Her husband lost his job in early 2008 and remained unemployed until October 2008. He did receive unemployment benefits between \$1,200 and \$1,400 a month.<sup>3</sup>

---

<sup>1</sup>GE 1 (e-QIP) at 6, 14-15; Tr. 25-26, 69-70.

<sup>2</sup>Tr. 23-26.

<sup>3</sup>*Id.* 24-31, 38; GE 2.

From 2003 until she returned to work in late 2007, Applicant's husband provided the primary household income. He managed the household finances, which he did not discuss with Applicant. She is now involved in the household finances.<sup>4</sup>

Applicant currently earns \$2,620 a month in gross income and \$2,097 a month in net income. Her husband earns \$3,350 a month in gross income and \$2,484 a month in net income. Household net income each month totals \$4,581. Household expenses include \$1,375 for rent, \$900 for child car, \$250 for groceries, \$130 for telephone, cable and internet, \$225 for electric, \$50 for water, \$40 for church, \$125 for education loans, \$75 for car insurance, \$100 for gasoline, \$75 for miscellaneous expenses, \$200 for entertainment, \$260 for small bills, \$550 for miscellaneous bills, and \$135 for another bill, for total monthly expenses of \$4,490. Applicant's budget provides some money each month towards debt payment in the small bill and miscellaneous bill categories.<sup>5</sup>

After reviewing the credit reports dated March 27, 2008, September 10, 2008, December 5, 2008, and the SOR, I have compiled a list of the total debts owed, excluding any duplicate entries. I find that Appellant's actual debts are as follows:<sup>6</sup>

<b>SOR ¶</b>	<b>TYPE OF DEBT</b>	<b>AMOUNT</b>	<b>STATUS</b>	<b>EVIDENCE</b>
1.a	State tax lien	\$ 5,515.00	\$1,678 actual debt; \$1,190 paid.	GE 2; AE M
1.b	Cell phone	\$ 560.00	Unpaid; Cannot located holder of debt	GE 2; Tr. 40
1.c	Medical bill	\$ 330.00	Paid	AE B; AE I <sup>7</sup>
1.d	Medical bill	\$ 75.00	Unpaid	AE I
1.e	Medical bill	\$ 50.00	Paid	GE 2, p. 38
1.f	Medical bill	\$ 250.00	Unpaid	AE I
1.g	Medical bill	\$ 50.00	Paid	GE 2, p. 38
1.h	Medical bill	\$ 50.00	Unpaid	AE I

---

<sup>4</sup>Tr. 29-30, 67.

<sup>5</sup>AE F (Applicant's earnings statement); AE J (Budget); AE N (Husband's earnings statement); Tr. 85-95.

<sup>6</sup>GE 2 (Credit report, dated September 10, 2008); GE 3 (Credit report, dated December 5, 2008); GE 4 (Credit report, dated March 27, 2008).

<sup>7</sup>Applicant provided an itemized list of medical bills being held by a collection service. Except for one \$266 bill, all the medical bills are for the same hospital. Applicant acknowledges owing money to this hospital. Several of the debts listed in the bill are not listed in the SOR. See AE I.

1.i	Utility bill	\$ 236.00	Paid	AE B; AE D
1.j	Store account	\$ 145.00	Paid	AE C
1.k	Credit Card	\$ 743.00	Unpaid	GE 2; Tr. 51-52
1.l	Credit Card	\$ 662.00	Unpaid	GE 2; Tr. 52-54
1.m	Automobile loan	\$12,563.00	Paid \$1,000	GE 2
1.n	Education loan	\$ 449.00	Forbearance	AE E
1.o	Collection/Medical	\$ 168.00	Unknown; Submitted to insurance for payment 2008	GE 2
1.p	Education Loan	\$ 1,862.00	Paid \$134	GE 2; Tr. 65

Appellant's husband did not pay their state income taxes for the years 2003, 2004, and 2005 because he did not know how to incorporate a land installment mortgage on the forms. When she learned about the tax lien, Applicant contacted the state tax office which recommended that they itemize their deductions. She hired a tax accounting firm to work with her on this issue. With this firm's assistance, she reduced her tax liability from \$5,515 to \$1,465 plus \$213 in interest. She paid \$300 and the state garnished her husband's bank account. As a result of its garnishment, the state received \$890 towards the tax lien debt, leaving a balance of \$498, including interest. Her state tax lien remains as she owes taxes for 2008. Her total current tax liability is \$1,185. She plans to develop a repayment plan, but has not provided evidence of a plan or payments.<sup>8</sup>

Applicant purchased a car in 2004. She paid the monthly payments for a period of time, but fell behind in her payments. Her car was repossessed in 2007. Two creditors notified Applicant that they held the debt on her car. One creditor is a collection agency and the other creditor is an out-of-state law firm. Applicant negotiated a \$7,500 settlement of her car loan with the law firm in early 2008. She obtained funds from a relative to pay the settlement. She paid \$1,000 in January 2008 to the law firm and asked for an invoice. The law firm refused to provide an invoice to her. In September 2008, Applicant received notice that the debt had been transferred to the collection agency. The \$1,000 payment is not referenced in the documents received from the collection agency. Applicant again negotiated a monthly payment plan, but has not complied with the plan. She has requested an invoice from this company, which has not been provided. Another law firm may now be involved in the collection of this debt.

---

<sup>8</sup>GE 2; AE M. Applicant received a notice from the Internal Revenue Service (IRS) that she owed \$120 on her 2008 taxes because of a miscalculation. She has sufficient income to pay this debt.

Applicant does not know who owns the debt at the present time and is not making payments until she can determine who holds the debt and what is actually owed.<sup>9</sup>

Applicant verified that education loans with the federal government are consolidated and currently in forbearance. She has another education loan with the state. Although she believes this loan is consolidated with her other education loans, she has not provided evidence that supports her belief.<sup>10</sup>

The government forwarded interrogatories to Applicant in August 2008, seeking information about 16 debts. Applicant responded, providing proof that she had paid four debts and made payments on three other debts. She also indicated she contacted her creditors, but had not fully resolved the debts. She also showed she obtained a small loan from her credit union which she has paid.<sup>11</sup>

Applicant's most recent performance evaluation shows an overall rating of satisfactory. She received a mix of excellent and satisfactory ratings on the individual elements. Her customers praise her manner and skills in working with them.<sup>12</sup>

### **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 over-arching 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

---

<sup>9</sup>GE 2, p. 30-31, 53-61.

<sup>10</sup>AE E; Tr. 61-63.

<sup>11</sup>GE 2; AE K.

<sup>12</sup>AE G; AE H.

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 accumulated delinquent debts over a period of time. She has been unable to pay her debts. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions 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.” Applicant’s financial worries began in 2003 and continue. The potentially mitigating condition is not applicable.

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.” Applicant’s financial problems began when she worked part-time. Her problems increased when her husband lost his job just as she returned to work full-time. His job loss decreased the amount of household income available to repay debts. Despite the loss of his income, she has paid her usual living expenses and some of her smaller debts since he did receive unemployment benefits. She acted reasonably under the circumstances. I find this potentially mitigating condition is a factor for consideration in this case.

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” is potentially mitigating under AG ¶ 20(c). Applicant has not received financial counseling. Although some debts are paid, she has not demonstrated that her finances are under control. This mitigating condition is not applicable.

AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant resolved several of her delinquent debts, either by payment or settlement. She has not resolved all of her debts, particularly her larger debts. I conclude this mitigating condition partially applies.

### **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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began when she lost her full-time employment. She continued to work, but generally on a part-time basis while she cared for her young children. Just after she returned to full-time employment, her husband lost his job and did not find another job for over nine months. She accumulated debt, due in part, to circumstances largely beyond her control, including job loss and underemployment. Her debts also arose, in part, because of poor financial management. She has taken steps to resolve some of her debts even before she received the interrogatories or SOR. She developed payment plans, but did not comply with the terms of her agreements. She continues to struggle with her bills, in part because she does not have a definitive plan of action. Her efforts at resolution of her debts are commendable, but she needs to do more before she is granted a security clearance. She needs to establish a consistent track record of managing her finances, payment of debt and compliance with debt repayment plans.

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.

### **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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant



Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For 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.

---

MARY E. HENRY  
Administrative Judge