



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 09-01382  
)  
)  
Applicant for Security Clearance )

For Government: Nicole Noel, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 15, 2010

Decision

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DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On September 10, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On June 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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.

Applicant answered the SOR in writing on July 15, 2009, and requested a hearing. On August 21, 2009, DOHA assigned the case to me. On September 21, 2009, DOHA issued a Notice of Hearing, setting the case for October 15, 2009. The case was heard as scheduled. Department Counsel offered Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and offered Exhibits (AE) A through G into evidence without objection. The record remained open until October 30, 2009, to give Applicant an opportunity to submit additional information. She timely submitted a document that I marked as AE H and admitted into the record without objection from Department Counsel. DOHA received the hearing transcript on October 22, 2009.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the allegations contained in ¶¶ 1.a, 1.b, 1.f, 1.g, 1.i, and 1.j. She denied the allegations contained in ¶¶ 1.c, 1.d, 1.e, and 1.h.

Applicant is 65 years old. She is divorced since 1983 and has three grown children. She has three years of college and a technical degree in online programming and system administration. She has worked as a contractor in both the private and public sectors over the past ten years. From 1999 to September 2001, she worked as a communications contractor for a private company located in the World Trade Center Towers. She was then unemployed until May 2002 when she obtained a state government contract in her home state that lasted for seven months. From December 2002 until May 2003, she was unemployed. She then obtained a position with another private company, where she worked until November 2004. For the next eight months she was unemployed. In June 2005, she obtained a two-month contract for a private company. In August 2005, she worked in private industry. In May 2006, she went to work for another private company until February 2007 when she became unemployed. From May 2007 to April 2008, she worked for a private firm. She was then unemployed until September 2008, when she started her current contract position with a defense contractor. (GE 1.)

In August 2003, Applicant filed a Chapter 13 Bankruptcy in order to establish a repayment plan for her delinquent debts, which were accruing as a result of periods of unemployment. (Tr. 25.) The case was dismissed because she did not timely file a repayment plan. At that time, she was trying to sell her house, which she purchased for \$225,000, and was appraised at less than \$190,000. (Tr. 26.) She re-filed for Bankruptcy in December 2003, hoping to give herself more time to sell. Although she had several buyers for her home, the mortgage company would not agree to a "short sale". Despite depleting her savings and retirement accounts, she was unable to maintain her mortgage payments, car payments, or other expenses. (Tr. 47.) In July 2003, the court dismissed the case for her failure to make payments to the bankruptcy trustee. (Tr. 26-27.)

The majority of the delinquent debt listed on the SOR accrued from September 2001 to August 2003. As stated above, Applicant was unemployed for 15 months during

this time. (Tr. 28.) Her financial situation started to improve in May 2005 when she obtained work on a more regular basis, after being unemployed for eight more months. (GE 2; Tr. 48.) Prior to the 2001 to 2003 time frame, she never experienced financial problems. (Tr. 43.) Her finances appear to have stabilized since starting her current position.

In September 2008, Applicant completed an e-QIP. In April 2009, she responded to the government's interrogatories about her delinquent debts, including six of those subsequently listed in the SOR. She explained that she was unaware that the debts remained on her credit report and thought all of them had been resolved, except for the second mortgage on her previous house that the bank foreclosed upon in 2003. (GE 2.) She was not aware that she could resolve charged-off debt and believed that she no longer was responsible for it once a creditor took a tax write-off. (Tr. 52.)

Based on credit bureau reports (CBR) dated May 2009 and October 2007, the June 2009 SOR alleged security concerns based on the accumulation of eight delinquent debts totaling \$60,146. The status of each of those debts is as follows:

1. (¶ 1.c) The \$41 medical debt was paid on July 13, 2009. (AE A.)
2. (¶ 1.d) The \$487 debt was owed to a cellular telephone company. It was paid in August 2009. (AE B.)
3. (¶ 1.e) The \$31,000 debt is owed to a bank for a second mortgage that was on her previous home, which was foreclosed upon and sold in 2003. The mortgage amount was originally for \$10,000. It was reported delinquent in July 2003. (GE 2; Tr. 36) It is unresolved.
4. (¶ 1.f) The \$2,182 debt is owed to a department store for a refrigerator that Applicant purchased for her previous house and remained in the foreclosed house when she moved out in 2003. It became delinquent in March 2003 and is unresolved. (GE 4; Tr. 37.)
5. (¶ 1.g) The \$2,131 debt is owed to a credit card company for living expenses Applicant incurred between October 2001 and January 2003. It was reported delinquent in September 2008. It was charged off by the creditor. (GE 2; Tr. 27.) It is unresolved.
6. (¶ 1.h) The \$15,000 debt is owed to a car company for the unpaid portion of a three-year lease that Applicant signed in September 2001. It became delinquent in September 2002 and is unresolved. (GE 2; Tr. 38.)
7. (¶ 1.i) The \$2,415 debt is owed to a department store for a computer Applicant purchased in September 2001. It became delinquent in March 2003. It was charged off by the creditor. (Tr. 40; GE 2.) It is unresolved.

8. (¶ 1.j) The \$6,890 debt is owed to a credit card company for expenses Applicant charged while trying to manage her mortgage and other bills. It became delinquent in July 2004. It was charged off by the creditor. It is unresolved. (GE 2; Tr. 41.)

In summary, all of the delinquent debt, except \$528, remains unresolved. On October 26, 2009, Applicant enrolled in a debt resolution program with a company that specializes in credit and debt counseling. The company is in the process of investigating her delinquent debts. (AE H.) She does not have an objection to paying the outstanding bills if she could arrange a payment within her budget. (*Id.*)

Applicant provided a copy of her budget. Her net monthly income is \$4,809 and expenses are \$3,849, including a payment on her car loan and large monthly medication expenses of \$651. (GE 2; Answer.) She has approximately \$167 at the end of the month for other expenses. She stated that all of her other bills are current. (AE D, E, F.)

Applicant submitted ten letters of recommendation, highly supportive of her efforts to obtain a security clearance. (AE G.) The Information Technology Director, who has worked with Applicant for a year, considers her to be very competent and ethical. (AE G at 1.) The Vice President of Operations where Applicant works stated that Applicant has “shown her business ethics to be nothing short of exemplary.” (AE G at 9.)

### **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 (DC) and mitigating conditions (MC), which are useful 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 on

the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to 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 and has the ultimate burden of persuasion to obtain a favorable clearance 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.”

## **Analysis**

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

The security concern relating to this guideline 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 potentially 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 has a history of financial delinquencies that began in September 2001 and remain unpaid or unresolved at the present. The evidence is sufficient to raise these potentially disqualifying conditions.

AG ¶ 20 provides six conditions that could mitigate security concerns arising under this guideline:

(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;

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

(e) 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; and

(f) the affluence resulted from a legal source of income.

AG ¶ 20(a) does not apply because Applicant's problems are ongoing, not isolated, and did not occur so long ago nor under circumstances that are so unusual and unlikely to recur. There is evidence that Applicant's delinquent debts accrued as a result of periods of unemployment from September 2001 to September 2008 for a total of 30 months. The majority of the delinquent debts accrued from 2001 to 2003; however one debt became delinquent in 2008. There is some evidence that she attempted to responsibly manage her mortgages and other debts during 2003 through a Chapter 13 Bankruptcy, however she failed to follow-through on her efforts. AG ¶ 20(b) has limited application. Applicant very recently contacted a credit counseling and debt resolution company in order to investigate and resolve her delinquent debts. Hence, there is insufficient evidence to indicate that the debts are under now control, as required under AG ¶ 20(c). Applicant provided proof that she paid two debts, demonstrating a good-faith effort to pay resolve them and warranting the application of AG ¶ 20(d) to SOR ¶¶ 1.c and 1.d. There is no evidence to support the application of AG ¶ 20(e) or AG ¶ 20(f).

### **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). They include the following:

- (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 include 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 facts and circumstances surrounding this case. Applicant is a 65-year-old educated woman, who is dedicated to her job and has received recommendations from many of her colleagues. From September 2001 to September 2008, she experienced 30 months of unemployment leading to financial problems that were particularly exacerbated between 2001 and 2003, when the bank foreclosed on her home. Although she is consistently paying her current bills, she has not taken any action to resolve the approximate \$60,000 of outstanding debt owed on her previous mortgage, car lease, and credit cards, including one that became delinquent in September 2008, despite being notified of the government's concerns in April 2009. She testified that she did not know that she could pay her charged-off debts and appeared to be unaware of the effect that financial delinquencies could have on her employment. To demonstrate her willingness to resolve the old debts, she sought credit counseling and debt resolution immediately after the hearing. However, at this time, she has not provided sufficient evidence establishing a track record of debt management.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant did not mitigate the security concerns arising from 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c	For Applicant

Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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.

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SHARI DAM  
Administrative Judge