



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-00206
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 23, 2010

**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on July 31, 2008. On September 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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 October 30, 2009, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on December 1, 2009. On December 17, 2009, a Notice of Hearing was issued, scheduling Applicant's hearing for January 13, 2010. On that date, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced 11 exhibits, which were marked Ex. 1 through 11 and admitted to the record without objection. The Government also offered a one-page chart summarizing the status of the six debts alleged on the SOR and indicating where information on those debts could be found in the Government's exhibits. I marked the chart as Hearing Exhibit (HE) 1, and it was admitted to the record without objection.

Applicant testified on her own behalf and called four witnesses. She introduced 38 exhibits, which were marked as Ex. A through Ex. Z and Ex. A-2 through Ex. L-2. Applicant's exhibits were admitted to the record without objection. DOHA received the transcript of the hearing on January 22, 2010.

### **Findings of Fact**

The SOR contains six allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.f.) In her Answer to the SOR, Applicant admitted the allegations at ¶¶ 1.a., 1.b., and 1.c. She denied the allegations at ¶¶ 1.d., 1.e., and 1.f. The Government stipulated that the debts alleged at SOR ¶¶ 1.e. and 1.f. had been settled and the debt alleged at SOR ¶ 1.d. had been otherwise resolved. Applicant's admissions are included herein as findings of fact. (Ex. L; Ex. M; Ex. N; Ex. O; Tr. 39-40.)

Applicant is 34 years old, married, and the mother of two small children. In 1998, she earned a Bachelor of Science degree in marketing. She has attended law school for one year. (Ex. 1; Ex. 2; Ex. F-2; Tr.122-124.)

Applicant was commissioned as an officer and served on active military duty from May 1998 through June 2003. She was an inactive reservist from July 2003 until May 2005. She resigned her commission and received an honorable discharge from military service on May 15, 2006. (Ex. 1; Ex. W; Tr. 123.)

Between 2003 and 2005, Applicant worked as a settlement agent and processor for two real estate title companies. In March 2005, Applicant and her mother established a business which conducted real estate closings for purchase and refinance transactions. In addition to being a co-owner, Applicant served as the operations manager for the business. (Answer to SOR; Ex. 1; Tr. 112-115, 167-169.)

In the latter part of 2007, the decline in the real estate market began to affect Applicant's business. In March 2008, Applicant and her mother agreed to close the business. In June 2008, the business closed. Applicant was without an income from March 2008 until she began her present employment in July 2008. She is employed as a program control and operations analyst by a government contractor. She seeks a security clearance. (Ex. 1; Ex. Y; Tr. 129, 170-172.)

Applicant is responsible for three delinquent debts totaling approximately \$70,000. Applicant's credit bureau reports show that she owes a judgment creditor approximately \$25,872 on a personal loan that she took out in July 2007. The last payment on the loan was made in December 2007. In June 2009, the creditor obtained a judgment against Applicant in order to satisfy the debt. This debt was alleged at SOR ¶ 1.a. (Ex. 5; Ex. 6; Ex. 8; Ex. 11; Tr. 101-102.)

Applicant admitted the debt. She advised that in October 2008 she entered an agreement with a debt repayment firm and began to make a monthly payment of \$554 to reduce this and other delinquencies. In September 2009, she removed the debt from the debt repayment program and entered into a repayment agreement with the creditor. In October 2009, she made a payment of \$1,500 to the creditor. She also made payments of \$300 in October, November, and December 2009. (Ex. Z; Ex. A-2; Tr. 63, 97-101.)

Applicant owes a second judgment creditor approximately \$9,969 on a credit card debt that became delinquent in December 2007. This debt, which was alleged at SOR ¶ 1.b., was also included in Applicant's debt repayment plan. Applicant hoped to settle the debt, but the debt repayment firm did not negotiate a settlement. Applicant requested that the firm return her money. In December 2009, Applicant made one payment of \$250 to the judgment creditor. In January 2010, Applicant received a refund of approximately \$7,348 from the debt repayment firm. Applicant spoke with the creditor and discussed the possibility of settling the debt by using some of the refund she received from the debt repayment firm. (Ex. Z; Ex. B-2; Tr. 105-107.)

Applicant's third debt arose as a consequence of her failure to pay the mortgage on a townhouse she purchased in 2004. In 2005, she refinanced the mortgage on the townhouse and purchased a second property as a residence, retaining the townhouse as an investment property. The first mortgage on the refinanced townhouse was for \$332,000. The second mortgage on the refinanced townhouse was for \$41,500. (Ex. C-2.)

Applicant listed the townhouse for sale in August 2005. When the property did not sell by December 2005, she withdrew it from the market. In March 2007, Applicant again listed the townhouse for sale. When the townhouse did not sell by the end of September 2007, she again withdrew it from the market. Applicant and a tenant signed a one-year lease in October 2007. In August 2008, the tenant stopped paying rent. Applicant has pursued payment by suing the tenant in small claims court. Applicant let the property to a second tenant in October 2008. The second tenant stopped paying

rent in July 2009. The tenant made a partial payment of back rent in October 2009 and has declared bankruptcy. Applicant's husband has retained the monthly rent payments made by the tenants in his savings account to be used in the event that the lender approves a loan modification for the property. Applicant estimated that the rental payments saved by her husband in his account total approximately \$16,000. (Ex. C-2; Tr. 110, 118-120.)

Applicant has not made payments on the town house mortgage since April 2008, and the delinquent debt of \$34,000 is still outstanding. Applicant's credit bureau report of January 2010 shows the delinquency has increased to \$42,435. The delinquent mortgage debt is alleged at SOR ¶ 1.c. In September 2008, the lender filed a notice of intent to foreclose. The lender has advised Applicant that it will accept nothing less than the full amount of the delinquency, plus attorneys' fees. Foreclosure has not yet occurred. (Ex. 10; Ex. 11; Tr. 83, 107-111, 118, 191.)

Applicant provided information on her past and current expenditures and financial status. She reported an annual income of \$91,520. Her husband is employed as an engineering services support manager. His annual salary is \$98,820. Additionally, he has a second job which pays approximately \$13,000 a year. (Ex. Y; Tr. 181.)

In December 2005, Applicant purchased a used 2004 Porsche SUV. Her monthly payments on the vehicle were \$1,009. Applicant made the monthly payments until November 2009, when she traded the car for 2006 Jeep SUV. Her monthly payments on the Jeep are \$375. (Tr. 112-114.)

Applicant settled the debt alleged at SOR ¶ 1.e. for less than the amount owed. In a letter to Applicant, dated October 30, 2009, confirming the settlement, the creditor gave notice that it was required to file a Form 1099C with the Internal Revenue Service for forgiveness of a debt of \$600 or more. Applicant stated that she had not received a Form 1099C or a notice of imputed income as the result of settling the debt for less than the amount owed. (Ex. N; Tr. 121-122.)

Together, Applicant and her husband owe \$72,000 in student loans. Applicant was responsible for a monthly scheduled payment of \$543 to repay her student loans of approximately \$45,000. In August 2009, Applicant received notice that she was four months past due on her student loan debt and owed a delinquency of \$2,172, including fees and late charges. Applicant paid the student loan creditor approximately \$2,302 in December 2009 to satisfy the delinquency. (Ex. L-2; Tr. 211-212.)

Applicant and her husband received a refund of \$18,000 on their 2008 federal income tax filing. They also received a refund on their 2007 federal income tax filing. The refunds were used to pay off debts from Applicant's business, which was closed in June 2008. (Tr. 203-205.)

Applicant provided a household budget that showed the following: net monthly household income: \$15,103<sup>1</sup>; monthly debt, including household expenses: \$13,789; monthly net remainder: \$1,314. Applicant uses the net monthly remainder to satisfy debts not listed on the SOR. (Ex. D-2; Tr. 116-118.)

Applicant has several hundred dollars in a savings account. She does not contribute to a retirement account. Her employer has contributed approximately \$900 on her behalf to a 401k account. (Tr. 115-116.)

Applicant provided 15 letters of character reference from friends, co-workers, and managers with whom she has worked. The letters praised Applicant's professionalism, technical skills, and work ethic. A senior officer in the company where Applicant now works stated that he was "very impressed by her high degree of integrity, responsibility, and customer support." (Ex. U.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an 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 used 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, the administrative judge applies these guidelines 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.

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<sup>1</sup> This figure included \$2,000 in rent from the townhouse. Applicant's Ex. C-2 established that the tenant occupying the town house had not paid rent since July 2009 and had declared bankruptcy. When the townhouse rent is subtracted from Applicant's monthly household income, she appears to have a monthly deficit of over \$600. (Ex. C-2; Ex. D-2.)

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 in seeking to obtain 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 that 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 conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying.

Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns.

Applicant accumulated substantial delinquent debt. Despite a substantial income, she was unable to pay her creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. If the financially delinquent 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,” then AG ¶ 20(a) might apply. If “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,” then AG ¶ 20(b) might apply. If “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,” then AG ¶ 20(c) might apply. If “the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts,” then AG ¶ 20(d) might apply. Finally, if “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,” then AG ¶ 20(e) might apply.

The record shows that Applicant’s financial delinquencies began before she experienced financial hardship when her business closed, and they continue to this day. Applicant’s current financial delinquencies involve substantial sums of money, occurred under circumstances that are likely to recur, and cast doubt on her current reliability, trustworthiness, and good judgment.

The record does not include facts that suggest protracted conditions beyond Applicant’s control that would explain her failure over a period of years to meet her financial obligations. While she experienced unemployment for several months in 2008, she has been steadily employed at a high salary with her current employer since July 2008. To her credit, Applicant sought to consolidate her debts, and, as of December 2009, she is current in paying her student loan obligations. She has settled or otherwise paid three of the debts alleged on the SOR. However, three other debts, totaling over \$70,000 and alleged on the SOR, remain unresolved. She and her husband have a combined annual gross income of over \$200,000, but it is not clear that she has a plan in place for avoid financial overextension in the future. According to her budget, she spends more than she earns each month. While Applicant’s intention to satisfy her creditors is laudable, she has failed to demonstrate a track record of financial responsibility. She has not yet demonstrated priorities that emphasize paying her existing debts and avoiding additional financial delinquencies in the future. While I conclude that AG ¶¶ 20(b) and 20(d) apply in part to the facts of Applicant’s case, I also

conclude that AG ¶¶ 20(a) and 20(c) do not apply. AG ¶ 20(e) is not raised by the facts of Applicant's 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 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.

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 relevant facts and circumstances surrounding this case. Applicant's friends, co-workers, and managers respect and appreciate her professionalism. She works hard and is a reliable employee. She has been steadily employed with her current employer for about one and one-half years. She earns a high salary.

Applicant has addressed her student loan delinquencies only recently, and it is not clear from the information she provided why she did not allocate some of her federal income tax refunds to satisfy her existing debts. Applicant's financial problems began when she was a mature adult. She is responsible for approximately \$70,000 in delinquent debt. While she recently established payment plans to satisfy two judgments, she has failed to demonstrate that she has developed a long-term plan to satisfy her creditors and understands how to avoid excessive debt in the future. She appears to have a monthly deficit of over \$600, putting in doubt her ability to make consistent payments to reduce her debt in the future.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude, after a careful review of the facts of her case, the Financial Considerations adjudicative guideline, and the whole person concept, that Applicant failed to mitigate the security concerns arising from her financial delinquencies. If she wishes, and if her employer supports reapplication, Applicant can reapply for a security clearance one



year after the date that this decision becomes final. At that time, she can produce new evidence that addresses the Government's current security concerns.

**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. through 1.c.:	Against Applicant
Subparagraphs 1.d. through 1.f.:	For 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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Joan Caton Anthony  
Administrative Judge