



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-11013
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: Pro Se

July 23, 2009

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Positions (SF 86), on July 30, 2008. On April 1, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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 April 23, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 18, 2009. The case was assigned to me on May 22, 2009. On June 1, 2009, a Notice of Hearing was issued, scheduling the hearing for June 16, 2009. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4 without objection. Applicant testified and offered no exhibits. The record was held open until July 1, 2009 to allow Applicant to submit additional documents. Applicant timely submitted a three-page document which was admitted as

Applicant Exhibit (AE) A without objection. Department Counsel's response to AE A is marked as Hearing Exhibit (HE) I. The transcript was received on July 1, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, Applicant denied the allegations in SOR ¶¶ 1.i, 1.v, 1.y, 1.bb, 1.dd, 1.ff, 1.gg, and 1.ii. She admits all of the remaining SOR allegations.

Applicant is a 34-year-old quality inspector employed with a Department of Defense contractor seeking a security clearance. She has worked for the defense contractor for two years. She is a high school graduate and has some college credit. This is her first time applying for a security clearance. She is single and has four children, ages 15, 13, three, and seven months. (Tr at 5-6, 21; Gov 1)

On July 30, 2008, Applicant completed a Questionnaire for Sensitive Positions (SF 86). (Gov 1) A subsequent background investigation confirmed that Applicant had the following delinquent accounts: a \$324 medical account that was placed for collection in December 2007 (SOR ¶ 1.a: Gov 4 at 1); a \$119 medical account that was placed for collection in April 2008 (SOR ¶ 1.b: Gov 3 at 12); a \$76 medical account that was placed for collection in July 2008 (SOR ¶ 1.c: Gov 3 at 7); an \$851 medical account that was placed for collection in July 2008 (SOR ¶ 1.d: Gov 3 at 6); and a \$75 medical account that was placed for collection in July 2008 (SOR ¶ 1.e: Gov 3 at 6).

Additional delinquent accounts include: a \$148 medical account that was placed for collection in July 2008 (SOR ¶ 1.f: Gov 3 at 6); a \$627 medical account placed for collection in June 2006 (SOR ¶ 1.g: Gov 4 at 1); a \$689 medical account that was placed for collection in July 2008 (SOR ¶ 1.h: Gov 3 at 6); a \$770 medical account that was placed for collection in July 2008 (SOR ¶ 1.i: Gov 3 at 5); and a \$2,070 medical account that was placed for collection in July 2008 (SOR ¶ 1.j: Gov 3 at 5).

Additional delinquent accounts include: a \$358 medical account that was placed for collection in June 2008 (SOR ¶ 1.k: Gov 4 at 2); a \$244 credit card account placed for collection in June 2008 (SOR ¶ 1.l: Gov 4 at 2); a \$241 account related to damages to a leased property that was placed for collection in June 2004 (SOR ¶ 1.m: Gov 4 at 2); a \$235 medical account that was placed for collection in June 2007 (SOR ¶ 1.n: Gov 3 at 8); a \$340 medical account placed for collection in October 2006 (SOR ¶ 1.o: Gov 3 at 8); and a \$203 medical account that was placed for collection in October 2006 (SOR ¶ 1.p: Gov 3 at 7).

Additional delinquent accounts include: a \$526 medical account that was placed for collection in January 2006 (SOR ¶ 1.q: Gov 3 at 8); a \$206 medical account placed for collection in August 2005 (SOR ¶ 1.r: Gov 3 at 7); a \$766 credit card account that was placed for collection in February 2006 (SOR ¶ 1.s: Gov 3 at 5, 21; Gov 4 at 2); a \$554 account that was placed for collection in August 2007 (SOR ¶ 1.t: Gov 3 at 9; Gov

4 at 2); an \$820 account placed for collection in March 2008 (SOR ¶ 1.u: Gov 4 at 2); and a \$823 credit card account that was placed for collection in July 2008 (SOR ¶ 1.v: Gov 3 at 21; Gov 4 at 2-3).

Additional delinquent accounts include: a \$449 account that was placed for collection in March 2005 (SOR ¶ 1.w: Gov 4 at 3); a \$647 credit card account placed for collection in October 2005 (SOR ¶ 1.x: Gov 4 at 3); a \$304 traffic ticket account that was placed for collection in March 2005 (SOR ¶ 1.y: Gov 3 at 4); a \$185 medical account that was placed for collection in June 2007 (SOR ¶ 1.z: Gov 3 at 8); a \$7,000 debt owed as a result of an automobile repossession (SOR ¶ 1.aa: Gov 3 at 9); and a \$2,554 credit card account that was charged off in May 2008 (SOR ¶ 1.bb: Gov 3 at 10).

Additional delinquent accounts include: a \$303 medical account that was placed for collection in August 2005 (SOR ¶ 1.cc: Gov 3 at 11); a \$982 credit card account placed for collection in February 2008 (SOR ¶ 1.dd: Gov 3 at 12, 21); a \$56 medical account that was placed for collection in May 2008 (SOR ¶ 1.ee: Gov 3 at 13); a \$353 bank account that was placed for collection in June 2008 (SOR ¶ 1.ff: Gov 3 at 13); an \$821 bank account placed for collection in June 2008 (SOR ¶ 1.gg: Gov 3 at 13); a \$1,754 medical account that was placed for collection in November 2007 (SOR ¶ 1.hh: Gov 3 at 20); and a \$540 cash advance account that was placed for collection in July 2008 (SOR ¶ 1.ii: Gov 3 at 21).

During the hearing, Applicant testified that she was not financially able to pay the debts. Her financial problems were caused by being irresponsible with credit cards. She is trying to get her credit back in good standing. She is considering filing for bankruptcy. She contacted a credit counseling agency and asked about bankruptcy, but has not taken steps towards filing for bankruptcy. (Tr at 19-22)

The SOR alleges 35 delinquent debts. Of those debts, 20 are medical debts. Applicant incurred these expenses for routine medical care for her family when she had no health insurance. She did not work for a year after the birth of her second child in 1996. She was laid off for about one month in 2003. She was laid off for two weeks on another occasion. She could not recall the year. (Tr at 26-27, 43)

Applicant denied the debt alleged in SOR ¶ 1.y which was a \$304 traffic ticket. Her credit report dated July 30, 2008, indicates this was a paid collection. (Gov 3 at 4) SOR ¶ 1.y is found for Applicant. Applicant also denied the debts alleged in SOR ¶¶ 1.i, 1.v, 1.bb, 1.ff, 1.gg, and 1.ii because she did not recognize the accounts. She provided no evidence that she took steps to formally dispute the accounts.

She describes her financial situation as living paycheck to paycheck. Her monthly income is approximately \$2,631. She estimates that she has approximately \$100 left over after expenses. (Tr at 27-32; Gov 2 at 4) On June 12, 2009, she paid off a \$619.64 debt owed to a payday loan company. (AE A) This debt was not alleged in the SOR. She has approximately \$12,000 in student loans. Her student loans are in forbearance

because of her financial hardship. (Tr at 24) Applicant provided no evidence about her work performance.

### **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.

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 several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c) (a history of not meeting financial obligations apply to Applicant’s case. Applicant has 35 delinquent accounts, an approximate total balance of \$27,013. Applicant claims that she is financially unable to repay these debts.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following Financial Considerations Mitigating Conditions (FC MC) potentially apply to Applicant’s case: FC 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 current reliability, trustworthiness, or good judgment) does not apply. With the exception of SOR ¶ 1.y, the majority of Applicant’s debts remain delinquent. As of the date of the hearing, Applicant had no plan in place to resolve her delinquent accounts. Her financial situation remains unstable. FC MC ¶ 20(a) does not apply.

FC MC ¶ 20(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) partially applies. Of the 35 delinquent

accounts, 20 accounts are medical accounts that were incurred by Applicant and her four children during a period of time that she had no medical insurance. Past periods of unemployment also contributed to some of the debt. However, I cannot conclude Applicant has acted responsibly under the circumstances because she has not resolved her delinquent accounts. Several of the accounts alleged in the SOR were placed for collection in 2007 and 2008 when she was employed full-time. (SOR ¶¶ 1.z, 1.bb, 1.dd, 1.ee, 1.ff, 1.gg, 1.hh, and 1.ii). FC MC ¶ 20(b) is given less weight due to Applicant's lack of effort towards resolving her delinquent accounts.

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) does not apply. Applicant contacted a credit counseling agency, but did not follow through with a debt repayment plan. Her financial situation remains unstable.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Aside from the debt alleged in SOR ¶ 1.y, Applicant has not taken steps towards resolving her delinquent accounts, primarily, because she is financially unable to repay the debts. She is considering filing for bankruptcy, but had not taken steps towards doing so at the time of the hearing.

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 of the dispute or provides evidence of actions to resolve the issue) potentially applies with respect to the debts that Applicant denies. However, aside from the debt alleged in SOR ¶ 1.y, no documented proof was submitted indicating a valid basis for disputing each debt. In addition, Applicant did not formally dispute the debts that she denies with the credit reporting agency.

### **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 provided no evidence pertaining to her work performance and other whole person factors. Applicant has a significant amount of unresolved delinquent accounts. I considered that more than half of the accounts are medical bills. I considered that Applicant resolved a payday loan account not alleged in the SOR. However, 34 of the debts alleged in the SOR remain delinquent, and it is unlikely Applicant will be able to resolve these accounts based on her income in the near future. For these reasons, Applicant has not mitigated the security concerns raised under 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
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
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	For Applicant

Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	Against Applicant
Subparagraph 1.cc:	Against Applicant
Subparagraph 1.dd:	Against Applicant
Subparagraph 1.ee:	Against Applicant
Subparagraph 1.ff:	Against Applicant
Subparagraph 1.gg:	Against Applicant
Subparagraph 1.hh:	Against Applicant
Subparagraph 1.ii:	Against 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.

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ERIN C. HOGAN  
Administrative Judge