



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 08-08445  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nichole Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

July 22, 2009

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government's security concerns raised under Guideline F, Financial Considerations. Clearance is denied.

On October 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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.

On November 13, 2008, Applicant answered the SOR, denying all of the allegations except SOR subparagraphs 1.s and 1.t, and requested an administrative determination. On February 13, 2009, Department Counsel prepared a File of Relevant Materials (FORM), and DOHA mailed it to Applicant. She received it on February 18,

2009, along with instructions to file any objections or supplementary information within 30 days. Applicant did not respond, and the case was assigned to me on May 15, 2009.

### **Procedural Ruling**

SOR subparagraphs 1.g and 1.k fail to identify specific creditors to whom Applicant allegedly is indebted. Although an SOR does not have to satisfy the strict requirements of a criminal indictment, it must still place an applicant on adequate notice of the allegations so that she may have a reasonable opportunity to respond and prepare a defense.<sup>1</sup> Subparagraphs 1.g and 1.k. do not meet this minimum threshold; therefore, I conclude that they are not justiciable.

### **Evidentiary Rulings**

1. The government must produce evidence to establish facts alleged in the SOR that have been controverted (Directive ¶ E3.1.14). Here, the only evidence the government provided to support SOR subparagraphs 1.a, 1.c through 1.f, 1.i, 1.j, 1.m, 1.n, 1.p, and 1.hh are credit reports noting that the status of these debts was in dispute (see *generally*, Items 5 and 6). These documents fail to satisfy the government's burden of production. Consequently, I have resolved the aforementioned subparagraphs in Applicant's favor, and will not consider them further in the Decision.

2. SOR subparagraph 1.q alleges a delinquent account for \$519. The credit bureau report the government provides lists this debt multiple times. Some of the listings note that Applicant has satisfied it (*Compare* Item 5 at 3 with Item 6 at 19). The government has not satisfied its initial burden of production. I have resolved SOR subparagraph 1.q in Applicant's favor.

### **Findings of Fact**

Applicant is a 41-year-old, married woman with five children ranging in age from 16 to 27. A previous marriage ended in divorce in 2002. She has been married to her current husband since 2008 (Item 4 at 15). Her educational background is unknown from the record. Since at least 2000, she has worked as a professional driver (Item 4 at 5).

As of April 2008, Applicant was indebted to 20 creditors on delinquent accounts totalling approximately \$9,600 (Items 5 and 6). By May 2008, Applicant had satisfied SOR subparagraphs 1.s, an automobile loan for approximate \$1,000, and 1.t, a \$132 medical bill (Item 2 at 5-7). She contends that she has either contacted, or has attempted to contact all of the other creditors, and that her ex-husband accrued many of the debts. As for the debts that are her responsibility, Applicant contends she is negotiating payment plans. She provided no documentary evidence supporting these contentions.

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<sup>1</sup> ISCR Case No. 03-07826 (App. Bd. June 17, 2005 at 3).

In Applicant's Answer, she alluded to some medical problems (Item 2 at 1). She did not elaborate upon whether these problems contributed to the accrual of her delinquencies.

## **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 overarching adjudicative goal is a fair, impartial and commonsense 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."

The government must present evidence to establish controverted facts alleged in the SOR (Directive ¶ E3.1.14, as discussed in the Evidentiary Rulings Section, *supra*). 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.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, "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" (AG ¶ 18). Applicant satisfied SOR subparagraphs 1.s and 1.t. I conclude they no longer represent a security concern. The remaining delinquencies, (SOR subparagraphs 1.b, 1.h, 1.i, 1.o, 1.p, 1.r, 1.u through 1.gg, and 1.ii) however, trigger the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant deserves credit for satisfying the two debts she admitted. Her efforts to satisfy or resolve the others, however, appear to have been limited to phone calls. She offered no evidence to support her contention that her ex-husband accrued some of the debts, nor did she offer any evidence to support her contention that she was arranging payment plans for the other SOR debts. Absent any documentation regarding these remaining delinquencies, I conclude that none of the mitigating conditions 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."

Absent sufficient proof that Applicant has rehabilitated her finances, the likelihood that her financial problems will continue is unacceptably high. Upon considering this case in the context of the whole person concept, I conclude Applicant's troubled finances continue to render her a security risk, as she has not shown any significant improvement in her debt problems.

### **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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c - 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraphs 1.i - 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m - 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p - 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant
Subparagraphs 1.s - 1.t:	For Applicant
Subparagraphs 1.u - 1.gg:	Against Applicant

Subparagraph 1.hh:  
Subparagraph 1.ii:

For Applicant  
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.

MARC E. CURRY  
Administrative Judge