



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



In the matter of: )  
)  
) ISCR Case No. 08-11492  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 17, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s available information is not sufficient to mitigate the security concerns arising from financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 23, 2008, Applicant submitted a security clearance application.<sup>1</sup> On May 21, 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 amended, modified,

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<sup>1</sup> FORM Item 7.

and revised.<sup>2</sup> The SOR alleges security concerns 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 denied or revoked.

On June 5, 2009, DOHA received Applicant's response to the SOR allegations. She elected to have her case decided on the written record in lieu of a hearing (Item 6). A complete copy of the file of relevant material (FORM), dated July 16, 2009, was provided to her by letter dated July 20, 2009. Applicant received the FORM on August 5, 2009. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any material in refutation, extenuation, or mitigation in response to the FORM. The case was assigned to me on October 8, 2009.

### **Findings of Fact**

Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.c - 1.g, 1.i, 1.l, 1.n, 1.o, 1.r, 1.s, and 1.v. She denied SOR ¶¶ 1.b, 1.h, 1.j, 1.k, 1.m, 1.p, 1.q, 1.t, and 1.u. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 28-year-old physical security guard. She has been working for her current employer, a defense contractor, since August 2005.<sup>3</sup> She graduated from high school in 1998, and attended college from November 1999 to January 2000. She has not completed a degree. Applicant has never been married and disclosed no children.

Applicant's work history can be summarized as follows: she has been employed since December 1997 to present, except during the following unemployed periods: from August 1999 to August 2001, from July 2002 to December 2002, and from July 2003 to November 2003. Applicant has been consistently employed from November 2003 to present. It appears that she has been holding two jobs since December 2002. She was hired by her current employer, a defense contractor, in August 2005.

In her 2008 security clearance application, Applicant disclosed having financial problems, i.e., debts over 180 days delinquent during the last seven years, and currently having debts over 90 days delinquent. Applicant's background investigation addressed her financial problems and included the review of her May 2009 and August 2008 credit bureau reports (CBRs), and her answers to March 2009 DOHA interrogatories.

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<sup>2</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) directed application of revised Adjudicative Guidelines 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.

<sup>3</sup> Item 7 (2008 e-QIP) is the source for the facts in this decision, unless stated otherwise.

The SOR alleges 22 delinquent and/or charged-off accounts totaling approximately \$28,000. Applicant admitted 12 of the delinquent debts alleged in the SOR, totaling approximately \$10,700. She claimed she has established payment plans on three of the SOR debts; however, she presented no documentary evidence to corroborate her claims. Applicant denied 10 of the SOR delinquent debts, totaling approximately \$17,000.

SOR ¶¶ 1.l and 1.m both allege Applicant had judgments filed against her in 2006 and 2007, respectively. Applicant claimed she was unaware of them. Concerning the other SOR debts Applicant denied, she claimed some were her sister's debts, others she did not recall or was not aware the debts had become delinquent. She provided no other explanations as to why these debts were not valid. She provided no documentary evidence to show that she has formally disputed any of the debts she denied.

I find that the alleged delinquent debts are established by Applicant's admissions and her two credit reports (Items 9 and 10).<sup>4</sup> Most of the debts have been delinquent for many years. Nine of the delinquent debts involved relatively small debts, for less than \$500 each. In light of her financial history, Applicant's uncorroborated statements are not sufficient to show that she contacted creditors, settled debts, or has been making payments on her debts. Applicant failed to overcome the presumption established by the credit reports that these are her debts.

Applicant explained her financial problems were the result of her attempts to finish college while working low-paying jobs. She was spending more money for school than what she was earning. Her periods of unemployment also contributed to her financial problems. Overall, she did not have sufficient income to pay her day-to-day living expenses and her delinquent obligations. In her September 2008 statement to a government investigator, Applicant stated she was meeting her current financial obligations, but, could not afford to pay her old delinquent accounts. According to her March 2009, response to interrogatories, Applicant's gross monthly salary was approximately \$1,066, and her monthly expenses were \$500.

Applicant has not participated in financial counseling. She indicated she has made inquiries about how to consolidate her debts. Applicant presented no documentary evidence showing any efforts to consolidate her debts. Overall, Applicant presented little evidence of paid debts, settlement agreements, or efforts to resolve her delinquent debts since she acquired them.

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<sup>4</sup> An applicant's credit report showing the delinquent debts alleged in an SOR is sufficient to establish the government's *prima facie* case. See ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2003).

## 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 required to be considered 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>5</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).<sup>6</sup>

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<sup>5</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).

<sup>6</sup> "The administrative judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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 an applicant’s 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.

Applicant has accumulated 22 delinquent and/or charged-off accounts totaling approximately \$28,000, most of which have been outstanding for many years. Applicant admitted 12 of the delinquent debts alleged in the SOR, totaling approximately \$10,700. She claimed she has established payment plans on three of the SOR debts; however, she presented no documentary evidence to corroborate her claim. Applicant denied 10 of the SOR delinquent debts, totaling approximately \$17,000.<sup>7</sup> She presented no documentary evidence to overcome the presumption these are her debts. She presented no documentary evidence of efforts to pay or resolve any of the financial obligations alleged in the SOR.

AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

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;

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<sup>7</sup> Applicant failed to admit or deny SOR ¶ 1.e, and I considered it denied.

(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's sparse favorable evidence fails to fully raise the applicability of any mitigating condition. Her financial problems are ongoing and her evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence to establish circumstances beyond her control contributing to her inability to pay her debts, i.e., her periods of unemployment. Applicant presented little evidence of efforts to resolve her financial obligations since she acquired the debts. She has failed to pay two judgments or to formally dispute her delinquent debts. Applicant presented no corroborating documentary evidence of efforts to pay or resolve any of the financial obligations alleged in the SOR.

Applicant has been employed since December 1997 to present, except during the following unemployed periods: from August 1999 to August 2001, from July 2002 to December 2002, and from July 2003 to November 2003. Applicant has been consistently employed from November 2003 to present. It also appears that she has been holding two jobs since December 2002. She was hired by her current employer, a defense contractor, in August 2005. Notwithstanding her periods of unemployment, Applicant presented no documentary evidence of any efforts to revolve her financial obligations. Her favorable information fails to establish a track record of financial responsibility. AG ¶ 20(b) does not apply.

AG ¶ 20(c) does not apply because there are no clear indications that her financial problem is being resolved or is under control. She presented no evidence that she has received financial counseling. Considering the number of delinquent debts, the

date the debts were acquired, the aggregate value of the debts, and the lack of corroborating documentary evidence of efforts to resolve her legal financial obligations, Applicant's information is insufficient to establish that her financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this 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 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.

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 receives credit for her work history and years working for government contractors. She also receives credit for her efforts to complete her college education and some mitigation because of her extensive periods of unemployment. These factors show some responsibility and mitigation.

Notwithstanding, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant has failed to show good-faith efforts to resolve her financial problems in a timely manner. The sparse mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her 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.v

Against Applicant

**Conclusion**

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 eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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JUAN J. RIVERA  
Administrative Judge