



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



In the matter of: )  
)  
) ISCR Case No. 09-00199  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: James Duffy, Esquire, Department Counsel  
For Applicant: *Pro se*

July 15, 2009

**Decision**

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted her Security Clearance Application (SCA) on July 3, 2007. On February 25, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her answer to the SOR on March 3, 2009. DOHA issued a notice of hearing on March 20, 2009 for a hearing on April 6, 2009. The hearing was held as scheduled. At the hearing, three exhibits (GE I through 3) were admitted in evidence without objection to support the government's case. Applicant testified and submitted four exhibits (AE A-AE D). Those exhibits have been re-labeled AE AA, AE BB, AE CC, and AE DD, to accommodate the identification system she employed in her post hearing exhibits. In her post hearing submissions, Applicant furnished AE A through AE Y (70 pages) on April 21, 2009. She submitted AE Z (4 pages) on April 22, 2009. These exhibits, which have been received in evidence, provide updated information about several of the listed debts. The exhibits also include character statements, her performance evaluations, and the preliminary documentation describing Applicant's enrollment in a debt consolidation plan. DOHA received the transcript on April 10, 2009. The record closed on April 22, 2009.

### **Rulings on Procedure**

Before opening statement of the hearing, Applicant was advised that because the notice of hearing was dated March 20, 2009, and the hearing was beginning on April 6, 2009, she may not have received the hearing notice more than 15 days before the hearing (as required by the E3.1.8. of the Directive), and could request a continuance (Tr. 10). Applicant answered that she had not received the notice of hearing more than 15 days before the hearing (Tr. 7), and that she had not talked with Department Counsel for the Government by telephone more than 15 days before the hearing (Tr. 8). Department Counsel indicated he talked with Applicant on March 19, 2009, and she agreed to the hearing occurring on April 7 or April 8, 2009. The date was changed to April 6, 2009 for administrative purposes. On March 25, 2009 (inside the 15-day period), Department Counsel advised Applicant of the change in hearing dates to April 6, 2009.

Applicant considered (1) requesting a continuance or (2) proceeding with the hearing, then having two weeks after the hearing to submit additional documents (through Department Counsel) to substantiate action taken on the delinquent accounts (Tr. 11-14). Applicant decided to have the hearing, and then be allowed two weeks to supplement the record (Tr. 13). The hearing was held as previously scheduled, and she was granted until April 21, 2009 to produce additional documentation (Tr. 13, 77). By agreeing to proceed with the hearing and a two-week period of time to submit additional evidence, I conclude Applicant knowingly waived the 15-day notice requirement.

### **Findings of Fact**

Applicant admitted all 13 delinquent accounts appearing in the SOR. The total amount of debt as of the date of the SOR was \$34,107. Her answers are incorporated into the following factual findings.

Applicant is 38 years old and married. She has two children, ages 15 and three, and is expecting a third child. She served in the United States Army (USA) from 1988 to November 2000. She has held a security clearance since 1988.

Applicant's financial troubles began during the latter part of her military service between 1996 and 2000. Due to her husband's sporadic employment, she was the only source of income for the family. After her honorable discharge in November 2000, she was unable to find employment for about a year. When she found work in November 2001, her husband lost his job, and was unemployed for approximately five years. He landed a job 2005 with a publisher, where he is still working (Tr. 22-27). Applicant and her husband were separated between 2001 and 2003 (Tr. 68) when they reconciled. They have been steadily employed since 2005 (Tr. 28).

Applicant explained that her second child developed medical problems after his birth in July 2005 (Tr. 29), including a heart condition that required hospitalization two weeks before the hearing (Tr. 59). After receiving a diagnosis of asthma at some time earlier in his life, the child was diagnosed with autism in February 2009 (Tr. 60, 73). Because of the recent diagnosis and the difficulty identifying the proper treatment for autism, Applicant and her husband are uncertain what services the child will need, and how much it will cost for increased medical insurance (Tr. 72-73). Even with their current medical insurance, they have to pay about 10% of all medical costs for the family (Tr. 61).

Applicant's credit bureau reports (GE 2, 3) provide historical background on the past due accounts listed the SOR. The delinquent accounts shall be addressed in the order they appear in the SOR.

» SOR 1.a. \$3,717, credit card, judgment received by creditor in June 2004. Applicant was making payments in 2003 and 2004 on the delinquent account before it became a judgment, but no payments were made since March 2004 (AE A1, at 7). The judgment is currently \$5,069, and will be included in Applicant's debt consolidation plan (AE A, N).

» SOR 1.b. \$696, medical account for services rendered to her second child in August 2005. The account became delinquent in December 2005. Applicant tried several times between April 15 and April 21, 2009 to obtain a current account balance, but she received nothing. The creditor has offered a settlement of SOR 1.b., 1.k., and 1.l. for \$692. The settlement amount will be included in Applicant's debt plan (AE A, N). See *also* discussion under SOR 1.k.

» SOR 1.c. \$348, credit card account opened in August 2002, and became delinquent in May 2004. Applicant provided documentation that she made a payment of \$114 on January 20, 2009, and a payment of \$114 on March 6, 2009 to pay off account. She is awaiting documentation from the creditor to reflect the account is paid. AE AA indicates that on January 13, 2009, the collection firm made an offer to Applicant to provide two payments of \$104 by February 20, 2009 to settle the account.

» SOR 1.d. \$5,010, credit card account opened in May 2001, and became delinquent in December 2003. The account was sold to a collection agency. Applicant has made two payments under a repayment plan established with the collection agency

in March 2009 (AE D1). Applicant made the first payment of \$591 on March 9, 2009 (AE D2), and the second payment of \$591 on April 20, 2009 (AE D3).

» SOR 1.e. \$1,644, unknown loan instrument that was opened in January 1999, and became delinquent in September 2003. On October 30, 2008, Applicant settled this account for \$1,110 (AE E2).

» SOR 1.f. \$16,104, credit card account opened in March 1997, and became delinquent in September 2001. The account was sold to a collection firm that presented an offer to settle in 2008 of \$5,199. This offer is verified by the firm's December 2008 acknowledgment of receiving Applicant's final payment under a repayment plan (AE DD). Under the plan, Applicant settled the account in three installments of \$1,733 made on: October 31, 2008 (AE F1); November 21, 2008 (AE F2); and, December 12, 2008 (AE F3). Applicant received a letter on April 21, 2009 indicating the account was satisfied for \$5,199 (AE F3).

» SOR 1.g. \$1,704, credit card account opened in May 1997, and became delinquent in August 2003. This account will be added to Applicant's debt consolidation plan (AE A).

» SOR 1.h. \$2,484, credit card account opened in May 1997, and became delinquent in March 2001. This account will be added to Applicant's debt consolidation plan (AE A, N).

» SOR 1.i. \$53.00, medical account (dental) for services rendered in September 2006. On April 20, 2009, Applicant paid the account. There is no documentation from creditor indicating the account was paid, however, she provided a check ledger reflecting a payment of \$57 to a dental firm (AE I1).

» SOR 1.j. \$697, unknown credit account that became delinquent in June 2007. The account was transferred to several collection agencies (AE A). Applicant settled the account in April 2009 for \$205 (AE J2, J3), and verification from the collection agency is pending (AE A).

» SOR 1.k. \$864, medical account for services rendered on March 2006. Although Applicant testified that this was the same account as SOR 1.b., she was apparently mistaken (AE A). Applicant stated that the creditor has notified her the three medical accounts (SOR 1.b., 1.k., and 1.l.) can be settled for \$692. After numerous attempts to contact the creditor, Applicant will include the consolidated settlement amount in her debt consolidation plan (*Id.*).

» SOR 1.l. \$531, medical account for services rendered February 2006. The consolidated settlement amount of \$692 will be in her debt plan (AE N).

» SOR 1.m. \$255, a medical account for services provided on January 2007. Applicant claims she paid the account, but provided no proof of payment as she had with SOR 1.c. and 1.d.

AE N provides some details of Applicant's debt plan enrolled in on April 19, 2009. After paying the enrollment fee of \$50, her first payment of \$460 is due May 10, 2009. As disclosed on page one of the plan, Applicant was advised to implement certain action steps in her financial practices. The debt consolidation firm recommended that she establish a budget, use coupons to make food purchases, and purchase certain merchandise at stores where the prices are generally lower. The firm also advised to open a savings account and deposit 10% of her net monthly income.

Having carefully evaluated the evidence, specifically the character statements and Applicant's demeanor at the hearing, I find her testimony credible. Based on the documentation Applicant provided to show payments or settlements of six accounts and partial payments of two of the 13 past due accounts (including one judgment), I find Applicant paid off, settled, or furnished payments to SOR 1.c., 1.d., 1.e., 1.f., and 1.i. In addition, based on her testimony and documentation relating to SOR 1.j., I find her claim that she also paid the account in SOR 1.j. is credible, even though there is no documentary verification of settlement. Since October 2008, Applicant has paid a total of \$7,931 and still owes \$9,953 to the creditors listed in SOR 1.a., 1.g., and 1.h. She will include those creditors in her debt plan, along with the consolidated settlement offer of \$692 (three medical accounts identified in SOR 1.b., 1.k., and 1.l.) into her debt plan.

### **Character Evidence**

Applicant's performance evaluations from 2004 disclose she has consistently exceeded requirements of her position as help desk manager in computer systems. She received a performance award in 2008 (AE O). Several coworkers indicate Applicant is a dedicated employee who has always been a team player (AE T through AE X). Her Executive Assistant has seen nothing but dedication in the way Applicant has carried out her job responsibilities in the last two ½ years (AE Y), while her supervisor since 2005 considers her a real leader (AE Z).

### **Policies**

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information. These guidelines are flexible rules of law that must take into consideration the complexities of human behavior.

The administrative judge's ultimate adjudicative goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole person

concept." Finally, 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. Reasonable 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 sensible, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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.

## **Analysis**

### **Financial Considerations (FC)**

¶ 18. The Concern. "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

Applicant encountered financial problems as she approached retirement from the military in November 2000. After her honorable discharge, she did not find employment until November 2001. Her husband was unemployed at the time of her discharge, and did not regain full-time employment until 2005. The accounts listed in the SOR show

that some of the debts became delinquent in 2003 and 2004, but others (primarily the medical debts for her second child) became delinquent in 2005 through 2007. Both FC disqualifying condition (DC) ¶ 19.a. (*inability or unwillingness to satisfy debts*), and FC DC ¶ 19.c. (*a history not meeting financial obligations*) apply to the circumstances of this case.

The first four mitigating conditions are potentially applicable. Applicant is entitled to limited mitigation under FC mitigating condition (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 reliability, trustworthiness, and good judgment*). Although a few of the 13 accounts became delinquent in the last three years, her outstanding character evidence and her proactive approach to her overdue debt obligations before receiving the SOR in February or March 2009, overcomes any previously existing doubt regarding her judgment and reliability.

FC MC ¶ 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) applies to the five-year-period when Applicant's husband was unemployed, and she had to pay the family bills on her income exclusively. Applicant receives additional mitigation under this mitigating condition with the discovery of her second child's health problems, including asthma, and more recently, autism. Applicant's resolution of several of the debts before receiving the SOR constitutes compelling evidence that she has acted responsibly under challenging circumstances.

Appellant needs additional financial counseling as defined by 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*). However, her progress in paying off and paying on two of the overdue accounts demonstrates she is regaining control of her financial responsibilities.

Applicant receives substantial consideration under FC MC ¶ 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Before October 2008, she owed more than \$34,000. Currently, she owes about \$9,953. All past due debts, including the judgment, are being paid on or a part of a repayment plan, or will be in her debt consolidation plan.

### **Whole Person Concept (WPC)**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the FC guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

¶ 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 the participation was 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.

Applicant's financial problems between 2000 and 2005 are extenuated by her unemployment for most of 2001, her husband's unemployment between 2000 and 2005, and their separation from 2001 to 2003. Even though they have been steadily employed since 2005, their son's health problems have understandably caused financial challenges.

Applicant exercised good judgment by acting on several of the family debts in October 2008, approximately five months before the SOR was issued in February 2009. By settling the largest delinquent account (SOR 1.f., \$16,104) in three payments between October and December 2008, she reduced her delinquent balance to approximately \$18,000. Her payments on the other accounts reduced the delinquent balance to about \$10,000 for the remaining four accounts that will be placed in her debt consolidation plan. Based on her favorable action taken since October 2008 to eliminate a substantial portion of her debt, I am convinced she will follow through with her promises to pay the remaining delinquent accounts including those that will be in her debt consolidation plan, even though she established the plan after the hearing, and has paid only the enrollment fee required by the plan. With one child in poor health, and expecting a third child, Applicant realizes she is duty bound to make responsible changes in her financial practices. I am convinced she will show the same dedication to her debt consolidation plan as she has demonstrated to her colleagues over the last eight years. The financial guideline is found in Applicant's favor.

### **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, Guideline F): FOR APPLICANT

Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant



Subparagraph 1.f.	For Applicant
Subparagraph 1.g	For Applicant
Subparagraph 1.h	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	For Applicant

### **Conclusion**

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

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Paul J. Mason  
Administrative Judge