



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



In the matter of: )  
)  
) ISCR Case No. 08-10569  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 24, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s efforts to resolve her financial problems before receipt of the SOR show reliability, judgment, and willingness to comply with rules and regulations. She now has a stable job. Applicant has learned from her past mistakes and, in the future, will be able to live within her financial means. She mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 8, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On January 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

dated January 2, 1992, as modified and revised.<sup>1</sup> The SOR alleges a security concern under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied or revoked.

On March 30, 2009, Applicant responded to the SOR allegations, and requested a hearing before an administrative judge. The case was assigned to me on April 22, 2009. DOHA issued a notice of hearing on May 1, 2009. The hearing was convened as scheduled on May 19, 2009. The government offered Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on her own behalf and submitted Applicant Exhibits (AE) 1 through 4. I left the record open to allow Applicant time to submit additional documentary information. She timely submitted AE 5. All Applicant's exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 28, 2009.

### **Findings of Fact**

Applicant admitted all the factual allegations in the SOR with explanations, except for SOR ¶¶ 1.h and 1.o, which she denied. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 40-year-old administrative assistant (secretary) employed by a defense contractor. She is single and has no children. She received her high school diploma in June 1987. Applicant's work history is summarized as follows: she has been consistently employed since June 1990 to the present, except during three periods of unemployment. She was unemployed from December 2003 to February 2004 (three months); April 2006 to October 2006 (seven months); and April 2007 to December 2007 (nine months).

Applicant testified she has had access to classified information at the top secret level since 1998 (Tr. 9). There is no evidence that she has ever compromised or caused others to compromise classified information.

Applicant submitted security clearance applications in January 2006 and January 2008. In her response to the financial delinquencies questions, Applicant admitted that she was currently over 90 days delinquent in many of her debts, and that during the last

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<sup>1</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of the revised Adjudicative Guidelines (AG) to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

seven years she had been over 180 days delinquent on many of her debts. Her background investigation addressed Applicant's financial status and included the review of March 2008, November 2008, and April 2009 credit bureau reports (CBRs), and court records of judgments filed against her in 2006 and 2007.

The SOR alleges 17 delinquent and/or charged off accounts, totaling approximately \$40,900, some of which have been delinquent for a number of years. In her response to the SOR, Applicant admitted these were her debts and that some are outstanding. The debts are also established by the admitted CBRs.

Applicant testified that her financial problems were caused by three unemployment periods between December 2003 and December 2008; the end of a relationship which forced her to move out of her apartment prior to the expiration of her lease, and unforeseen vehicle repair expenses. Because of the limited income she received through her unemployment benefits, she could not afford to pay both her past financial obligations and her day-to-day living expenses. This resulted in her falling behind on her financial obligations. Once she was employed again, Applicant started making payment arrangements with her creditors. Because of the number of creditors, Applicant could not afford to pay all the creditors at the same time. She has been paying her creditors one at a time.

Applicant has been working diligently to resolve her financial problems. When unemployed, she sought additional employment. She contacted her creditors to let them know she was unemployed and of her resulting financial problems. When she obtained employment, she contacted her creditors, negotiated settlement agreements, and established payment plans to resolve any outstanding balances.

The status of the alleged SOR debts is as follows:

SOR ¶ 1.a (\$4,837) is a debt resulting from a lawsuit Applicant lost in October 2006. In November 2006, Applicant established a payment plan with the creditor agreeing to pay \$100 a month. She has been making regular payments thereafter, except during the period she was unemployed. After finding a new job, Applicant continued making the agreed payments (AE 3, Tr. 39).

SOR ¶ 1.b (\$4,498) and SOR ¶ 1.e (\$4,498) alleged the same credit card debt (Tr. 89-90). Applicant fell behind on her payments and was paying other debts first. In January 2007, the creditor obtained a judgment against her. Applicant has been paying this debt through a garnishment of wages initiated in September 2008 (Tr. 38, 50-52, AE 1).

SOR ¶ 1.c (\$3,105) is a debt resulting from a broken apartment lease. Applicant is waiting to pay other delinquent debts first and then promised to address this debt (Tr. 52-53).

SOR ¶ 1.d (\$2,026) is a credit card debt. Applicant is waiting to pay other delinquent debts first and then has promised to address this debt.

SOR ¶ 1.f (\$578) and SOR ¶ 1.p (\$1,044) alleged the same debt. At the hearing, Applicant testified she had settled the debt for less than the total value. Documents submitted post-hearing confirm Applicant settled the debt in June 2009, and is making payments (AE 5, pp. 8-10, Tr. 56).

SOR ¶ 1.g (\$1,041) and SOR ¶ 1.q (\$583) alleged the same retail credit card debt. Applicant was in negotiations with the collection agency. She is waiting to pay other debts first and then promised to address this debt.

SOR ¶ 1.h (\$837) is disputed. She testified she talked to the creditor and was told there was nothing in their file establishing this debt (Tr. 59).

SOR ¶ 1.i (\$1,878) is her delinquent credit card debt. Applicant is waiting to pay other delinquent debts first and then will address this debt. This is the same debt that was alleged under SOR ¶ 1.g (\$1,041).

SOR ¶ 1.j (\$568). In her response to the SOR, Applicant admitted this debt and indicated she was in communication with the creditor and was trying to settle the debt. At her hearing, she testified she had settled the debt, but presented no documentary evidence to corroborate her testimony. Post-hearing Applicant submitted documents corroborating she settled the debt, and that she made a \$178 payment (AE 5, pp. 12-13).

SOR ¶ 1.k (\$11,436). This delinquent debt pertains to Applicant's car. She purchased a used vehicle and stopped making payments when she lost her job. She testified she informed the creditor she had lost her job and tried to return the vehicle. The creditor elected not to repossess the vehicle, and she is still driving it. She does not know who owns the delinquent account now. She promised to add this debt to her repayment plans when she locates the creditor.

SOR ¶ 1.l (\$2,051). This debt concerns a loan Applicant obtained. She stopped making payments when she lost her job. In July 2008, she started working again and resumed paying her loan through direct deposit (Tr. 64). After her hearing, Applicant submitted a letter from the creditor stating she paid off the debt (AE 5, at 3).

SOR ¶ 1.m (\$155). Applicant paid this debt.

SOR ¶ 1.n (\$387). Applicant admitted this debt. She is undergoing settlement negotiations with the creditor.

SOR ¶ 1.o (\$1,397). Applicant disputed this debt. This is her sister's account.

Applicant also presented documents showing she entered into a payment agreement with the Internal Revenue Service to pay for past due taxes, and with her state to repay an overpayment of social benefits she received.

Applicant sought financial assistance from the creditor in SOR ¶ 1.I (a bank) when she lost her job and could not make the loan payments. The bank referred her to a debt consolidation company. Applicant contacted the debt consolidation company; however, she was told they could not help her because she did not have enough debt (Tr. 74-77). In 2008, Applicant contracted with another company to assist her with disputing some of her debts and with cleaning up her CBR (Tr. 71-72).

Applicant expressed sincere remorse for her financial problems. She was candid and credible explaining the circumstances surrounding her financial problems. She credibly testified she is paying as much as she can to resolve her delinquent debts. She is paying her delinquent debts one debt at a time, and her payments are within her financial means. Applicant has been honest and forthcoming in the security application process. She disclosed her financial problems on her security clearance applications and has been up-front with her security officers.

### **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 controlling 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.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”<sup>2</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

## **Analysis**

### **Guideline F, Financial Considerations**

Under Guideline F, the security concern is that 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. AG ¶ 18.

The SOR alleged 14 delinquent and/or charged off debts (not counting duplicate allegations) some of which have been delinquent for a number of years. The debts are Applicant’s debts as established by the evidence and Applicant’s admissions, except for SOR ¶¶ 1.h and 1.o, which she disputed.

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<sup>2</sup> See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

Applicant's evidence shows she has paid, or entered into payment agreements on six of the alleged debts (SOR ¶¶ 1.a, 1.b, 1.f, 1.j, 1.l, and 1.m). Some of the settlement agreements and/or payment plans preceded the SOR. Applicant is paying these debts first, and then she plans to start making payments on the other six delinquent debts (SOR ¶¶ 1.c, 1.d, 1.g, 1.i, 1.k, and 1.n). AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant established that her financial problems resulted from circumstances beyond her control which contributed to her inability to pay her debts, i.e., three periods of unemployment between December 2003 and December 2008; the expenses she incurred resulting from the end of a relationship; and unforeseen vehicle repair expenses.

AG ¶ 20(b) applies. Applicant's limited unemployment benefits income did not allow her to pay both her past financial obligations and her day-to-day living expenses. This resulted in her falling behind on her financial obligations. When unemployed, she sought employment. She contacted her creditors to let them know she was unemployed and of her resulting financial problems. Once she found work, Applicant contacted her creditors, negotiated settlement agreements, and established payment plans to resolve

any outstanding balances. Because of the number of creditors, Applicant could not afford to pay all the creditors at the same time. She has been paying her creditors one at a time. Although Applicant could have been more diligent addressing her delinquent debts, I find Applicant's evidence is sufficient to show she acted responsibly under the circumstances.

I also find that AG ¶¶ 20(c) and (d) apply.<sup>3</sup> There are clear indications that Applicant's financial problems are being resolved and her financial problems appear to be under control. She made good-faith efforts to resolve her debts prior to receipt of her SOR. AG ¶¶ 20(a), (f), and (e) do not apply. The financial considerations concerns are mitigated.

### **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 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a substantial number of debts that have been delinquent for a number of years.

Applicant has successfully worked for several government contractors, and has held access to classified information for many years. There is no evidence she has ever compromised classified information or committed any security violations. Applicant expressed sincere remorse for her financial mistakes and credibly promised to repay her creditors. She established circumstances beyond her control contributing to her inability to pay her debts. Moreover, she established she has been financially responsible under the circumstances.

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<sup>3</sup> AG ¶ 20(c) applies only partially because there is no evidence that Applicant participated in financial counseling.



She initiated good-faith efforts to resolve her debts after she found employment.<sup>4</sup> There are indications that her financial problem is being resolved or is under control. She is paying her delinquent debts within her means -- one at a time.<sup>5</sup> These factors show responsibility, good judgment, and mitigation.

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . “established a plan to resolve his financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in

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<sup>4</sup> The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>5</sup> The government can re-validate Applicant’s financial status at any time through credit reports, investigation and/or additional interrogatories. Approval of a clearance now does not bar the government from subsequently revoking it, if warranted. Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. The security clearance process provides a clear warning to Applicants about the importance of maintaining financial responsibility.

the SOR. [ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008)  
(internal citations omitted).]

On balance, I conclude Applicant's favorable evidence is sufficient to mitigate the security concerns arising under the financial considerations guideline.

### **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:	FOR APPLICANT
Subparagraphs 1.a through 1.q:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is granted.

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JUAN J. RIVERA  
Administrative Judge