



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



In the matter of:

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) ISCR Case No. 08-10104
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Applicant for Security Clearance

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel

For Applicant: *Pro Se*

November 9, 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 May 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant 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.

In an undated answer Applicant responded to the SOR and requested a hearing before an administrative judge. The answer was received by DOHA on June 24, 2009. The case was assigned to me on July 27, 2009. DOHA issued a Notice of Hearing on August 6, 2009. I convened the hearing as scheduled on September 23, 2009. The government offered Exhibits (GE) 1 through 7 into evidence. Applicant objected to GE 5

and her objection was overruled. She did not object to any other exhibits and they were admitted. The government also offered a demonstrative exhibit that was marked as Hearing Exhibit (HE) I. Applicant offered Exhibits (AE) A through E. Department Counsel did not object and they were admitted. Applicant and four witnesses testified on her behalf. The record was held open until October 7, 2009, to allow Applicant to submit additional documents. She submitted AE F through I. Department Counsel did not object and they were admitted.¹ DOHA received the transcript of the hearing (Tr.) on October 1, 2009.

Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶¶ 1.f, 1.h, 1.k and 1.o. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 30 years old and has been employed as a business development specialist for a federal contractor since March 2008. Prior to then, she was employed by different federal contractors. She had a period of unemployment from November 2004 to March 2005, and a three-week period between 2007 and 2008. Applicant has moved several times due to her employment.

Applicant married in April 2003, and had a child in April 2004. Applicant served in the Navy from February 1997 to December 2004. She and her husband agreed that she would leave the Navy so she could be a full-time wife and mother. She was honorably discharged on the basis of parenthood. Three weeks after she was discharged from the Navy, her husband filed for divorce. At that point she had no job and was caring for her infant daughter. She made arrangements to move back to her home town where she had family support. Days before the move was scheduled to take place, she received a job offer. The job was in a state with a high cost of living. She accepted the job and in January 2005, she moved. She had no money or place to stay. She also did not have money to hire a lawyer for her divorce, which was acrimonious. The divorce was final in April 2005. She started her life over. Her former husband provides \$200 a month for child support.²

In November 2005, Applicant remarried. Her husband was in the Navy and she accepted a transfer from her job, so she could be closer to his duty station. She relocated to a high cost of living area. He had legal problems in the Navy. She could not afford the rent and transferred back to the location where she previously worked. In July 2006, she decided to file for an annulment from her husband. He was depleting the funds in their joint accounts. He was gambling at the time. He was admitted to a mental hospital due to his behavior. Applicant had difficulty paying her expenses. Applicant is still married to her second husband. She attempted to contact him over the past three

¹ HE II.

² Tr. 27-33, 56-59.

years and was unable to find him. In the past month her husband has contacted her. They are pursuing a divorce and are looking for the most cost effective means.³

In September 2006, Applicant required major surgery and was out of work until December 2006, with no pay.⁴

In 2007, Applicant had an opportunity to deploy to Afghanistan, which would have given her an opportunity to earn a significantly higher salary. Her daughter's father was caring for their daughter. The deployment fell through and he filed for full custody of their daughter in March 2008. This required Applicant to hire an attorney. There were jurisdictional issues and the court required mediation, which was unsuccessful. Applicant estimated she spent approximately \$20,000 on attorney's fees and travel expenses to the out-of-state court. She believed her ex-husband intentionally dragged out the proceedings. The custody issue was resolved in July 2009.⁵

The debt in SOR 1.a (\$110) was a joint account with her husband for phone services. The bill has been delinquent since 2006, and is not paid.⁶

The debt in SOR 1.b (\$260) is a medical debt related to Applicant's surgery in 2006. She stated she did not receive a bill and has not contacted the creditor to resolve the debt.⁷

The debt in SOR 1.c (\$95) is owed to a beauty salon. Applicant incurred it while living in a different state. She was unaware of the debt until she received the SOR. The debt is from 2003. Applicant has not contacted the creditor or paid the debt.⁸

The debt in SOR 1.d (\$212) is owed to an electric company. Applicant stated that at the time the bill became due she did not have the money to pay it. She has not contacted the creditor or paid the debt.⁹

Applicant had a company credit card that was authorized for business expenses, for which she was reimbursed. The debt in SOR 1.e (\$3,465) is owed to the corporate credit card. She stated: "My bank account was almost \$1,000 overdrawn, and due to

³ Tr. 30, 33, 42-45, 62-63.

⁴ Tr. 45-47.

⁵ Tr. 24, 33-42, 48; AE A.

⁶ Tr. 61-64.

⁷ Tr. 63-65.

⁸ Tr. 59-61.

⁹ Tr. 59-60.

everyday life expenses, I used it for other things than paying off the card.”¹⁰ She stated her husband took the reimbursement money. She admitted that she was delinquent with payments before she married her second husband. She also admitted that because she was experiencing financial problems she used the credit card for personal expenses. The debt is unpaid.¹¹

Applicant is not familiar with the debt in SOR 1.f (\$697) and has not contacted the creditor or credit bureau to dispute the debt or resolve it.¹²

Applicant had a second corporate credit card that is listed in SOR 1.g (\$10,977) and became delinquent in February 2006. She admitted that she made some personal purchases with the card. She was reimbursed for her business expenses, but did not pay the balance on the card, because her husband depleted their account. She became delinquent on the account in February 2006. She stated she contacted the creditor approximately a year ago and they were unwilling to accept a payment arrangement. She has not made any payments on the debt since it became delinquent in 2006.¹³

The debt in SOR 1.h (\$993) is a loan that Applicant originally paid automatically while she was in the Navy. When she was discharged the automatic withdrawal ceased. She did not make payments on the debt after she was discharged. She settled the debt in March 2009. The approximate amount of the settlement was \$563.¹⁴

Applicant is not familiar with the debt in SOR 1.i (\$94). She did not contact the creditor to determine the debts validity or to resolve it. She did not contact the credit bureau agency to dispute the debt.¹⁵

The debt in SOR 1.j (\$223) is a medical debt that was placed for collection in January 2007. It is not resolved.¹⁶

The debt in SOR 1.k (\$809) is owed to a cable company. Applicant thinks the amount is a mistake. She believes, based on a notice she received three days before the hearing, that the amount should be \$84. She did not contact the creditor to resolve the debt.¹⁷

¹⁰ Tr. 55.

¹¹ Tr. 54, 65-73.

¹² Tr. 75.

¹³ Tr. 46-48, 73-75.

¹⁴ Tr. 49-50; 76-77; AE D.

¹⁵ Tr. 77-78.

¹⁶ Tr. 78.

¹⁷ Tr. 78-82.

The debt in SOR 1.l (\$1,172) is owed to a bank for an account that was overdrawn. She stated her husband was responsible for the problem. She stopped using the account sometime before 2007. She stated she made arrangements to settle the account by paying \$40 a month. She began making the payments in February or March 2009, and the current balance is \$423.59.¹⁸

The debt in SOR 1.m (\$65) is a charge for a nonsufficient funds check that was presented to a pizza delivery service. It has been delinquent since February 2008, and is not paid.¹⁹

The debt in SOR 1.n (\$470) is owed to a telephone company telephone services. Applicant has not contacted the creditor or paid the debt.²⁰

In 2003, while stationed in a city where gambling is legal, Applicant won approximately \$2,500 while gambling. She then lost her winnings and spent about \$200-300 from her savings account. There is no evidence that Applicant is addicted to gambling or has a problem. However, in the past year she has taken her grandmother to a city to gamble approximately four times. While there she spends \$100 to \$200 to gamble. In 2007, she took two or three trips.²¹ Applicant attended marital counseling in 2003, during which her gambling was brought up.²²

Applicant paid a delinquent debt that was not listed on the SOR.²³ Her monthly net pay after taxes is approximately \$4,000. Her annual gross salary is approximately \$75,000. She estimated her monthly expenses were approximately \$3,800. She still owes her attorney more than \$5,600, and makes monthly payments of \$500.²⁴ After she completes paying her attorney, she intends to resolve her other delinquent debts. She explained that because her husband withdrew money from her account and she incurred large legal fees during the child custody battle, she has been unable to pay other delinquent debts.²⁵

¹⁸ Tr. 50-52, 82-84; AE I.

¹⁹ Tr. 84-86.

²⁰ Tr. 86-87.

²¹ Tr. 86-90.

²² Tr. 86-88.

²³ AE B.

²⁴ AE A.

²⁵ Tr. 90-100, 131.

Appellant purchased a new 2009 car in 2008 because it was too costly to repair her old one. She pays \$361 a month for car payments and another \$218 a month for insurance.²⁶

Applicant's plan is to complete paying the money she owes to her attorney and then start paying off the smaller debts and consolidating the larger debts.²⁷

Applicant's parents testified on her behalf and confirm she made some poor choices in her life, but attributed them to her age and immaturity. Over the past three years, they have observed her mature, especially in her decision-making. Their niece, who is a small business owner, is helping Applicant establish a budget and is providing some financial counseling. Applicant recently purchased a car, but did not want her parents to co-sign the loan. She wanted to do things on her own. Applicant's father loaned her money and she began repaying it. She still owes him \$800, but he has agreed to have the repayment put on hold. They believe she is a good person and a good mother. She has made mistakes, but they believe she has a desire to change things.²⁸

Applicant's coworker and friend testified on her behalf. He has known her for 13 years. She is considered loyal and faithful to the company they work for and a good person.²⁹

The owner of the company where Applicant works testified on her behalf. He has known Applicant casually for 14 years through his son, but lost contact with her when she went into the Navy. He hired her based on her military record. She has worked directly for the owner for two years in customer development. She is a model employee who has character, integrity, and is hard working.³⁰

I have considered all of the awards, certificates and other documentary evidence presented by Applicant. I have considered all of the character letters provided. The letters attest to Applicant being a devoted and good mother. Applicant is a hard worker with a model work ethic and commitment to accomplishing the mission. She is a professional with integrity and dedication to her job. She is considered by those who provided character letters to be a patriotic and loyal citizen, who is trustworthy and very capable of handling classified information. They recommend her for a security clearance.³¹

²⁶ Tr. 90, 95.

²⁷ Tr. 53.

²⁸ Tr. 106-118.

²⁹ Tr. 120-124.

³⁰ Tr. 125-130.

³¹ AE E, F, G, H.

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." 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.

Directive ¶ E3.1.14 requires the government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant has a significant history of not meeting her financial obligations. She has delinquent debts totaling more than \$19,000. She settled one delinquent debt and is making monthly payments for attorney's fees. However, she has not contacted most of the creditors and has not made an effort to pay some of the smallest debts. I find there is sufficient evidence to raise the above disqualifying conditions.

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

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

(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 of the dispute or provides evidence of actions to resolve the issue.

Applicant's behavior is recent because she has many delinquent debts that remain unpaid. I find mitigating condition (a) does not apply. Applicant experienced some unfortunate circumstances with her divorces and child custody issues that have affected her finances. She moved several times due to her employment and marital situation that also impacted her finances. However, she also had a delinquent debt (SOR ¶ 1.h) from 2003 that she neglected to pay and only recently settled in March 2009. She has another debt to a beauty salon (SOR ¶1.c, \$95) from 2003, that she stated she was unaware she owed and remains unpaid. She has some small medical debts unpaid, and a pizza delivery debt (SOR ¶ 1.m, \$65) for nonsufficient funds that have been delinquent since February 2008. She has not contacted many of her creditors. I find that some of the conditions that resulted in her financial problems were beyond her control. Others were within her control. Applicant is paying her attorney's fees, but has not addressed most of her other delinquent debts. She owes large amounts on her corporate credit cards that she admitted she also used for personal expenses. She blames her husband for depleting their account. She was using the cards prior to marrying her second husband. Applicant did not act responsibly under the circumstances in addressing all of her delinquent debts. I find mitigating condition (b) only partially applies.

It is unclear what type of counseling Applicant is receiving from her cousin, but it appears she is making an attempt to understand her finances. She did not provide a budget or a plan on how she intends to resolve her delinquent debts. I find mitigating condition (c) only partially applies because there are not clear indications the problem is being resolved.

Applicant has not contacted many of her creditors and has not paid most of the small debts that she owes. I find she has not initiated a good-faith effort to pay her overdue creditors or otherwise resolve her debts. She disputes one of her delinquent debts, but did not provide documented proof to substantiate the basis of her dispute or other actions to resolve the debt. Therefore, I find mitigating conditions (d) and (e) 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 commonsense 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 served in the Navy and received an honorable discharge. She is a valued employee, who is trusted and respected. She has earned praise from her coworkers and friends. She had difficult divorces and a child custody battle that impacted her finances. She moved due to employment opportunities and personal choices. It is clear that her child custody issues created a financial burden. Applicant also has debts that were incurred while in the Navy and when she was employed. Many of the debts are small. She has not contacted many of the creditors to set up a payment plan or resolve the debts. She has two large corporate credit card debts that she was reimbursed for, but stated her husband took the money. She also admitted that some of the charges incurred were for personal expenses. Applicant is paying her attorney's fees and has a \$40 monthly payment plan for one of her debts. She did not provide a budget or a plan for addressing her other delinquent debts. At this juncture, based on her financial history, it is too early to conclude that she is resolving her financial problems. It does not appear that Applicant has a gambling problem. However, considering her financial situation, her actions of gambling money for entertainment, when she could have paid some of her small debts, raises questions about her commitment to resolving her delinquent debts. Applicant needs a systematic realistic plan for resolving her debts. Once she establishes that and a track record of regular payments, she can reapply for a security clearance.

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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.k:	Against Applicant
Subparagraph: 1.l:	For Applicant
Subparagraphs: 1.m-1.n:	Against Applicant
Subparagraphs: 1.o-1.p:	For 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.

Carol G. Ricciardello
Administrative Judge