



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

\_\_\_\_\_, \_\_\_\_\_  
SSN: \_\_\_\_\_

Applicant for Security Clearance

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ISCR Case No. 09-00788

**Appearances**

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

October 13, 2010

**Decision**

WHITE, David M., Administrative Judge:

Applicant incurred 12 delinquent debts, totaling more than \$70,500, since 2007. She provided no evidence of any effort to resolve any of those debts, despite expressing her intention to do so more than two years ago. She failed to mitigate the resulting security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on June 20, 2008.<sup>1</sup> On December 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup> 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*

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<sup>1</sup>Item 7.

<sup>2</sup>Items 1 and 2.

*Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 7, 2010, and again on February 19, 2010, and requested that her case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on March 4, 2010. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on March 17, 2010, and returned it to DOHA. She provided no further response to the FORM within the 30-day period, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on July 7, 2010.

### **Findings of Fact**

Applicant is a 31-year-old employee of a defense contractor, where she was hired in April 2008. She has no military service. This is her first application for a security clearance. She is married, but pending divorce, and has no children. She graduated from high school as a member of the National Honor Society, and attended a community college for three years from 1998 to 2001.<sup>5</sup> In her responses to the SOR, she denied the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.j, and 1.k, and admitted the allegations in SOR ¶¶ 1.d through 1.i, 1.l, and 1.m. Applicant's admissions, including her responses to the SOR, and to DOHA interrogatories, are incorporated in the following findings.

Applicant admitted owing each of the eight delinquent debts alleged in SOR ¶ 1.d through 1.i, 1.l, and 1.m, totaling \$34,927.<sup>6</sup> Although she formally denied the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, and 1.k, she admitted that she was the sole responsible debtor for each, and each of these debts continues to be reported on her record credit reports.<sup>7</sup> She offered no evidence to substantiate any resolution of these debts, which total an additional \$36,242. Her record credit reports reflect a zero balance due on her first mortgage loan for \$132,000, which is alleged to be delinquent in SOR ¶ 1.j.

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<sup>3</sup>Items 4 and 6.

<sup>4</sup>The Government submitted ten Items in support of the SOR allegations.

<sup>5</sup>Items 4 and 7.

<sup>6</sup>Items 4 and 6.

<sup>7</sup>Items 4, 8, 9, and 10.

Department Counsel conceded that this allegation appeared to be in error, and that the creditor's January 2008 initiation of foreclosure proceedings appears to have resolved any ongoing debt, as claimed by Applicant.<sup>8</sup> Excluding the mortgage debt alleged in SOR ¶ 1.j, the record evidence establishes that Applicant owes 12 delinquent debts totaling \$70,539. All of these debts became delinquent in 2007 or 2008, after she was laid off from her job as an office manager for a mortgage company and moved to another state where she worked as a cashier.<sup>9</sup> She neither documented, nor claimed to have completed, arrangements to repay any of these debts.

On September 4, 2009, Applicant filed for divorce from her husband, whom she vaguely blamed for some of her financial difficulties. The petition sought incorporation of a Property Settlement Agreement which they entered into on May 3, 2007. Applicant did not provide a copy of that agreement, but told the investigator from the Office of Personnel Management who interviewed her on August 14, 2008, that she did not intend to request that her husband be awarded responsibility for any of the debts discussed above. She also told the investigator that she had moved in with her parents in April 2008 to minimize living expenses while she resolved her delinquent debts, which she intended to do promptly. As noted above, she offered no evidence of any attempt to resolve any of these debts, all of which remained on her credit report dated August 12, 2009.<sup>10</sup>

Applicant provided no evidence of financial counseling, or of any basis to dispute the legitimacy of any of the aforementioned delinquent debts. The only budget information she provided, from which to determine her present or future solvency, consisted of undocumented estimates on a personal financial statement showing a monthly surplus of \$129, submitted with her interrogatory response dated May 21, 2009. This budget reflected a \$50 monthly payment toward the delinquent debt alleged in SOR ¶ 1.h, but no other payment toward her delinquent debts. She has virtually no savings from which to address her obligations.<sup>11</sup>

Applicant submitted no other evidence describing her character, trustworthiness, or work performance. Department Counsel pointed out her lack of documentation concerning any form of debt resolution in the Argument section of the FORM, and identified the need for her to submit such documentation to establish mitigation. Applicant failed to respond to the FORM with any additional information. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

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<sup>8</sup>FORM at 5.

<sup>9</sup>Items 4, 7, 9, and 10.

<sup>10</sup>Item 4, Item 8 at 24, 26, Item 9.

<sup>11</sup>Item 8 at 9, 13, 26.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

## Analysis

### Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

Department Counsel argued that the evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.<sup>12</sup>

Applicant has been unable or unwilling to satisfy 12 delinquent debts, totaling more than \$70,500, which arose during 2007 and 2008. DC 19(a) and (c) were clearly established, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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; and

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<sup>12</sup>FORM at 5.

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial concerns involve 12 different accounts, span the past three years, and continue to date, with no documentation of any effective steps toward resolution. She did not demonstrate that these obligations will be resolved anytime soon, or that she can avoid additional delinquencies in the future. The evidence does not support the application of MC 20(a).

Applicant was underemployed for some of the time since 2007, but she provided no evidence tending to show that the causes of this underemployment were largely beyond her control. She also made no showing that the debts she incurred arose from conditions that were beyond her control. She told the OPM investigator that she was unemployed for two months in 2007, but her SF 86 reflected continuous employment dating back to May 2003.<sup>13</sup> Finally, she provided nothing to substantiate that she acted responsibly under the circumstances, so very limited mitigation under MC 20(b) was established.

Applicant documented no financial counseling, and provided insufficient evidence of a good-faith effort to resolve her outstanding debts. On the present record, Applicant failed to establish mitigation under MC 20(c) or MC 20(d). "An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken significant actions to implement that plan."<sup>14</sup> Applicant failed to meet her burden in this regard.

### **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.

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<sup>13</sup>Item 8 at 24, Item 7 at 13-19.

<sup>14</sup>ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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 relevant facts and circumstances surrounding this case. Applicant is a mature, educated, and experienced individual, who is responsible for her voluntary choices and conduct that underlie the security concerns expressed in the SOR. Her financial irresponsibility spans the past three years, and continues at present from all indications in the record. She demonstrated little effective effort to resolve her debts since gaining her current employment more than two years ago. She remains subject to coercion and duress from her financial obligations, and made no showing that such problems are unlikely to continue or recur.

Overall, the record evidence creates substantial doubt as to Applicant's present 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k through 1.m:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge