



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-08635 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: *Pro Se*

April 24, 2009

**Decision**

---

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On January 14, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines 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 answered the SOR in writing on February 17, 2009, and requested a hearing before an administrative judge. The case was assigned to me on March 9, 2009. DOHA issued a Notice of Hearing on March 19, 2009, and I convened the hearing as scheduled on April 13, 2009. Department Counsel offered Exhibits (GE) 1 through 5. Applicant did not object and they were admitted. Applicant and one witness testified.

Applicant offered Exhibits (AE) A through F. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on April 22, 2009.

### **Findings of Fact**

Applicant admissions to all of the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 32-year-old single mother of three children, ages 13, 6 and 4. She has a high school diploma and has earned approximately 15 college credits. She has worked for her present employer, a federal contractor, as a document management specialist, since November 2006. Approximately a year ago she received a pay increase. She receives no child support from the father of her 13 year old because he is in jail. She receives sporadic child support from the father of her other two children, but he spent last year in jail for failing to pay child support for a different child.<sup>1</sup>

Applicant was unemployed from April 2006 to October 2006. She also experienced a period of unemployment in 2002 to 2003 when she was working for a government contractor and they lost the contract. It is not known how many months she was unemployed. From 1999 to 2004 she first worked in a temporary position for her employer before she was hired in a permanent position.<sup>2</sup>

Appellant has had difficulty paying her financial obligations because of the lack of consistent child support payments and the periods of unemployment. She stated she is always falling behind in her payments because it is hard to take care of her family and expenses and she was not making enough money to adequately do both. For a period of time the father of her two younger children lived with her and helped with the expenses. He lost his job and she supported him for a period of time. Sometimes her parents and family members help her financially.<sup>3</sup>

Appellant has approximately \$18,170 in delinquent debt she has accumulated since as early as 2001. On February 27, 2009, she entered into a debt management agreement and consolidated certain delinquent debts. She originally was to pay \$243 a month in the plan, but the amount was modified to \$333 a month beginning with her April 2009 payment. She stated she made one payment of \$243 in March 2009 on this plan.<sup>4</sup> The information below describes which creditors are and are not included in this plan.

---

<sup>1</sup> Tr. 29-37.

<sup>2</sup> Tr. 39-45; AE E.

<sup>3</sup> Tr. 37-38, 45-49.

<sup>4</sup> Tr. 50-53; AE A.

The debt in SOR ¶ 1.a is a credit card debt (\$1,506) that is in collection and has not been paid in a couple of years. This debt is included in the debt management plan.<sup>5</sup>

The debt in SOR ¶ 1.b is a credit card debt (\$437). The account is closed and is not included in the debt management plan. Applicant stated she has a separate arrangement with the creditor and is paying \$50 a month on the debt. She stated that she made her first payment in March 2009, but did not provide any documented proof of her payment.<sup>6</sup>

The debt in SOR ¶ 1.c (\$825) is for on-line classes Applicant took through a university. She participated in the classes in March 2008. She has not made any payments toward this debt, but stated she planned on paying the debt. She stated she will pay \$50 a payday toward repayment. It is not included in her debt management plan.<sup>7</sup>

The debts in SOR ¶¶ 1.d and 1.f are credit card debts (\$1,035, \$727). Applicant stated that she has not made any payments on these debts in a couple of years because she did not make enough money. She has included these two debts in her debt management plan.<sup>8</sup>

The debt in SOR 1.e is a store credit card (\$550). The account closed last year and this debt is included in Applicant's debt management plan.<sup>9</sup>

The debt in SOR ¶ 1.g is a debt incurred for on-line classes (\$4,204) that Applicant took approximately four years ago. She did not finish the courses because she started a job. She made a couple small payments of \$30, but did not recall how many. This debt is included in her debt management plan.<sup>10</sup>

The debt in SOR ¶ 1.h is a debt for telephone services (\$433). This debt is not included in her debt management program. Applicant stated she contacted the creditor but does not have an agreement with them. She will wait to resolve this debt until after she pays her other debts.<sup>11</sup>

---

<sup>5</sup> Tr. 53-58; AE A.

<sup>6</sup> Tr. 56-59.

<sup>7</sup> Tr. 59-65.

<sup>8</sup> Tr. 66-69; AE A and C.

<sup>9</sup> Tr.70, 74-76; AE A.

<sup>10</sup> Tr. 66-74; AE A and D.

<sup>11</sup> Tr. 76-78.

The debts in SOR ¶¶ 1.i and 1.j are medical debts (\$682 and \$62). Applicant has not contacted the creditor, but has included these debts in her debt management plan.<sup>12</sup>

The debt in SOR ¶ 1.k is a store credit card (\$461). It is not included in the debt management plan. Applicant has not made arrangements to pay this debt.<sup>13</sup>

The debt in SOR ¶ 1.l is for on-line classes (\$1,705) that Applicant believes she took sometime in 2001. She has never made any payments on this debt prior to including it in her debt management plan.<sup>14</sup>

The debt in SOR ¶ 1.m is a credit card debt (\$381). Applicant has not made any payments on the debt and has not contacted the creditor. It is not included in her debt management plan.<sup>15</sup>

The debt in SOR ¶ 1.n is a debt to a library (\$41) for a lost book. The debt is several years old. She contacted the collection agency and was told she could go to the library and pay the debt. She has not paid this debt.<sup>16</sup>

The debt in SOR 1.o is a debt for cell phone services (\$253). Applicant stated she contacted the creditor and made arrangements to pay the debt, but has not made any payments as of yet. The debt is three years old.<sup>17</sup>

The debt in SOR ¶ 1.p is a debt for an on-line school (\$4,868) that Applicant participated in. She can not remember what year she incurred this debt and stated she has never paid anything on the debt.

Applicant is signed up to take two classes in the next couple of months. She stated her employer is going to pay for these classes.<sup>18</sup>

Applicant provided as part of her debt management plan a budget analysis worksheet. The worksheet lists her income and expenses. It shows that at the end of the month she has a remaining balance of \$58, after making the \$243 payment into the program. However, Applicant's payment scheduled has changed to \$333 a month. When asked how she would make this payment based on her budget Applicant

---

<sup>12</sup> Tr. 78-81; AE A.

<sup>13</sup> Tr. 81-82.

<sup>14</sup> Tr. 82-84.

<sup>15</sup> Tr. 84-85.

<sup>16</sup> Tr. 85-86.

<sup>17</sup> Tr. 86-87.

<sup>18</sup> Tr. 87-88; AE F.

explained she was reducing her other expenses, such as day care and her direct television contract. Not included in her budget were any of the payments she stated she was making outside of the plan or any of the payments she stated she intended to start making.<sup>19</sup>

Applicant was asked if she pays her taxes on time and she stated she did and received a refund of \$3,000 to \$4,000 from the federal government. Some of this money was involuntarily garnished due to an overpayment in foot stamp benefits she received. She was entitled to a state refund of approximately \$1,500, but it was also garnished. She was unable to explain why the state garnished her refund. After the garnishment she received about \$3,000 from her federal tax refund. She used this money to pay bills and to repay outstanding personal loans and take care of needed repairs on her home. Her home is owned by her parents and she pays them rent. She stated she fixes things in the home because she plans on buying it.<sup>20</sup>

Applicant stated she intends on paying all of her outstanding debts. This procedure has been a “wake up” call to her. Due to her low income she has not been able to pay her bills, but her family was her top priority. She believes given an opportunity to prove herself she can show she is trustworthy and can correct her past problems. She has not sought or received any financial counseling.<sup>21</sup>

A coworker of Applicant’s testified on her behalf. She has observed Applicant advance in her job and that she was entrusted with more responsibility. She believes Applicant has a strong work ethic and is reliable. She does not believe Applicant lives beyond her means. She does not socialize with Applicant outside of work.<sup>22</sup>

I have considered all of the character statements provided by Applicant. Those providing statements consider Applicant to be conscientious to her children, family, friends and coworkers. She does whatever is necessary to get the job done. She is trusted by her employer. She is considered dedicated and reliable. She demonstrates honesty, teamwork and a willingness to learn new tasks. Applicant is considered loyal and devoted and is highly respected. She is trusted in matters of national security.<sup>23</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

---

<sup>19</sup> Tr. 90-95, 103-106.

<sup>20</sup> Tr. 95-102.

<sup>21</sup> Tr. 102.

<sup>22</sup> Tr. 19-28.

<sup>23</sup> AE B.

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

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. I have considered all of them and especially considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ration, and/or other financial analysis

Applicant had numerous delinquent debts that have remained unpaid for years. She recently set up a payment plan for some of the debts, however it appears based on her budget that it will be difficult for her to realistically maintain the plan. Not all of her debts are included in the payment plan. She stated she is making payments on some other debts, but they were not in her budget. Despite Applicant's financial difficulties she incurred significant debts with four on-line educational programs, dating as far back as 2001. She would incur new debts for on-line courses when she had not made any effort to pay the ones she already had. I find all of the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions and especially considered the following under 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

(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 individual 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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's behavior is recent because she has delinquent debts that remain unpaid and are not included in her payment plan. It does not appear that with the budget she presented that the plan will likely be successful. Applicant did not take any action on her delinquent debts until her security clearance became an issue. I find her conduct casts doubt on her reliability, trustworthiness and good judgment and therefore (a) does not apply.

Applicant has had financial problems for a significant amount of time. Some of it is attributable to not receiving consistent child support and periods of unemployment. These were conditions that were beyond her control. Applicant has been working steadily since November 2006 and last year received a pay raise. She did not take any action on the delinquent debts raised in the SOR until last month when she entered a debt management program. She has made only one payment. Applicant incurred approximately \$9,945 in debts for on-line classes that she could not afford. She took the classes and never paid for them. She was aware of her limited income and inability to pay her bills, yet she incurred these additional expenses. She continued to incur new debts for on-line courses when she had not repaid any of the previous debts. Seeking to expand her opportunities through education is a positive step. However, neglecting to reimburse those institutions providing the education is not acting responsibly. Therefore, I find that mitigating condition (b) only partially applies.

Applicant is now participating in a debt management program and is paying some of her delinquent debts. It is too early to determine whether based on her budget she will be able to maintain the payments required of this plan. She also has other debts that she stated she is either paying or intends to start paying, but failed to provide documentation of her efforts. In addition, these prospective payments were not included in her budget and therefore it is unclear how they will be maintained. Applicant has not had any financial counseling. Under the facts presented and the circumstances of this case, I do not find there are clear indications the problem is being resolved; is under control; or that there are good faith efforts to resolve all of her debts. Therefore, I find mitigating conditions (c) and (d) do not 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a single mother with three children she supports. Those whom she works with provided praise for her work. She has had periods of underemployment and unemployment. However, she has been employed since 2006 and received a pay raise in the last year. Although some of her debts may be for living expenses, she has incurred approximately \$9,945 in debts for educational courses she took and never paid for. Despite knowing she had not paid for one course, she took others and again did not pay for them. She did not attempt to pay her delinquent debts on the SOR until her security clearance became an issue. Based on the budget she provided it appears unlikely she will be able to maintain the payment plan she has agreed to. She has made only one payment into the plan. She does not have a consistent history of regular payments into this plan and therefore it is too early to conclude she is committed to reducing her delinquent debt. 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 failed to mitigate the security concerns arising from 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 |
| Subparagraphs 1.a-1.p:    | Against Applicant |

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly in the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge