



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 08-09637
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James Duffy, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds. Esquire

August 14, 2009

**Decision**

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted her Security Clearance Application (SCA) on June 9, 2008. On December 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her answer to the SOR on January 20, 2009, and requested a hearing before an administrative judge. DOHA issued a notice of hearing on March 20, 2009 for a hearing on April 8, 2009. The hearing was held as scheduled. At the hearing, three exhibits (GE 1 through 3) were admitted into evidence without objection to support the government's case. Applicant testified and submitted fourteen exhibits (AE A-AE N). DOHA received the transcript and the record closed on April 15, 2009.

### **Findings of Fact**

The SOR contains eight allegations under the financial considerations guideline. Applicant denied the allegations. The total amount of debt as of the date of the SOR was \$37,282. Her answers are incorporated into the following factual findings.

Applicant is 44 years old. She has been married since July 2001. She has a 22-year-old stepchild. She has been employed by her current employer since July 2005 (GE 1). According to Section 26 of her SCA, she had a security clearance while working for a previous employer in 1985 (*Id.*). She seeks a security clearance.

Applicant testified she had some financial issues in 1998 and took action to eliminate the issues (Tr. 36-37). She placed an unknown number of accounts in a debt consolidation plan and paid \$600 a month under the plan until she no longer had to make payments (Tr. 38, 45).<sup>1</sup> She claimed she joined the plan so she would have to make only one payment, not because she was having difficulty meeting her financial obligations. (Tr. 39). She thought she had completed the plan before she broke her arm in 2000 when she received disability compensation (Tr. 38). Applicant indicated she purchased a house in 2003 and refinanced it in 2005. There were no indications she had any delinquent debts during either transaction (Tr. 31).

Applicant testified that to her knowledge none of the listed debts belonged to her (Tr. 27). The first time she found out about the delinquent debts was in June 2008 just before she certified and submitted her SCA. (Tr. 28). Even though she did not believe the accounts belonged to her, she transferred the information about four delinquent accounts from her current credit report (also listed in the SOR) to her SCA under question 28a. She testified, "That I reported them because you need to go back 10 years and they were on the report and that I wasn't aware of them, but I wrote them down because the form said to put them on the report (Tr. 45-46). In addition, even though question 28a. refers to a seven-year window, Applicant testified she received computerized instruction to include debts within the last 10 years when answering the question. (Tr. 54-55). When asked why she did not deny the delinquent debts she listed on her SCA, Applicant stated, "I didn't realize that I had to do that." (Tr. 43-43)

Between June and November 2008, Applicant testified she called the listed creditors by telephone, but received no response (Tr. 35). Prompted by a letter dated

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<sup>1</sup> Applicant referred to the consolidation plan as debt counseling. However, there is no evidence she received financial counseling.

October 14, 2008, that she received from her mortgage company stating that a former employee of the company had stolen her personal identification, Applicant sent letters on October 23, 2008, to two credit agencies warning that her personal information may have been stolen by a “now ex-employee” of her mortgage company (GE 2), and that she was formally disputing the creditor identified in SOR 1.f. She also advised the government in her interrogatory responses that she had the other accounts removed from her credit report or that she was disputing. (*Id.*)

On January 20, 2009 (same date as her answer to the SOR), Applicant sent a certified letter to each one of the listed creditors indicating she did not recall opening the account, and asking the creditor to provide information about the account (AE M). She received no response from any of the creditors (Tr. 31), and the accounts have been removed from her credit report dated March 13, 2009 (AE N).<sup>2</sup>

According to Section 9 (living locations) of her SCA (GE 1), Applicant lived at “[address] Carver Street” in a city in Pennsylvania from November 1964 to November 2001. From November 2001 to approximately January 2003, she lived at “[address] Blair Mill Road” address in a city in Pennsylvania north of her previous address (Tr. 43). From January 2003 to August 2004, she returned to live at the Carver street address. From August 2004 to the present, she has lived at “[address] State Road [number],” in Florida (*Id.*). GE 3, the credit bureau report dated June 24, 2008, lists the Carver street address and her current State Road address in Florida.

The eight delinquent debts listed in the SOR, that are based on the information in GE 3, shall be discussed in the order they appear in the SOR.

» SOR 1.a. \$2,762, rental debt, described as an individual installment account (GE 3). The credit report also reflects the last activity on the account before it became delinquent was in August 2004. Applicant recalled renting the unit from the landlord between 2001 and 2003 at the Blair Mill Road address under a two-year lease that she indicated was converted to month-to-month (Tr. 39-40). She left her security deposit to cover the last period of rent, however, she vacated the premises without determining whether she had a balance due (*Id.*). She still owes the debt.

» SOR 1.b. \$3,500, credit card, described in GE 3 as an individual revolving account. The last activity on this account before it fell delinquent was in May 2002 (GE 3). Applicant remembered having a checking account, a savings account, a certificate of deposit, but no credit card account with this bank (Tr. 42). Applicant owes this account.

» SOR 1.c. \$2,200, credit card, described as an individual installment loan account (GE 3). The last activity on this account was in November 2001 (*Id.*). Just before filling out her SCA (GE 1) in June 2008, Applicant obtained a credit report and transferred information about this account from her credit report to question 28a. as one of her accounts over 180 days delinquent in the last seven years. As noted at the outset

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<sup>2</sup> The credit report shows no delinquent accounts.

of the factual findings section, she did not deny the debts she listed in her SCA because she did not realize she had to do that (Tr. 43-44). I do not find her explanation credible.

» SOR 1.d. \$4,700, credit card, described as an individual revolving account (GE 3). The account was opened in November 1986. The last activity on this account before it became delinquent was in July 2002. Exactly as she had done with SOR account 1.c., Applicant listed this account under question 28a. of her SCA (GE 1) as being a second account over 180 days delinquent. She recalled having a credit card from this company in the 1980s, but claimed she was never delinquent on the account (Tr. 46-47). She owes the account.

» SOR 1.e. \$8,500, credit card, described as an individual revolving account (GE 3). The account was opened in September 1985. The last activity on the account before it became delinquent was in January 2003. Applicant listed this account under question 28a of GE 1, but then claimed she never had an account with the creditor. She still owes the account.

» SOR 1.f. \$6,656, loan, described as an installment account. The last activity on the account before becoming past due was in December 2006. Even though Applicant contends she never had an account with the creditor, I do not find her claim credible. Applicant still owes the account.

» SOR 1.g. \$3,703, loan, described as individual open. The last activity on this account before it converted to a delinquent account was in November 2001. Applicant listed this account under question 28a. of GE 1, but testified she never had an account with this creditor (Tr. 48). She still owes the account.

» SOR 1.h. \$5,261, credit card, incorrectly described as an individual installment account. The last activity on this account was in November 2001. Applicant recalled applying for the card, but complained to the credit card official that she never received the card (*Id.*). She still owes the account.

The combined salaries of Applicant and her husband allow them to pay all expenses, and are the reason they have no delinquent accounts at the present time (Tr. 32). They earn approximately \$4,416 a month, and after monthly expenses and mortgage payments are subtracted, Applicant and her husband have a net monthly remainder of \$1,161 (GE 2). Their net worth over \$100,000 (AE L) will enable them to pay all the delinquent accounts if proof is presented to her (Tr. 32-33).

### **Character Evidence**

Applicant's performance evaluations from 2005 through 2008 reflect successful ratings. Seven character statements from colleagues or supervisors describe Applicant as a real professional who applies her excellent work ethic at all times. Witness A, who also provided a character statement (AE A), has worked with Applicant for three years and is impressed with her honesty and trustworthiness (Tr. 20-24). Applicant told him

she has not incurred any additional debt while working for him, and tried hard not let her finances get out of control when she was younger (*Id.*). She also informed him that after finding out she had inaccurate entries on her credit report, she had the information removed (Tr. 25).

Witness E, who also prepared a character statement (AE E), is employed as an administrative assistant just like Applicant. She testified that their jobs involve expense reporting, meeting schedules, making travel arrangements, and conducting accounting functions. Witness E considers Applicant trustworthy and dependable (Tr. 14). Applicant collected almost \$4,000 for Witness E's son after his house was destroyed by fire (Tr. 15). Witness E believes Applicant wrote letters to certain creditors and the accounts were cleared (Tr. 17).

### **Credibility Findings**

Considering the entire record as a whole, I find that GE 3 contains accurate information about Applicant's delinquent accounts. This finding is based on fact that the personal information in her credit report (GE 3) matches the personal information provided by Applicant in her June 2008 SCA (GE 1). Also, information which Applicant provided in her June 2008 SCA about four of her delinquent accounts is very similar to the information appearing in her credit report (GE 3).

Having observed Applicant's demeanor and conduct as she testified, I find her credibility undermined in several areas of her testimony. In her answer and initial testimony, she denied all debt allegations. On cross-examination she recognized at least two of the debts. Regarding the debt consolidation plan in 1998, she claims she enrolled in the plan to reduce the number of payments to her creditors to one monthly payment, not because she had problems paying her creditors. Though she transferred information about four delinquent accounts from her credit report to her June 2008, SCA, she believed the accounts were not her responsibility, yet she did not dispute the accounts in her SCA because she did not think she had that option.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information. These guidelines are flexible rules of law that must take into consideration the complexities of human behavior.

The administrative judge's ultimate adjudicative goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole person concept." Finally, 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. Reasonable 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 sensible, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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**

### **Financial Considerations (FC)**

Paragraph 18 of the Adjudicative Guidelines (AG) sets forth the security concern related to financial considerations:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The government has established its case under the financial guideline. Applicant opened eight credit card or installment loan accounts at various times in the 1980s, 1990s, and between 2000 and 2002. I believe her financial issues in the late 1990s were financial problems manifested by an inability to pay her debts, and constituted the reason she joined the consolidation plan. The existence of the listed debts today persuades me to conclude she did not successfully complete the plan.

When she filled out her SCA in June 2008, she dutifully listed the delinquent debts as she knew they were her responsibility. After Applicant submitted her SCA and before she provided interrogatory responses in November 2008 (GE 2), she concluded the debts were not her responsibility. She formally disputed the SOR 1.f. creditor in October 2008, and, as she had done with the other listed creditors, had all the delinquent accounts removed from her credit report by March 2009 (AE N). The debts still are Applicant's responsibility even though they are legally unenforceable. Both FC disqualifying condition (DC) ¶ 19.a. (*inability or unwillingness to satisfy debts*), and FC DC ¶ 19.c. (*a history not meeting financial obligations*) apply to the circumstances of this case.

Five of the six mitigating conditions are potentially applicable to the circumstances of this case: FC mitigating condition (MC) ¶ 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 reliability, trustworthiness, and good judgment*); FC MC ¶ 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); 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*); FC MC ¶ 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*); and, FC MC ¶ 20.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 or provides evidence of actions to resolve the issue*).

Though the listed debts have been delinquent for a lengthy period of time, Applicant still owes the eight debts totaling \$37,282. Applicant's ongoing refusal to accept responsibility for the debts continues to cast doubt on her current reliability and judgment. FC MC ¶ 20.a. is not applicable.

FC MC ¶ 20.b. provides mitigation for unanticipated circumstances that are not present here. First, the mitigating weight to be applied to Applicant's broken arm in 2000 is dramatically diminished by the passage of more than eight years after the injury. Applicant has been employed by her current employer since 2005. The only action by her to address her delinquencies was to have the debts removed from her credit report in 2008 and 2009. I do not interpret Applicant's actions as falling within the last clause of the mitigator (*and the individual acted responsibly under the circumstances*).

FC MC ¶ 20.c. is inapplicable to this case. While Applicant referred to her debt consolidation plan as debt counseling, there is no evidence she had financial counseling. Her failure to at least accept responsibility for her delinquent debts that are no longer enforceable, continues to raise security concerns about her judgment that have not been overcome by her favorable character evidence. Her readiness to pay the debt if presented with proof is not mitigating.

FC MC ¶ 20.d. does not apply because the mitigator calls for a good-faith, affirmative action, including bankruptcy, by the individual to resolve her indebtedness. Applicant's decision to avoid paying her debts because they are unenforceable is a legal course of action. However, it does not demonstrate a good-faith effort to resolve her debts as contemplated under FC MC ¶ 20.d.

FC MC ¶ 20.e. does not apply as I have concluded Applicant was not disputing the validity of the listed debts. I have concluded her reason for seeking removal of the debts, as exemplified by her identification of the SOR 1.a. creditor which she admitted, was because the statute of limitations had run. I have carefully evaluated the commendable reputation she has built with her employer. Aside from the delinquent debts that are no longer enforceable, she has no current delinquent debt. Considering the evidence as a whole, I still find she has not satisfied her ultimate burden of persuasion under the financial guideline.

### **Whole Person Concept**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the FC guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

In 1998, Applicant was 33 years old and had financial problems. She exercised good judgment by seeking help through a debt consolidation plan. However, the continued existence of the debts infers she did not complete the plan. More than eight years has passed without any action by Applicant in addressing the debts.

At some point after she submitted her SCA in June 2008 and before she provided her interrogatory responses in March 2009 (AE N), she had all the listed



creditors removed from her report. See *also*, GE 2. In obtaining the removal of the listed creditors from her credit report, it is clear that Applicant employed the statute of limitations to handle her debt rather than working out a plan to either pay the creditors or seek relief through the bankruptcy laws. Notwithstanding the favorable character evidence of Applicant's job performance and stable financial position, she cannot be given credit for waiting out the statute of limitations when she has had resources to pay the indebtedness. She has furnished no evidence of repayment of the listed creditors for over eight years. She does not demonstrate the trustworthiness, reliability or good judgment required under the financial guideline. Accordingly, the financial guideline is resolved against Applicant.

### **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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g	Against Applicant
Subparagraph 1.h	Against Applicant

### **Conclusion**

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

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Paul J. Mason  
Administrative Judge