



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



In the matter of:	)	
	)	
	)	
-----	)	ISCR Case No. 08-10168
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Francisco J. Mendez, Jr., Esq., Department Counsel

For Applicant: *Pro Se*

November 4, 2010

**Decision**

WESLEY, Roger C., Administrative Judge:

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

**Statement of the Case**

On April 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 adjudicative guidelines (AGs), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on May 10, 2010, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant

Material (FORM) on July 19, 2010, and did not respond with any information within the 30 days permitted. The case was assigned to me on October 7, 2010.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have accumulated 30 delinquent debts, exceeding \$18,000. Specifically, his listed debts comprise creditor 1.a (\$468); creditor 1.b (\$214); creditor 1.c (\$242); creditor 1.d (\$398); creditor 1.e (\$769); creditor 1.f (\$492); creditor 1.g (\$36); creditor 1.h (\$492); creditor 1.i (\$905); creditor 1.j (\$986); creditor 1.k (\$694); creditor 1.l (\$1,075); creditor 1.m (\$972); creditor 1.n (\$272); creditor 1.o (\$7,473); creditor 1.p (\$1,087); 1.q (\$5,424); creditor 1.r (\$91); creditor 1.s (\$905); 1.t (\$986); creditor 1.u (\$337); creditor 1.v (\$713); creditor 1.w (\$954); creditor 1.y (\$3,418); creditor 1.z (\$257); creditor 1.aa (\$1,135); creditor 1.bb (\$347); creditor 1.cc (\$406); and creditor 1.dd (\$1,1187). Additionally, Applicant is alleged to have petitioned for Chapter 13 bankruptcy relief, and converted the petition to one for Chapter 7 bankruptcy protection in March 1998 (receiving his discharge in June 2002).

In her response to the SOR, Applicant admitted some of the alleged debts, and denied others. She disputed a number of the debts, and committed to making progress in the resolution of her remaining debts. She requested six months to enable her to make good-faith attempts in clearing her delinquent debts.

### **Findings of Fact**

Applicant is a 38-year-old executive administrator for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant first married in 1996. She has a child from this marriage (Items 5 and 8). Her first husband abandoned her in March 2002, and left her with insufficient income to pay her bills and care for her child. Her divorce was finalized in July 2004 (Item 8). She has since remarried and claims improved finances. (see Item 8)

Applicant attended college between September 1990 and September 1992 and received an associates degree in business management in August 2007. (Item 5) She held administrator positions with several companies before joining her current employer in November 2005.

Applicant's credit reports reveal a considerable history of financial difficulty. In March 1998, she petitioned for Chapter 13 relief. She converted her Chapter 13 petition into a Chapter 7 straight bankruptcy petition in June 2001, and received her Chapter 7 discharge in June 2002. (see exs. 8 and 13)

Following her divorce, Applicant accumulated a number of additional delinquent debts. Altogether, she accrued delinquent debts exceeding \$18,000. She attributes these additional debt problems to her ongoing divorce, and failure of her former husband to provide any financial assistance. (Item 8) One of the largest debts (creditor 1.o) involves a 2006 car repossession following her current husband's loss of

employment, and an ensuing deficiency balance of \$7,473. (Items 8 and 11) Another debt (creditor 1.a) involves a \$468 judgment entered against her in December 2006. (Items 8 and 11). Her remaining listed debts cover assorted medical and credit card debts, some of which are unknown to her. (Items 8 and 11)

In an effort to address her debts, Applicant contracted a debt consolidation firm in November 2008. (Item 8) Records show that she identified her listed creditors from her credit report and signed a payment agreement with the counseling firm. (Item 8) Under the terms of her agreement, she obligated herself to pay the firm \$377 a month to make and fulfill payment agreements with her covered creditors. (Item 8)

Applicant does not document any payment progress with her debt consolidation firm. Nor does she provide any proofs of addressing her creditors individually.

In the personal financial statement that Applicant furnished as a part of her interrogatory answers in January 2009, Applicant reported net monthly income of \$2,437 for herself and \$1,959 for her spouse. (Item 8). After allowing for \$3,160 in monthly expenses, she claimed a net monthly remainder of \$638. (Item 8) She has not provided any proof of disputed debts with her creditors, or efforts to negotiate any settlements, reduce payments, or engage any credit counseling agent to assist her in addressing her debts.

Applicant provided no endorsements or documentation of community activities and awards. Nor did she provide any performance evaluations or military service records.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is an executive administrator with a defense contractor who accumulated a number of delinquent debts during her two marriages. Her accumulation of additional delinquent debts following her divorce from her first husband and bankruptcy discharge, and her past inability and unwillingness to address these debts, warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶ 19(c) “a history of not meeting financial obligations.”

Applicant’s debts are attributable in part to her divorce from her first husband and her current husband’s inability to find well-paying work following his layoff in 2006. To date, she has been unable to document any follow-through with the debt consolidation program she agreed to, or payment arrangements with any of her listed individual creditors. Collectively, her remaining delinquent debts exceed \$18,000, and have not been fully addressed to date.

Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant’s inability to pay or otherwise resolve her debts. Partially available to Applicant is MC ¶ 20(b), “the conditions that resulted in the behavior 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.” Without more information from Applicant about the efforts she has made to resolve debts that are hers and dispute those she denies, the evidence is insufficient to credit her with responsible corrective measures once her finances improved.

Moreover, some judgment problems persist, too, over Applicant’s unexplained delinquencies and her failure to demonstrate she acted responsibly in addressing her listed debts with the net monthly remainder she and her current husband claimed in January 2009. Mitigation requires a demonstration of earnest repayment efforts once the unemployment conditions that contributed to the delinquencies had passed or eased, and her finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Not only are Applicant’s listed debt delinquencies ongoing, but she has failed to address them in any tangible way. Mitigation credit is not available to Applicant based on the evidence developed in this record.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Failure of the applicant to make concerted efforts to pay or resolve her debts when able to do so raises security-significant concerns about whether the applicant has demonstrated the trust and judgment necessary to safeguard classified information.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by her accumulation of delinquent debts. Since reporting a positive remainder in 2009, she has not shown enough manifest effort in addressing any of her covered debts to mitigate her still delinquent accounts. Resolution of her delinquent accounts is a critical prerequisite to her regaining control of her finances.

While divorce and unemployment conditions might have played a considerable role in her accumulation of so many debts over recurrent periods, Applicant failed to provide any explanatory material for consideration. Potentially helpful endorsements and performance evaluations were not provided either. Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable her to establish judgment and trust levels sufficient to overcome security concerns arising out of her accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, her lack of any exhibited explanations for her debt accruals, and her failure to provide any proof of corrective actions taken to address her old debts, it is still soon to make safe predictive judgments about Applicant's ability to repay her debts and restore her finances to stable levels commensurate with the minimum requirements for holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.dd.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparas. 1.a through 1.dd:

Against Applicant

## **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

