



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



In the matter of: )  
)  
) ISCR Case No. 08-07479  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 16, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the security concerns arising from financial considerations and personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 28, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).<sup>1</sup> On September 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

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<sup>1</sup> FORM Item 4.

dated January 2, 1992, as modified and revised.<sup>2</sup> The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied or revoked.

On October 14, 2008, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing (Item 2). A complete copy of the file of relevant material (FORM), dated December 23, 2008, was provided to her by letter dated December 29, 2008. Applicant signed the receipt for the DOHA transmittal letter on January 8, 2009. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. In her response to the FORM, Applicant submitted a one-page handwritten letter with explanations about some of the SOR allegations, and a notarized letter from her ex-husband. DOHA received her response to the FORM on February 23, 2009. The case was assigned to me on March 12, 2009.

### **Findings of Fact**

Applicant admitted the factual allegations in SOR ¶¶ 1.a and 1.i. She failed to admit or deny SOR ¶¶ 1.b through 1.h, and I considered all of them denied. She denied SOR ¶¶ 2.a through 2.c. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 50-year-old courier-driver working for a defense contractor.<sup>3</sup> She married her spouse in November 1970 and they were divorced in July 1999. She has five children, two daughters, ages 30 and 23 and three sons, ages 28, 21, and four. She received her real estate license in October 2006. Except for her real estate courses, she disclosed no other education.

Applicant has been continuously employed since March 2000. She worked for two government contractors during this period, first as a file clerk from June 2001 to October 2004, and then as a courier-driver from July 2005 to the present for her current employer (Item 4).

In her security clearance application, Applicant disclosed she filed for bankruptcy protection in August 2003. She also disclosed having one debt that was over 180 days delinquent at the time she completed the e-QIP. Her security clearance background

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<sup>2</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

<sup>3</sup> Item 4 (2007 e-QIP) is the source for the facts in this paragraph, unless stated otherwise.

investigation addressed her financial problems, and included the review of her March and August 2008 credit bureau reports (CBR).

In her answer to the SOR and in her response to the FORM, Applicant claimed not to have knowledge of the debts alleged in SOR ¶¶ 1.b and 1.c. She said she wanted to contact these creditors to resolve both debts and was not able to do so because she does not know who to contact. She presented no documentary or corroborating evidence of any efforts taken to resolve these debts.

Applicant's judgment alleged in SOR ¶ 1.d (entered against her in March 2003), was included in her December 2003 Chapter 7 bankruptcy discharge. Applicant stated she had to file for Chapter 7 bankruptcy protection in 2003, "because of the situation [her] (1999) divorce put [her] in" (answer to the SOR). She provided no further details or information about her financial problems before her bankruptcy filing or thereafter.

Concerning the state tax liens alleged in SOR ¶¶ 1.e through 1.h, Applicant stated she was not aware of them. She explained that over 10 years ago, she and her ex-husband owned a pharmacy business with a third partner. She was a stockholder and the vice president of the corporation, but she was never involved in the day-to-day operation of the business. In his answer to the SOR, Applicant first explained she did not disclose the liens in her e-QIP because her ex-husband assured her that the tax liens had been taken care of, and that they were more than seven years old and outside of the requested information. She then stated that she found out about the tax liens the first time she had to pull up her credit report (CBR) after her divorce (Item 3). It is not clear from her explanation when she looked at her CBRs and discovered the liens. It appears, however, it was sometime around 2003 when she filed her bankruptcy.

According to her ex-husband, most of the ten years they were in business, Applicant was a homemaker and took care of their kids. He averred Applicant had no knowledge the business owned any back taxes at the time it was dissolved. Her ex-husband claimed that their business partner paid all back taxes and was granted a waiver of penalties and interests. He and Applicant applied for a similar waiver last fall, and he expects the waiver will be granted in March-April 2009.<sup>4</sup>

Regarding SOR ¶ 1.i, Applicant admitted the debt. She explained she made the mistake of cosigning a car note for one of her daughters. Her daughter was unable to pay the car note, and they voluntarily turned in the car to the seller. The debt is outstanding. Applicant provided no explanation as to what she intends to do to resolve this debt.

SOR ¶¶ 2.a and 2.b, alleged that Applicant falsified question 27 of her January 2008 security clearance application (asking whether in the last seven years she had any liens filed against her for failing to pay taxes or other debts, or any unpaid judgments),

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<sup>4</sup> See Applicant's ex-husband statement, dated February 2009, included with her response to the FORM.

when she answer “No,” and failed to disclose the liens alleged in SOR ¶¶ 1.e through 1h, and the judgment alleged in SOR ¶ 1.d.

Applicant claimed she was not aware of the liens for various reasons: she was never involved in the day-to-day operation of the business; her ex-husband assured her that the tax liens had been taken care of; the liens were more than seven years old; and she found out about the tax liens the first time she had to pull up her credit report after her divorce. Applicant’s contradictory explanations fail to convincingly show she was not aware of the tax liens when she completed her January 2008 security clearance application. Concerning the judgment alleged in SOR ¶ 1.d, Applicant did not pay it. However, it was discharged as part of her 2003 bankruptcy.

Concerning SOR ¶ 2.c, I find that Applicant falsified question 28 of her security clearance application (asking whether in the last seven years she had been over 180 days delinquent on any debts or whether at the time she was 90 days delinquent on any debt), because she answer “No,” and failed to disclose the debts alleged in SOR ¶¶ 1.d through 1.h.<sup>5</sup> As previously discussed, Applicant’s evidence is insufficient to show she had no knowledge of the alleged debts, tax liens, and judgment at the time she submitted her e-QIP. Moreover, Applicant’s contradictory explanations are not credible.

Applicant considers herself to be an honest, hard working person, with high integrity. She averred she did not and would not lie about anything.

### **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 controlling 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.

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<sup>5</sup> Regarding SOR ¶ 1.b, Applicant’s last action on this debt occurred in June 2004, and her last action on SOR ¶ 1.c occurred in 2001 (CBRs). It is possible she was not aware of these debts, or that the debts were included in her 2003 bankruptcy.

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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”<sup>6</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>7</sup>

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

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<sup>6</sup> See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>7</sup> “The administrative judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

## Analysis

### Guideline F, Financial Considerations

Under Guideline F, the security concern is that an Applicant's 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. AG ¶ 18.

The SOR alleges eight delinquent/charged off accounts, a judgment, and tax liens totaling approximately \$47,583. Except for her 2003 bankruptcy, Applicant presented no evidence of efforts to pay or resolve the alleged financial obligations, many of which have been delinquent for many years. I find that SOR ¶¶ 1.b-1.d were probably included in her 2003 bankruptcy discharge. Considering the sparse record evidence, I find that Applicant's delinquent debts listed in SOR ¶¶ 1.e-1.i remain outstanding. AG ¶ 19(a): inability or unwillingness to satisfy debts; and, AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant's sparse favorable evidence fails to raise the full applicability of any mitigating condition. Her financial problems are ongoing and her evidence fails to show they occurred under such circumstances that it is unlikely that they will recur. Her financial problems and her failure to fully address the security concerns cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence that could establish circumstances beyond her control contributing to her inability to pay his debts, i.e., her divorce, and being a single mother of five children. AG ¶ 20(b) applies, but only partially. Applicant's evidence is not sufficient to show how her 1999 divorce continues to impact her current financial situation, and whether she acted responsibly under the circumstances. Although she has been consistently employed since March 2000, she presented little evidence of effort to contact creditors or to resolve her debts beyond her 2003 bankruptcy from the day she acquired the debts to the day he answered the FORM.

AG ¶ 20(c) does not apply because, there are no clear indications that her financial problems are being resolved or are under control. Her inability to pay even small debts show she was financially overextended. Considering Applicant substantial debt, she also failed to establish that she is no longer financially overextended. She also failed to present any evidence that she received financial counseling and that her financial problems are not likely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

### **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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature, well trained woman, and a good mother. She has been successful working for two defense contractors during a combined period of approximately six and one-half years. There is no evidence of any security violation, or that she is not a good, reliable and competent worker. These factors show some responsibility and mitigation.

On the other hand, there are more substantial circumstances that weigh against Applicant in the whole person analysis such as the lack of credibility of her conflicting explanations. Also, when she completed her security clearance application, she deliberately failed to disclose her full financial situation. Considering the number and aggregate value of debts and liens, Applicant knew or should have known of her debts and liens at the time she completed her security clearance application.

Considering the record as a whole, Applicant's financial behavior and personal conduct raise doubt about her ability to have access to classified information. "Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government's compelling interest in security by denying or revoking [a] clearance." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990).

For all these reasons, I conclude Applicant failed to mitigate 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
Subparagraphs 1.a - 1.d:	For Applicant
Subparagraphs 1.e - 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a & 2.c:	Against Applicant
Subparagraph 2.b:	For Applicant



## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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JUAN J. RIVERA  
Administrative Judge