



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-11995
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 26, 2010

**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant was alleged to owe approximately 24 accounts that have been charged-off or placed for collection, which total approximately \$13,000. She admits owing 11 debts, which total approximately \$7,700. The delinquent debts remain unpaid. Applicant failed to rebut or mitigate the government’s security concerns under financial considerations. Clearance is denied.

**Statement of the Case**

Applicant contests the Defense Department’s intent to deny her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a Statement of

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<sup>1</sup> 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

Reasons (SOR) on August 11, 2009, detailing security concerns under guideline F, financial considerations.

On September 19, 2009, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated December 10, 2009. The FORM contained 11 attachments. On December 16, 2009, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

On January 15, 2010, Applicant responded to the FORM. Department Counsel did not object to the response. Applicant's response was admitted into the record. On January 29, 2010, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, she admitted the factual allegations, with explanations, in ¶¶ 1.e, 1.f, 1.h, 1.j, 1.k, 1.o, 1.q, 1.r, 1.t, 1.u. and 1.w. These eleven debts total \$7,755. She denied the remaining factual allegations. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is a 51-year-old security officer who has worked for a defense contractor since June 2008, and is seeking to obtain a security clearance.

Applicant asserts her financial problems started in 1993 when she was taking care of her two daughters<sup>2</sup>, her sick mother, and stepfather. Her stepfather died in 2000 after a four-year illness. In 2000, Applicant was laid-off from her job at a counseling center. In September 2003, she was unemployed for three months following her relocation to a new city. From May 2003 through July 2008, her pay was \$9 per hour. In June 2008, she obtained her current job which pays \$12 per hour.

In December 2008, she suffered a heart attack and her medications are expensive. Applicant's credit bureau reports (CBR) (Items 10 and 11) list six medical debts in SOR paragraphs: 1.a (\$42), 1.b (\$36), 1.c (\$34), 1.d (\$900), 1.f (\$371), and 1.x (\$647).

Applicant denies owing a \$1,173 telephone debt (SOR ¶ 1.q), which a collection agency is attempting to collect. Applicant's cell phone was stolen in 2003. She reported the theft to the service provider and they said they would investigate the matter. Applicant then forgot about the matter. As of September 2008, Applicant had been advised she was \$1,349 delinquent on the account. (Item 8)

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guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

<sup>2</sup> Her daughters are now age 25 and 31.

In March 2009, Applicant contacted a debt solution company. (Item 9) The plan lists \$10 per month payments on each of eight debts, which totaled \$2,322, for a total monthly payment of \$80. Those SOR debts are: 1.c (\$34), 1.f (\$371), 1.j (\$189), 1.k (\$373), 1.n (\$751), 1.o (\$236), 1.q (\$48), and 1.r (\$320). Applicant failed to show she made any payments to the debt solution company.

In September 2009, Applicant again contacted the debt solution company. The arrangement listed four of the SOR debts and two duplicate accounts, which totaled \$1,723. Those SOR four debts are: 1.f (\$371), 1.j (\$189), 1.o (\$236), and 1.r (\$320). The two duplicate accounts are: 1.f (\$371) and 1.o (\$236). Applicant did not explain why the duplicate accounts were listed as debts to be paid. The agreement required Applicant to pay the debt solutions company \$75 monthly on these debts.

As of March 25, 2009, the creditor of the student loan was holding a postdated check in the amount of \$64. (Item 9) There is no evidence this check was honored or that any additional payment was made on this loan. Applicant asserts, but failed to provide documentation, that she is paying \$64 monthly on her student loans. The SOR lists two student loan debts: 1.l (\$38) and 1.w (\$4,973).

Applicant has cut back on or eliminated things in order to pay her bills. She did not learn she was divorced until 1997 or 1998, when her ex-husband and he told her he had divorced her years earlier. (Answer to FORM)

In September 2008, Applicant was questioned about her unpaid debt during a personal interview. (Item 8) In March 2009 and May 2009, Applicant answered interrogatories concerning her unpaid debt. In March 2009, a debt of \$19.18 was paid by an offset from her state income tax refund. (Answer to SOR) Applicant did not indicate which SOR debt related to this payment. Additionally, a \$35.74 check was sent to another creditor not listed in the SOR. These are the only documented payments presented.

## **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 must 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 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 for 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 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**

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems, by her admission, which started in 1993. Seven of Applicant's debts were approximately \$100 or less. Throughout this process, she had admitted responsibility for eleven delinquent debts, totaling about \$7,700. She has provided insufficient documentation to show significant progress resolving her debts. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(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; or

(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.

Under AG ¶ 20(a), Applicant's financial problems started in 1993, but continue to remain a problem. She has numerous delinquent debts, some less than \$100 each, that

remain unpaid. The debt was not incurred under unusual circumstances. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), Applicant was divorced sometime during the 1990s and was unemployed for three months in 2003. These are certainly problems largely beyond her control, however the divorce occurred more than ten years ago and the unemployment more than six years ago. Her mother had been ill, and in December 2008, Applicant had a heart attack. Again, these are conditions beyond her control. The financial impact of her mother's illness and her heart attack is unknown except for her comment that her medication is rather expensive. AG ¶ 20(b) has limited applicability.

Under AG ¶ 20(c) there is no indication that Applicant has received counseling or that her financial problems are under control. Under AG ¶ 20(d), there is no showing Applicant has paid any of the SOR debts or entered into an agreement making payment on her debts. In March 2009, she contacted a debt management company, but there is no evidence she made any payments to her creditors as a result of that contact. In September 2009, she again contacted the company, but she has not provided any evidence she has made payments following that contact. She did provide evidence that in March 2009, the creditor holding her student loan obligation was in possession of a \$64 postdated check. There is no evidence of any additional payment to that creditor. AG ¶ 20(c) and ¶ 20(d) do not apply.

Applicant has denied some of the debts. Specifically, she says her cell phone was stolen in 2003 and she informed the service provider of the theft. They investigated and Applicant owes the money. For AG ¶ 20(e) to apply not only is there a need for a reasonable basis to dispute the legitimacy of the past-due debts, but she must provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. Simply stating the debt is not owed is insufficient for this mitigating factor to apply.

The debts listed in SOR ¶¶ 1.u (\$489) and 1.v (\$574) are duplicated debts. Not only are both obligations owed to the same creditor, although the account numbers differ, the payment history on these two debts is identical. Applicant admits the one obligation and denies the other. The debt listed in SOR ¶ 1.l (\$38) is a student loan, which would be included in the larger \$4,973 student loan amount (SOR ¶ 1.l). Additionally, the debt listed in SOR ¶ 1.l (\$189) is a collection company collecting for the telephone company listed in SOR ¶ 1.l (\$189). I find the debts listed in SOR ¶¶ 1.j, 1.l, and 1.v to be duplicate debts. I find for Applicant as to these three debts. Her unpaid debt raises concerns about her current reliability, trustworthiness, or good judgment.

### **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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. It is noted that six of the debts were for medical treatment.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate her demeanor, appearance, or form a positive determination as to her truthfulness. From the record, I am unable to find Applicant was sincere, open, and honest. Even if I found for her in these matters, there is no evidence of payment on the delinquent debts.

Of course, the issue is not simply whether all her debts are paid or are being paid, which they are not—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) The amount of debt is not large. The amount alleged was \$13,000 and she admits to owing \$7,700. However, none of the delinquent debt has been paid. It is noted that seven of the debts, approximately one-third of the total number of her debts, are for debts of less than \$100 each. Even the small debts have not been addressed.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances, a clearance is not recommended. Should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, she may well demonstrate persuasive evidence of her security worthiness.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has not mitigated 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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a -1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m- 1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w and 1.x:	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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CLAUDE R. HEINY II  
Administrative Judge