



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-10221
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro Se*

November 13, 2009

**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on June 6, 2008. On May 26, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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.

On July 1, 2009, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on August 13,

2009. A Notice of Hearing was issued on August 21, 2009. On September 9, 2009, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through Ex. 4 and admitted without objection. The Government offered one demonstrative exhibit which showed where each of the debts alleged on the SOR could be found on the two credit reports admitted as Ex. 3 and Ex. 4. The Government's demonstrative exhibit was marked as Hearing Exhibit (HE) 1 and admitted without objection.

Applicant testified on her own behalf and called one witness. She introduced 13 exhibits, which were marked as Ex. A through Ex. M and admitted without objection. DOHA received the transcript (Tr.) of the hearing on September 14, 2009.

### **Findings of Fact**

The SOR contains 17 allegations which raised security concerns under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.q.) In her Answer to the SOR, Applicant admitted 13 allegations (SOR ¶¶ 1.a., 1.b., 1.d., 1.f. through 1.m., 1.o., and 1.q.). The debts that Applicant admitted totaled approximately \$17,000. She denied the four allegations of delinquent debt at SOR ¶¶ 1.c., 1.e., 1.n., and 1.p. The debts that Applicant denied totaled approximately \$2,390. Applicant's admissions are included herein as findings of fact. (Applicant Answer to SOR.)

Applicant is 52 years old, divorced, and the parent of a 14-year-old son. Applicant has sole custody of her son, and her former husband pays her \$505 a month in child support. (Ex. 1; Ex. 2; Tr. 24-25, 47-48.)

Applicant has completed approximately three years of college studies. She is employed by a government contractor as a document management specialist. She has worked for her current employer for approximately 1½ years. She has also worked as a substitute teacher and personal trainer. She was first awarded a security clearance in 1981. (Ex. 1; Tr. 24, 48-52, 75, 82.)

Applicant and her former husband separated in 2001 and divorced in 2004. She was employed by another federal contractor between August 2001 and July 2005. In July 2005, she lost her job. Between July 2005 and acquiring her present employment in April 2008, Applicant worked at a variety of temporary jobs. During her periods of unemployment and underemployment, Applicant began to fall behind in paying her debts, and she continues to have financial difficulties. (Ex. 1; Tr. 22-23.)

In 2004, Applicant purchased an automobile for \$25,000. The automobile was repossessed in March 2008. As of May 14, 2009, Applicant owed the creditor \$14,000 on the delinquent automobile debt. (SOR ¶ 1.j.; Ex. 3; Ex. 4; Tr. 69-70.)

In 2005, approximately two weeks before she lost her job, Applicant met a man with whom she established a romantic relationship. Applicant considers the man to be her "significant other," and he appeared as a witness at her hearing. He stated that he had provided Applicant with approximately \$30,000 in financial assistance, on an as-needed basis, from 2005 to the present. Sometimes he gave her money to pay her rent; sometimes he provided money for her car payments or other expenses. He continued to provide her with financial assistance after she obtained her present job in April 2008. He did not expect repayment from Applicant. Applicant provided photocopies of checks that she had received from her significant other. The most recent check for \$350 was dated July 30, 2009. (Ex. I; Tr. 45, 76-77, 90-95.)

In February 2009, Applicant contracted with a debt management group to pay some of her delinquent debts. The delinquent debts alleged at SOR ¶¶ 1.a., 1.b., 1.h., 1.i., 1.j., 1.k., 1.l., and 1.m. were listed on Applicant's payment plan. She provided documentation to establish that for eight months she made payments of \$437 to reduce or satisfy her debts. She provided documentation to establish that the debt alleged at SOR ¶ 1.h. had been satisfied. (Ex. G; Ex. H; Tr. 53-54.)

Applicant owed three debts to a communication company. These debts were alleged at SOR ¶¶ 1.g., 1.n., and 1.p. In her Answer to the SOR, Applicant admitted the debt alleged at SOR ¶ 1.g., and she acknowledged that it had not been paid. She denied the debts alleged at ¶¶ 1.n. and 1.p., which are listed on her credit report. She failed to provide documentation to establish that she did not owe the debts. (Answer to SOR; Tr. 65-68.)

Applicant also acknowledged that she had not paid the debts alleged at SOR ¶¶ 1.c. and 1.d. She stated that she intended to dispute the debt alleged at SOR ¶ 1.e. She stated she had placed the debt alleged at SOR ¶ 1.f. in her debt payment program. However, the debt was not listed in the debt management payment materials she provided. (Ex. G; Ex. H; Tr. 57-60, 61-64.)

Applicant provided documentation to establish that she had satisfied the debt alleged at SOR ¶ 1.o. (Ex. D.)

Applicant's net monthly income from her employer is \$3,000. She also receives \$505 each month in child support. Her fixed monthly expenses are \$2,616. She pays \$437 a month on her consolidated debt payment plan. She also pays an additional \$42 a month on a personal debt. She has \$10 in her savings account, and she estimated that she had \$6,000 in her retirement account. She has a net monthly remainder of \$410.<sup>1</sup> (Tr. 75-82.)

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<sup>1</sup> Applicant's Personal Financial Statement of February 23, 2009, showed a net monthly remainder of \$1.46. This low monthly remainder was alleged at SOR ¶ 1.q., and Applicant admitted the allegation. However, the Personal Financial Statement contained arithmetic errors that did not favor Applicant, and she provided additional information at her hearing that supported a higher monthly remainder amount. (Ex. 2 at 12; Tr. 74-84.)

Applicant provided certificates of training, a newsletter excerpt praising her for good service to customers, and a recent performance review. The performance review showed that her employer values her hard work, good judgment, and dependability. (Ex. J; Ex. K; Ex. L; Ex. M.)

Applicant reported she had attended some financial counseling offered by her bank for individuals who wish to purchase homes. (Tr. 79-80.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an 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, the administrative judge applies these guidelines 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.

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 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 substantial delinquent debt and was unable to pay her creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. If the financially delinquent 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," then AG ¶ 20(a) might apply. If "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," then AG ¶ 20(b) might apply. If "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," then AG ¶ 20(c) might apply. If "the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts," then AG ¶ 20(d) might apply. Finally, if "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," then AG ¶ 20(e) might apply.

The record shows that Applicant's financial delinquencies began several years ago and continue to this day. Applicant's current financial delinquencies involve substantial sums of money in proportion to her income and resources, occurred under circumstances that are likely to recur, and cast doubt on her current reliability, trustworthiness, and good judgment.

Applicant was divorced in 2004 and lost her job in 2005. Between 2005 and early 2008, she searched for another job and accepted temporary employment. Her significant other provided her with approximately \$30,000 in financial assistance. The record does not include facts that suggest protracted conditions beyond Applicant's control that would explain her failure over a period of years to meet her financial obligations. While she experienced unemployment in the past, she has been steadily employed with her current employer for the past 1½ years.

To her credit, Applicant sought to consolidate her debts, and, since February 2009, she has made eight monthly payments to reduce her debts through a debt consolidation and management program. She provided documentation to establish that two of the debts alleged on the SOR have been satisfied. However, she is also responsible for several other debts that remain unresolved. She remains dependent upon her significant other for financial support, and she does not have a plan in place for avoid financial overextension in the future. While Applicant's intention to satisfy her creditors in the future is laudable, it is too soon to conclude that she has demonstrated a track record of financial responsibility. She has not yet demonstrated that she will repay her creditors and avoid financial delinquencies in the future. I conclude that AG ¶¶ 20(a), 20(c), and 20(e) do not apply to the facts of Applicant's case. I also conclude that AG ¶¶ 20(b) and 20(d) apply in part to the facts of Applicant's case.

### **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 relevant 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 relevant facts and circumstances surrounding this case. In her current position, Applicant is respected and appreciated for her professionalism and hard work. She is a reliable employee. She has been steadily employed with her current employer for 1½ years.

Applicant has experienced financial difficulties since at least 2005, but she has addressed them only recently. Applicant's financial problems began when she was a mature adult, and she failed to address her delinquent debts for a significant period, a decision that raises concerns about her judgment and reliability. To her credit, she entered a debt consolidation and management program in February 2009, and she has made regular payments since then on some of her debts. However, she has failed to satisfy other debts and continues to rely upon her significant other for financial assistance. It is not clear at this time that she will accept responsibility for managing her own financial problems and satisfying her creditors.

Applicant can reapply for a security clearance one year after the date that this decision becomes final. At that time, if she wishes, she can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial delinquencies.

## 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. and 1.b.:	For Applicant
Subparagraphs 1.c. through 1.g.:	Against Applicant
Subparagraphs 1.h. through 1.m.:	For Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	For Applicant
Subparagraph 1.p.:	Against Applicant
Subparagraph 1.q.:	For 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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Joan Caton Anthony  
Administrative Judge