



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 09-01081
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro Se*

November 13, 2009

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant filled out her Security Clearance Application (SF 86) on December 20, 2007 and signed it on January 7, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on April 13, 2009. 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 acknowledged receipt of the SOR on May 12, 2009. She submitted a written response to the SOR allegations on June 2, 2009, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on August 17, 2009. Applicant received the FORM on September 1, 2009. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She has not submitted a response or additional evidence. DOHA assigned this case to me on November 9, 2009. The government submitted eight exhibits, which have been marked as Item 1-8 and admitted into the record. Applicant's response to the SOR has been marked as Item 4.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c-1e, 1.g, 1.h, and 1.j of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.f and 1.i of the SOR.<sup>1</sup> She neither admitted nor denied the factual allegations in ¶ 1. b of the SOR. This allegation is deemed denied.

Applicant, who is 31 years old, works as a software engineer for a Department of Defense contractor. She began her employment with this employer in June 2000 and has worked steadily since this time.<sup>2</sup>

Applicant married in July 2000 and separated from her husband in July 2004. They are not divorced. She has two children, ages 5 and 4. Her estranged husband does not provide her with any child support.<sup>3</sup>

Applicant's debts arose after she and her husband separated. She could not pay all her living and household expenses on her income alone. As a result, the mortgage foreclosed on her house and she incurred other significant, unpaid debt. Her car was repossessed and a judgment was obtained against her for nearly \$30,000.<sup>4</sup>

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<sup>1</sup>When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted).

<sup>2</sup>Item 5.

<sup>3</sup>*Id.*; Item 4.

<sup>4</sup>Item 4; Item 7.

Applicant states that she is working with a credit specialist to pay her outstanding debts. She has not provided a copy of her contract with this credit specialist, a list of the debts which are being managed through this credit specialist, or verified any payments she has made on her debts through this individual.<sup>5</sup>

Applicant did not submit any evidence which showed her monthly income and her monthly expenses. She denied owing the debts in SOR allegations ¶¶ 1.b, 1.f, and 1.i in her response to the SOR, but she failed to provide proof that she paid these debts or that she is not responsible for these debts. Outside of her summary written response, Applicant did not provide any documents which address the status of her debts and show her current financial situation.<sup>6</sup>

The credit reported dated March 19, 2009 indicates that Applicant disputed the debts listed in SOR allegations 1.c., 1.d, and 1.e. By admitting these factual allegations, Applicant agreed that she was indebted to these creditors. She has not provided any documentary evidence which reflects how her disputes of these debts have been resolved.<sup>7</sup>

### **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 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, 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

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<sup>5</sup>Item 4; record.

<sup>6</sup>*Id.*

<sup>7</sup>Item 7; record.

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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An 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. Decisions include, by necessity, consideration of the possible risk an 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 delinquent debt subsequent to her separation from her husband in 2004. She has been unable to pay these obligations for a period of time. 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 debts are recent and occurred after she and her husband separated. Her separation is not an unusual situation.

Under AG ¶ 20(b), mitigation can occur when “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.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant and her husband separated in 2004. Since their separation, he has failed to provide child support for their children. While her separation and her estranged husband’s failure to pay child support impacted her finances, Applicant has not provided any information which shows she acted reasonably under these circumstances. Rather, the evidence of record indicates that she lost control of her finances. Applicant has not provided evidence which shows she retained a credit specialist to help with her finances and, if she did, what debts are being resolved or have been resolved. Finally, Applicant has not provided any evidence which shows she made a good-faith effort to repay her creditors. The record contains no evidence which would raise the application of these mitigating conditions.

AG ¶ 20(e) provides that 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,” she may mitigate the government’s security concerns. While the March 2009 credit report indicates that Applicant disputed three debts, she acknowledged owing the debts and has not provided information showing the result of her dispute. Applicant has not established any facts which show she has mitigated the government’s security concerns.<sup>8</sup>

### **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 an applicant’s conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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<sup>8</sup>AG ¶¶ 20 (f) is not applicable in this case.

(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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of denying a security clearance to applicant under the whole person concept is more substantial than the evidence in support of a grant. In reaching conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant married in 2000 and separated from her husband in 2004. She has two young children she is raising on her own, without any financial support from her estranged husband. She began work for her current employer more than nine years ago and has no disciplinary problems at work.

As a result of her separation, Applicant began to develop financial problems. In the last three or four years, Applicant's financial problems have become very severe. The mortgagor foreclosed on her house and she has a large judgment against her for a repossessed automobile. She indicated that she is working with a credit specialist to help resolve her credit issues, but she has not provided any evidence showing what the credit specialist is doing on her behalf. Applicant has significant debt problems, which are not resolved or under control. She has not shown a track record for paying her debts and living within her current income.

Overall, the record evidence leaves me with questions or 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 finances.

### **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

Subparagraph 1.a-1.k:                   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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MARY E. HENRY  
Administrative Judge