



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 09-00833  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Esq., Department Counsel

For Applicant: *Pro se*

January 11, 2010

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on March 18, 2008 (Government Exhibit 1). On April 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning Applicant. 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.

Applicant answered the SOR in writing on April 28, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 12, 2009. This case was assigned to me on May 13, 2009. DOHA issued a notice of hearing on May 29, 2009, and I convened the hearing as scheduled on July 2, 2009. The Government offered Government Exhibits 1 through 6, which were received

without objection. Applicant testified on her own behalf, called one additional witness, and submitted Applicant's Exhibits A through H, also without objection. DOHA received the transcript of the hearing, and the record closed, on July 14, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 57 and married. She is employed by a defense contractor and seeks to retain a security clearance in connection with her employment.

### **Guideline F, Financial Considerations**

The Government alleges that Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits SOR ¶¶ 1.a., 1.b., 1.f., 1.g., and 1.i. Those admissions are hereby deemed findings of fact. She denies SOR ¶¶ 1.c., 1.d., 1.e., and 1.h.

Applicant testified about her financial situation. She stated, "I was married for almost 25 years, and we got a divorce, and I got very depressed, and people were giving me charge cards, so I went shopping. I know it was wrong but I did it." (Transcript at 44-45.)

1.a. Applicant admits that she is indebted to credit card company A (Company A) in the amount of \$604 for account number 3906. She has not contacted this creditor in the recent past. Applicant has not paid this debt, but intends to pay it when she is financially able to do so. As further set forth below, this is the same debt as ¶ 1.d. (Government Exhibit 5 at 2, Applicant's Exhibit D, Transcript at 47-51.)

1.b. Applicant admits that she is indebted to Company A in the amount of \$517 for a second credit card with account number 5152. She has not contacted this creditor in the recent past. Applicant has not paid this debt, but intends to pay it when she is financially able to do so. As further set forth below, this is the same debt as ¶ 1.f. (Government Exhibit 5 at 2; Transcript at 51.)

1.c. Applicant denied that she owed this medical debt in the amount of \$4,885 for account number 0547. The available records show that this debt is actually a duplicate of ¶¶ 1.h. and 1.i. Further discussion will be found under ¶ 1.h., below. This allegation is found for Applicant because it is a duplicate.

1.d. Applicant denied that she is indebted to collection agency B (Agency B) in the amount of \$1,183 for account number 3018.<sup>1</sup> Available records, particularly Applicant's Exhibit D, show that this is the same debt as that set forth in ¶ 1.a., above.

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<sup>1</sup>The records show two Agency B accounts with the number 3018. See ¶ 1.f., below.

This allegation is found for Applicant because it is a duplicate. (Government Exhibit 4; Applicant's Exhibit D; Transcript at 53-58.)

1.e. Applicant denied that she is indebted to Agency B in the amount of \$2,371 for account number 2995. Available records show that this is the same debt as Company A account number 1553. That Company A account is not alleged separately in the SOR. I find that this is Applicant's debt, and that she has made no recent payments on this debt. (Government Exhibit 5; Applicant's Exhibit E; Transcript at 53-58.)

1.f. Applicant admitted that she is indebted to Agency B in the amount of \$1,068 for the second account number 3018. Available records show that this is the same debt as Company A account number 5152 (¶ 1.b., above.) This allegation is found for the Applicant because it is a duplicate debt. (Government Exhibit 5; Transcript at 53-58.)

1.g. Applicant admits that she is indebted to collection agency C (Agency C) in the amount of \$1,689 for a delinquent debt. Applicant testified that she intends to pay this debt as soon as she has the money, but that she has made no recent payments on this debt. (Government Exhibit 4; Applicant's Exhibit C; Transcript at 58-62.)

1.h. Applicant denied that she is indebted to collection agency D (Agency D) in the amount of \$5,953 for account number 0547. As stated above, this is the same debt as that set forth in ¶¶ 1.c. and 1.i. Based on the available evidence, I find that this is Applicant's debt, and that she has made no recent payments on this debt. (Government Exhibit 3 at 6, Exhibit 4 at 2; Applicant's Exhibit G; Transcript at 52-53, 63-64, 75.)

1.i. Applicant admits that she was indebted to collection agency E (Agency E) for a delinquent debt in the amount of \$4,551 for account number 0547. The records show that this particular account is a duplicate of ¶¶ 1.c, and 1.f. This allegation is found for Applicant because it is a duplicate. (Government Exhibit 3 at 7.)

Applicant submitted additional documentary information concerning three other accounts. One of these accounts she successfully paid off in 2008. (Applicant's Exhibit B; Transcript at 61-63.)<sup>2</sup> She also submitted documents concerning two other past due accounts, neither one of which is alleged in the SOR. (Applicant's Exhibits F and H.)

Applicant testified that she worked with a debt-consolidation company in approximately 2002. She stopped using them after three months because she concluded that the company was actually a scam. (Transcript at 60-61.) Applicant also testified that she was uncertain which collection agencies were collecting for which debts. (Transcript at 48-50.) As described above, four of the debts alleged in the SOR are actually duplicates of other allegations.

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<sup>2</sup>Applicant alleged in her testimony that Applicant's Exhibit B applied to ¶1.i. of the SOR. The evidentiary record shows that the exhibit does not apply to that allegation.

Applicant maintains, and records show, that she is able to pay her regular debts. She credibly testified that she pays her past due debts as she has available funds. (Applicant's Exhibit A; Transcript at 50-51.)<sup>3</sup>

## **Policies**

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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 as to 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. Security clearance decisions include, by

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<sup>3</sup>See Testimony by Applicant's husband. (Transcript at 23-41.)

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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . 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.” 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, by her own admission, and supported by the documentary evidence, has \$11,134 in past-due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial difficulties arose about eight to ten years ago, primarily between 1999-2002. In addition, Applicant stated that many of these debts arose because she used poor judgment after a divorce. She has remarried, paid off one of the past due debts, evinced a credible and believable intent to pay off her remaining past due indebtedness, and her current financial situation is stable. This mitigating condition applies to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” As stated above, the Applicant’s divorce did enter into her spending habits sometime in the past. As further stated, those stressors no longer are in her life and she now uses good spending habits. This mitigating condition also applies.

Applicant has initiated a good-faith effort to pay off her creditors, albeit slowly. The record supports her concern that the true creditors are hard to find. As set forth above, four of the allegations in the SOR were duplicates (¶¶ 1.c., 1.d., 1.f., and 1.i.). The SOR alleged a past due indebtedness of \$22,821. The figure supported by the evidence is actually \$11,134. Accordingly, AG ¶ 20(d) is applicable.

Applicant is over \$11,000 in debt. However, the record is clear that she is not running up new debt. Indeed, she is paying her debts as her financial situation allows her to do so. Under the particular circumstances of this case, I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

### **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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant engaged in spending above her means after a divorce ten years ago. She has stopped this conduct, and her current financial condition is stable. Under AG ¶ 2(a)(3), Applicant’s irresponsible conduct is not recent, although some old debt remains unpaid. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8); and that there is no likelihood of recurrence (AG ¶ 2(a)(9).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial situation at this time.

On balance, I conclude that Applicant has successfully overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports granting her request for a security clearance.

### **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:	FOR APPLICANT
Subparagraphs 1.a. through 1.i.:	For Applicant

### **Conclusion**

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

WILFORD H. ROSS  
Administrative Judge