



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-08220
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: *Pro Se*

June 22, 2009

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SF-86) dated August 1, 2007. On December 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 for SORs issued after September 1, 2006.

In an undated response, Applicant admitted 13 of the 19 allegations noted in the SOR and requested a hearing. The matter was referred to DOHA on March 4, 2009, and the case was assigned to me that day. Department Counsel and Applicant agreed to a hearing date of April 2, 2009. A notice of hearing was issued to that effect on March 16, 2009. I convened the hearing as scheduled. Applicant gave testimony and offered seven documents which were admitted without objection as exhibits (Exs.) A-G.

Department Counsel offered four documents admitted as Exs. 1-4 without objection. The record was held open for two weeks to permit Applicant to supplement the record. Five additional documents were accepted into the record without objection as Exs. H-L on April 17, 2009. The transcript (Tr.) of the proceeding was received that same day and the record was closed. Based upon a review of the testimony, submissions, and exhibits, I find Applicant met her burden regarding the security concerns raised. Security clearance is granted.

### **Findings of Fact**

Applicant is a 28-year-old performance enhancement specialist for a defense contractor. She is currently completing a doctorate in sport and exercise psychology. Married, she has a two-year-old son and is soon expecting a second child.

In 1998, at age 17, Applicant began college with the hopes of ultimately earning a doctorate in sports psychology. Although a gifted student, her family could not afford to send her to college. Consequently, she relied on student loans and various jobs to finance her education. Mindful of cost and focused on attaining a doctorate, she completed her undergraduate degree in two-and-a-half years. By working full-time during her master's degree program over a three-year period, she kept abreast of her past debt and helped defray her current academic costs. She also invested in a townhouse as an alternative to paying rent. When she moved from the area to pursue her doctorate in 2004, she sold the property for a profit and paid off her credit cards.

As a doctoral student, Applicant received a research assistantship which paid \$10,000 per school year for 20 hours of work per week. Her future husband quit school in order to work and help pay for her education. Together, they purchased a foreclosure property in which to live. The home was bought for far less than its worth, but it needed repairs and new appliances they had not anticipated. Consequently, they got "into a little bit of a hole that unfortunately [they] weren't really able to get out of as far as debt."<sup>1</sup>

In 2005, Applicant's fiancée was promoted to retail management. The extra income helped with current obligations, but little was accomplished toward older debts.<sup>2</sup> Applicant accelerated her studies in order to join the work force as soon as possible.

Applicant and her fiancée married in the summer of 2006. She finished her doctoral course work in May 2007, around the time the couple had their son. Free from classes, she immediately set out to find a job. She applied for many positions. One was for a lucrative position for which she thought she was under-qualified, but was her "dream job."<sup>3</sup> She was ultimately offered the position. The recruiters were so impressed

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<sup>1</sup> Tr. 16.

<sup>2</sup> Tr. 17.

<sup>3</sup> Tr. 18.

with her, they gave her the location she requested and considered her their top candidate. They continue to be impressed with her performance, promoting her to higher levels of responsibility. In August 2007, Applicant and her husband put their home on the market and moved to an area between their places of employment, requiring both of them to commute an hour each way. Real estate sales were sluggish and progress on the home sale dragged on. Her new job helped her to start addressing her student loans, which became due in December 2008 despite the fact she was still qualified as a doctoral student and despite her request for forbearance based on her finances.<sup>4</sup>

In April 2008, their house finally sold. Applicant's husband accepted a lower paying job in order to shorten his commute and save commuting costs. With both spouses working, they quickly started addressing their delinquent debts.<sup>5</sup> Realizing they needed help in this task, she sought financial counseling advice from a nearby military installation. Applicant found this assistance to be "a lot of benefit."<sup>6</sup> She also pursued assistance through a debt counseling service. She pays the service \$186 every two weeks and the service works out settlements with some of her creditors.<sup>7</sup> Despite these efforts, Applicant feels she needs more guidance and is currently seeking additional counseling to tackle her remaining debts.<sup>8</sup>

At issue in the SOR are 19 debts, set forth in allegations ¶¶ 1.a through 1.s. Applicant previously satisfied the debts identified at ¶¶ 1.b, 1.e, 1.f, and 1.s, representing about \$3,000.<sup>9</sup> Since the hearing, she submitted evidence that she has been making payments on the \$2,164 debt noted in allegation ¶ 1.r.<sup>10</sup> The approximately \$35,000 in student loans noted in allegations ¶¶ 1.g, 1.h, 1.i, 1.j, and 1.k were recently consolidated and are in repayment.<sup>11</sup> Allegations ¶¶ 1.c and 1.q were

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<sup>4</sup> Ex. 4 (Credit report, dated Nov. 14, 2008) at 2-3; Ex. 2 (Interrogatories) at 11. Applicant testified that her school incorrectly reported her as having graduated, thus triggering her student loans prematurely. Tr. 51-53. Otherwise, student loans are generally deferred until six months following withdrawal or graduation and forbearance can generally be requested for financial hardship. See [www.salliemae.com](http://www.salliemae.com) (Apr. 2, 2009).

<sup>5</sup> Tr. 21.

<sup>6</sup> Tr. 26.

<sup>7</sup> Tr. 22.

<sup>8</sup> Tr. 26.

<sup>9</sup> Tr. 27-28; Applicant's Answer to the SOR; Ex. F (Statement, dated Mar. 10, 2009). Note that allegation 1.f and 1.s are duplicate entries. Tr. 28.

<sup>10</sup> Ex. H (Applicant's narrative, dated Apr. 16, 2009); Ex. L (Bank statements).

<sup>11</sup> Tr. 29-30; Ex. J (Direct loans letter, dated Apr. 1, 2009); Ex. 1 (Loan facilitator payment history). See <http://www.finaid.org/loans/> (Jun. 17, 2009), noting the average cumulative debt for undergraduate through doctoral degree is approximately \$53,500.

determined to be duplicates.<sup>12</sup> Remaining unaddressed are the debts noted in SOR allegations ¶¶ 1.a, 1.c, 1.d, and 1.l – 1.p, representing approximately \$21,000.

Applicant's field is highly specialized and potentially very lucrative. By the beginning of 2009, she was earning in excess of \$60,000 per year.<sup>13</sup> At work, Applicant receives commendable appraisals. She was recommended for, and received, a competitive certification appropriate to her field. Her supervisor fully recommends her for a security clearance, noting her character and both her moral and ethical integrity.<sup>14</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. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>15</sup> The burden of proof is something less than a preponderance of evidence.<sup>16</sup> The ultimate burden of persuasion is on the applicant.<sup>17</sup>

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<sup>12</sup> Tr. 28.

<sup>13</sup> Ex. 2 (Interrogatories) at 4.

<sup>14</sup> Ex. E (Recommendation, dated Feb. 10, 2009).

<sup>15</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>16</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>17</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>18</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>19</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>20</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## Analysis

### Guideline F – Financial Considerations

Under Guideline F, failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.<sup>21</sup> The Directive sets out several potentially disqualifying conditions under this guideline.

Applicant acquired a number of delinquent debts as she matriculated her way from undergraduate student to doctoral candidate. She admits a number of those debts

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Executive Order 10865 § 7.

<sup>21</sup> Revised Adjudicative Guideline (AG) ¶ 18.

remain unaddressed. Such facts are sufficient to give rise to Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and FC DC AG ¶ 9(c) (“a history of not meeting financial obligations”) apply. With such conditions raised, the burden shifts to Appellant to overcome the case against her and mitigate security concerns.

In 2004, Applicant and her fiancée bought a foreclosure property at far below its value, but it turned into a “money pit” fixing the condition of the house and updating appliances. Moreover, payment on her student loans became due despite the fact she had yet to finish her doctoral program. Additionally, their home took a protracted period of time to sell in a sour economy. Throughout this time, she and her husband tried to offset their debt through their paychecks and their real estate profits.<sup>22</sup> Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (“the conditions that resulted in the behavior 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”) applies.

Today, approximately two-thirds of Applicant’s delinquent debt is paid or in repayment. This includes her student loans, which were prematurely designated for repayment despite her current student status and finances. They represent over half of her total debt.

Today, the noble pursuit of higher education is a costly investment few can attain without acquiring significant debt. Here, Applicant’s expedited doctoral pursuit was the main reason she acquired her debt. Throughout her graduate studies, she and her husband diligently tried to minimize their debts. Given the cost of higher education, however, debt was accepted as inevitable. With the exception of completing her doctoral thesis, her formal education is now complete. She is now in a position to move ahead and reap the benefits of her specialized training and diligent studies with a lucrative job. Meanwhile, her husband works full-time, adding to the family coffers. Given these circumstances, FC MC AG ¶ 20(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”) applies. Moreover, based on Applicant’s testimony, advice from financial counselors and from the credit service have aided her in addressing some of her debts and in consolidating her student loans. Consequently, FC MC ¶ 20(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”) and FC MC ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) both apply. No other mitigating conditions apply.

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<sup>22</sup> Additionally, Applicant’s claim that her student loans were accelerated for payment prematurely, prior to her graduation and despite her request for forbearance, is generally consistent with the federal government student loan program.

## 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 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, as well as the "whole person" factors. Applicant is a young wife and mother who is uniquely goal oriented. At 17, she independently commenced a self-financed educational path toward a doctoral degree. She completed her undergraduate degree in only 5 semesters, then worked full-time while earning her master's degree. She and her husband toiled through her doctoral program with a singular goal of preparing her for a lucrative position in a highly specialized field. Earmarks of her achievement include her recent attainment of her "dream job" and her ability to have kept her educational debt to far below the national cumulative average of \$53,500 for undergraduate through doctoral matriculation.

Today in that dream position, Applicant makes a lucrative salary augmented by her husband's own income. Together, they started addressing her delinquent debt before receipt of the December 2008 SOR. She arranged to have her student loans consolidated for easier repayment, which she has already commenced. She solicited assistance from a debt counselor who has helped address some accounts through her bi-weekly payments to that entity. She received financial counseling advice and recognizes she needs to continue with more formal debt counseling to help her address the remainder of her delinquent accounts. Such proactive efforts are consistent with her past efforts, where she demonstrated ingenuity and diligence in her methods of addressing her academic debt. For example, she worked full-time to catch up on some of her undergraduate debt and help finance her master's degree. She also invested in a townhouse in lieu of paying rent, leaving her able to sell that property for a profit when she moved to begin her doctoral program. That profit was used to address the credit card debt she had acquired during her master's program.

The delinquent debt at issue is not the result of “poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations” nor does it serve as the best commentary on her character traits, including her “reliability, trustworthiness and ability to protect classified information.”<sup>23</sup> She has not resorted to bankruptcy, has expressed the intent to honor her debts, none of her debts appear to be frivolous, and her lifestyle is not extravagant. The surrounding facts clearly show that this debt was incurred as, and calculated to be, a temporary measure to help finance her matriculation in a specialized field.<sup>24</sup> There is no apparent potential for pressure, coercion, exploitation, or duress based on this debt. While the debt is high, the student loans are relatively modest for educational tracks leading to the doctoral level.<sup>25</sup> The unaddressed debt, while high, is not disproportionate given her years of study and her current field of practice. Having made good on her obligations in the past, there is little reason to believe she and her husband cannot again catch up on their most recent – and final – round of educationally related obligations.<sup>26</sup> This is especially true given the progress made between her receipt of the SOR in late December 2008 through March 2009 and her current pursuit of additional financial guidance. With security concerns regarding her finances mitigated, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

### 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant

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<sup>23</sup> AG ¶ 2(a)(8).

<sup>24</sup> AG ¶ 2(a)(1)-(3), (7).

<sup>25</sup> AG ¶ 2(a)(1).

<sup>26</sup> AG ¶ 2(a)(9).



Subparagraph 1.m:	For Applicant
Subparagraph 1.n	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	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 a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge