



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



In the matter of: )  
)  
) ISCR Case No. 08-97451  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

July 7, 2009

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant has 21 accounts that have been placed for collection, which total in excess of \$23,000. She has paid none of the debts. 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 Statement of Reasons (SOR) on October 23, 2008, detailing security concerns under financial considerations.

<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.

The SOR lists 20 debts totaling in excess of \$23,000. In her answer to the SOR, which was received on received November 6, 2008, Applicant requested a hearing. On March 10, 2009, I was assigned the case. On March 26, 2009, DOHA issued a notice of hearing scheduling the hearing held on April 22, 2009. The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through F, which were admitted into evidence. On April 30, 2009, the transcript (Tr.) was received.

### **Findings of Fact**

The SOR lists 21 debts totaling in excess of \$23,000 as having been placed for collection. In her Answer to the SOR, Applicant admits the debts listed in SOR ¶ 1.a, 1.g, 1.h, 1.i, 1.m, 1.n, 1.p and 1.s. She denies the remaining debts. In her answer to the SOR, Applicant admits owing eight of the debts totaling approximately \$4,500 and denies owing 13 debts totaling in excess of \$19,000. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 33-year-old logistician who has worked for a defense contractor since February 2008, and is seeking to obtain a security clearance. In 1996, Applicant divorced. She has no children.

When living with her finance, Applicant worked as a babysitter. (Tr. 19) She was able to pay her credit cards from her job as a babysitter. Following a fight with her finance, Applicant left the country. From December 2003 to February 2006, Applicant lived in Puerto Rico. (Ex. 1, Tr. 30) After moving there she did not pay attention to her credit, made no payments on any of her debts, and did not inform her creditors of her new location. (Tr. 19) At the time, she had 19 credit cards. (Tr. 31) She hired an individual and paid him a couple of dollars to fix her credit. (Tr. 19) Positive results were not received.

On September 3, 2008, Applicant entered into an agreement with a credit consultant in a credit restoration process. (Ex. C) She paid a \$750 fee. (Tr. 27) As of September 2008, Applicant's credit scores were 572, 554, and 532. (Ex. D) As of November 2008, her credit scores had improved to 678, 640, and 640. (Ex. E)

In December 2008, she purchased a house for \$97,000 on which her monthly mortgage payments are \$980. (Tr. 25) Since purchasing her home, she is paying her current bills including utilities, but has made no payment on her older debts. (Tr. 20) She is current on her mortgage and two credit cards, one a department store account with a \$400 limit and a MasterCard with a \$300 limit. (Tr. 25, 26)

Applicant is paid \$25 per hour. (Tr. 28) Her take home pay is \$2,600. (Tr. 38) Her monthly expenses include: utilities (\$200-\$300), cell phone (\$100), car payment (\$320), groceries (\$200), gasoline (\$200), and miscellaneous (\$300 - \$400). Her monthly net remainder (take home pay less monthly expenses) is between \$80 and \$280. She has \$100 in savings. She had not attended financial counseling. (Tr. 41)

A summary of Applicant's debts follows:

	Creditor	Amount	Current Status
a	Electric bill.	\$130	Unpaid. Applicant failed to pay her electric bill when she moved to Puerto Rico. (Tr. 32)
b	Cable TV bill.	\$80	Unpaid. Denies having this cable service provider. (Tr. 32)
c	Telephone bill.	\$247	Unpaid. Denies having this telephone provider. (Tr. 33)
d	Furniture bill.	\$6,446	Applicant asserts she paid the furniture debt, but provided no documentation. (Tr. 33)
e	Collection agency collecting for a mail order firm.	\$2,282	Unpaid. \$2,324 collection account. Applicant has no idea about the nature of this debt and has not tried to contact the creditor.
f	Credit card.	\$1,814	Unpaid. \$1,974 charged off as bad debt. Credit limit was \$500. Applicant has no idea about the nature of this debt.
g	Collection agency collection for a department store.	\$1,271	Unpaid. Applicant admits having the department store account and not paying it when she left the country. (Tr. 35) Deleted from November 2008 CBR.
h	Collection agency collection for a department store.	\$1,271	Unpaid. Applicant admits having the department store account and not paying it when she left the country. (Tr. 35) Deleted from November 2008 CBR.
i	Debt.	\$55	Unpaid. Applicant has no idea about the nature of this debt.
j	Furniture debt.	\$5,224	This is the furniture debt listed in SOR ¶ 1.d.
k	Telephone service provider.	\$694	Unpaid. Balance \$694 is 120 days past due. Denies having telephone service with this provider. She has never contacted the creditor about this debt. (Tr. 35)
l	Credit card. Applicant had three credit cards with this lender. (Tr. 35)	\$479	Unpaid. Applicant failed to pay this debt after she left the country. (Tr. 36) Deleted from November 2008 CBR.
m	Credit card.	\$244	Unpaid. Applicant failed to pay this debt after she left the country. (Tr. 36) Deleted from November 2008 CBR.

n	Credit card.	\$485	Unpaid. Applicant failed to pay this debt after she left the country. (Tr. 36) Deleted from November 2008 CBR.
o	Bank credit card.	\$673	Unpaid. Deleted from November 2008 CBR. Applicant has no idea about the nature of this debt. She has not attempted to contact this creditor. (Tr. 36)
p	Department store credit card debt.	\$235	Unpaid. Account purchased by another lender. Applicant failed to pay this debt after she left the country. (Tr. 36)
q	Collection agency collecting a medical debt.	\$135	Unpaid. Applicant has no idea about the nature of this debt. She does not remember this debt. (Tr. 36)
r	Collection agency.	\$161	Unpaid. Applicant has no idea about the nature of this debt.
s	Musical CD purchased.	\$134	Unpaid. Applicant admits purchasing musical CDs.
t	City social service debt.	\$210	Unpaid. This debt was verified in Applicant's November 2008 CBR. It is a \$210 collection account. (Ex. F) Applicant has no idea about the nature of this debt. (Tr. 37)
u	Credit card debt.	\$1,206	Unpaid. Applicant has no idea about the nature of this debt. (Tr. 37)
	Total debt listed in SOR	\$23,476	

## 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 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 (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 irresponsible, unconcerned, negligent, 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 21 accounts placed for collection totaling in excess of \$23,000. Ten of Applicant's debts were under \$250 each. 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;

(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.

In December 2003 Applicant moved to Puerto Rico. After moving there she did not pay attention to her credit, made no payments on any of her debts, and did not inform her creditors of her new location. At the time, she had 19 credit cards in addition to unpaid utility bills. She has paid none of her debts. She hired a credit consultant to help restore her credit. Her credit scores improved from 572, 554, and 532 in September 2008 to 678, 640, and 640 in November 2008. Six of the SOR debts were deleted from Applicant's November 2008 CBR. (Ex. F) However, Applicant admitted in her answer to the SOR owing five of the deleted debts: (SOR ¶¶ 1.g (\$1,271), 1.h

(\$1,271), 1.l (\$479), 1.m (\$244), and 1.n. (\$485) In December 2008, her credit allowed her to purchase a home.

AG ¶ 20(a) does not apply. Applicant had 19 credit card accounts when she left the country in 2003. She has not paid any of her debts. The behavior is recent and the accounts numerous. There is nothing in the record supporting her behavior is unlikely to recur except that she has purchased a home and her current mortgage payment, utility payments, and two credit cards are current. Leaving the country and not paying her bills does cast doubt on the individual's current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) does not apply. Her financial problems were not caused by factors beyond her control and she has not acted responsibility under the circumstances. Hiring a consultant to restore her credit is not the same as paying her past due obligations.

AG ¶ 20(c) and ¶ 20(d) do not apply. Applicant has paid none of the debts listed in the SOR even though ten of them are under \$250 each. She has not attended financial classes.

AG ¶ 20(e) does not apply. Applicant asserts she did not have service with a few of the creditors. But she has contacted none of the creditors to challenge the debts. AG ¶ 20(e) requires documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue, which Applicant failed to provide.

### **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. The debts incurred numerous credit card obligations and then failed to pay them when she left the country. She's been employed in her current job since February 2008 and has made no payments on her accounts placed for collection.

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 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, financial considerations:   AGAINST APPLICANT

Subparagraph 1.a – 1.u:                   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



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	Creditor	Amount	Current Status
1 a	Electric bill.	\$130	Unpaid. Applicant failed to pay her electric bill when she moved to Puerto Rico. (Tr. 32)
2 b	Allied/Direct TV	\$80	Unpaid. Denies having this cable service provider. (Tr. 32)
3 c	Palisades/AT&T	\$247	Unpaid. Denies having this telephone provider. (Tr. 33)
4 d	Palisades/Citibank furniture bill	\$6,446	Applicant asserts she paid the furniture debt, but provided no documentation. (Tr. 33)
5 e	Midland Credit MGMT Inc Fingerhut Credit Advantage.	\$2,282	Unpaid. \$2,324 collection account. Applicant has no idea about the nature of this debt and has not tried to contact the creditor.
6 f	WAMU/PRVDN Washmutual/Prov	\$1,814	Unpaid. \$1,974 charged off as bad debt. Credit limit was \$500. Applicant has no idea about the nature of this debt.
7 g	Living Fund/Sears admit	\$1,271	Unpaid. Applicant admits having the department store account and not paying it when she left the country. (Tr. 35) Deleted from November 2008 CBR.
8 h	Living Fund/Sears admit	\$1,271	Unpaid. Applicant admits having the department store account and not paying it when she left the country. (Tr. 35) Deleted from November 2008 CBR.
9 i	Zenith	\$55	Unpaid. Applicant has no idea about the nature of this debt.
10 j	Unifund	\$5,224	This is the furniture debt listed in SOR ¶ 1.d.
11 k	AFNI/Cingular	\$694	Unpaid. Balance \$694 is 120 days past due. Denies having telephone service with this provider. She has never contacted the creditor about this debt. (Tr. 35)

12 l	First Premier Admit credit card. Applicant had three credit cards with this lender. (Tr. 35)	\$479	Unpaid. Applicant failed to pay this debt after she left the country. (Tr. 36) Deleted from November 2008 CBR.
13 m	First Premier Admit credit card.	\$244	Unpaid. Applicant failed to pay this debt after she left the country. (Tr. 36) Deleted from November 2008 CBR.
14 n	First Premier Admit credit card.	\$485	Unpaid. Applicant failed to pay this debt after she left the country. (Tr. 36) Deleted from November 2008 CBR.
15 o	Bank First	\$673	Unpaid. Deleted from November 2008 CBR. Applicant has no idea about the nature of this debt. She has not attempted to contact this creditor. (Tr. 36)
16 p	GEMB/Walmart admit credit card debt.	\$235	Unpaid. Account purchased by another lender. Applicant failed to pay this debt after she left the country. (Tr. 36)
17 q	NCO Group FIN/medical	\$135	Unpaid. Applicant has no idea about the nature of this debt. She does not remember this debt. (Tr. 36)
18 r	Portfolio RC/Arrow Services LLC	\$161	Unpaid. Applicant has no idea about the nature of this debt.
19 s	Applicant admits purchasing musical CDs.	\$134	Unpaid.
20 t	Jefferson Cty Dept Social SE	\$210	Unpaid. This debt was verified in Applicant's November 2008 CBR. It is a \$210 collection account. (Ex. F) Applicant has no idea about the nature of this debt. (Tr. 37)
21 u	RSHK/CBSD	\$1,206	Unpaid. Applicant has no idea about the nature of this debt. (Tr. 37)
	Total debt listed in SOR	\$23,476.0 0	

New Millennium Bank      verified, no change