



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 08-09621  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 23, 2009

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted her Security Clearance Application (SF 86), on June 9, 2008. On November 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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.

Applicant acknowledged receipt of the SOR on November 21, 2008. (Item 3) She submitted a notarized, written response to the SOR allegations dated December 8, 2008, and requested a decision on the written record in lieu of a hearing. (Item 4)

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on January 27, 2009. Applicant received the FORM on February 3, 2009. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She timely submitted a written response which was received on March 5, 2009. DOHA assigned this case to me on March 12, 2009. The government submitted seven exhibits, which have been marked as Items 1-7 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4. Her response to the FORM is admitted into evidence.

### **Findings of Fact**

In her Answer to the SOR, dated December 8, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.u of the SOR, with explanations. (Item 4) She also provided additional information to support her request for eligibility for a security clearance. *Id.*

Applicant, who is 36 years old, works as technical writer for a Department of Defense contractor. She has held this full time job since May 2008. She graduated from college with a Bachelor of Arts degree in December 2007. (Item 5.)

Applicant married her first husband in June 1994 and they divorced in November 1999. She has a 13 year-old son from this marriage, who lives with his father. She married her second husband in July 2005. They recently divorced. They have a two year-old son, who lives with Applicant. Applicant also has two step-children, ages 15 and 11. Applicant does not receive any financial support from her estranged husband. (Items 4 and 5; Response to FORM)

Applicant enrolled in college in 1999. Over the next eight years, she worked part-time and attended school either part-time or full-time. Many jobs did not pay a living wage. In May 2005, while a student, doctors diagnosed Applicant with an incurable, life-threatening illness. She did not have medical insurance and incurred significant medical bills as she began medical treatment. Through her medical treatment, her illness is being medically managed. She will require medical treatment for the rest of her life. (Item 5; Response to FORM)

The record indicates numerous unpaid debts, totaling more than \$55,000. These debts accrued over the last seven years. Many unpaid debts are medical bills, totaling \$8,825. Six of the debts are five years or more older.<sup>1</sup> These old debts total \$7,482, including \$1,536 in medical bills. The October 9, 2008 credit report shows that a car

---

<sup>1</sup>The State statute of limitations for open accounts is three years (A..C. 6-2-37) and for sale of goods under the Uniform Commercial Code is four years (A.C. 7-2-725).

owned by Applicant and her second husband was repossessed. In her response to the SOR, Applicant acknowledges that she still owes \$22,850 on this debt. In light of Applicant's admission, I find that this is the amount owed on the debt listed in allegation 1.n. (Items 1, 4, 6, 7)

In December 2008, Applicant retained a credit counseling service. This company indicates that it will help her develop a budget and resolve her old debts, including eliminating debts which are not hers. (Item 4) In her response to the FORM, Applicant advises that she now has a budget and a repayment plan. She also states that she is in the process of contacting her creditors and in a forbearance plan on her education debt. (Item 4; Response to FORM) She has not provided a copy of her budget, her letters to creditors, her repayment plan, her forbearance plan, or evidence of payments made. The record does not contain any evidence which shows Applicant's current earnings and current expenses.

### **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**

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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated significant delinquent debt over the last seven years that remains unpaid. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” As Applicant’s debts are recent this potentially mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating where “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.” As noted above, some of Applicant’s financial problems arose from her serious medical problems, her recent divorce, and periods of under employment or unemployment. These factors are beyond Applicant’s control. For this mitigating condition to fully apply, Applicant must establish that she acted responsibly in identifying and resolving these debts. The record lacks substantial evidence that Applicant is resolving these debts. I find this mitigating condition has partial applicability.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant retained a credit counseling service, which indicated the services it will provide. Applicant advises that she has a budget and repayment plan for her debts, but has not provided any documentary evidence that her debts are in a payment plan and her finances are under control. Likewise, she has not provided any documentary evidence that she is making payments under her payment plan and on her education debt. The record lacks evidence that her debts are being resolved and that she is financially sound. I conclude that these potentially mitigating conditions have minimal application in this case. Mitigating conditions AG ¶¶ 20(e) and 20(f) are not applicable.

### **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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both good and bad. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is shown. A determination of an applicant’s eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of

record to decide if a nexus exists between established facts and a legitimate security concern.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant accumulated debt partly due to circumstances beyond her control, including health problems, sporadic employment, under employment, and her divorce. (See AG ¶ 2(a)(2).) Since her debts continue to accumulate, Applicant has not demonstrated a significant change in her financial management.

While six of her debts are barred from collection under the statute of limitations, she has many newer debts that she has not paid. She recently sought help from a credit counseling service with managing her numerous and voluminous debts. She is just beginning the process of rehabilitating her credit and her finances. She has not yet demonstrated a track record of compliance with the payment plan she has developed and compliance with her budget. Given the current status of her debts and the lack of evidence that she has started to resolve her debts, a security concern exists. Her current debt levels are significant. As the record lacks evidence showing Applicant's efforts to manage her finances, she has not established mitigation.

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 finances.

### **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.e:	Against Applicant
Subparagraphs 1.f-1.i:	For Applicant
Subparagraphs 1.j:	Against Applicant
Subparagraphs 1.k:	For Applicant
Subparagraphs 1.l-1.n:	Against Applicant
Subparagraphs 1.o:	For Applicant
Subparagraphs 1.p-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.

---

MARY E. HENRY  
Administrative Judge