



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



In the matter of )  
)  
) ISCR Case No. 09-01750  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

January 28, 2010

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is denied.

**Statement of the Case**

On September 28, 2008, Applicant submitted a Questionnaire for Sensitive Positions (Standard Form 86) to request a security clearance required as part of her employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative

finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

On July 14, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).<sup>2</sup> In her Answer to the SOR, signed and notarized on August 10, 2009, Applicant denied all the allegations under Guideline F except subparagraphs 1.a., 1.f., and 1.k. She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on August 21, 2009 and the case was assigned to me on August 29, 2009. DOHA issued a Notice of Hearing on October 7, 2009, and I convened the hearing as scheduled on November 4, 2009. During the hearing, the government offered ten exhibits, marked as Government Exhibits (GE) 1 through 10,<sup>3</sup> which were admitted without objection. Applicant testified, and offered two exhibits, admitted without objection as Applicant's Exhibits (AE) A and B. I held the record open for Applicant to submit additional documentation. She timely submitted four documents, admitted without objection as Applicant's Exhibit (AE) C through F. DOHA received the transcript on November 12, 2009.

### **Findings of Fact**

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>2</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines (AG), approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The AG supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

<sup>3</sup> Applicant attached 128 pages to GE 4, her Interrogatory response. They were not assembled or marked in relation to the SOR allegations. I have sorted the pages that appear to relate to a particular allegation as follows: GE 4-1 (allegation 1.d.); GE 4-2 (allegations 1.f. and 1.k.); GE 4-3 (allegation 1.h.); GE 4-4 (allegation 1.i.); GE 4-5 (allegation 1.j.); GE 4-6 (allegation 1.l.); GE 4-7 (allegation 1.n.); GE 4-8 (allegation 1.p.). The response also included GE 4-9 (personal financial statement); GE 4-10 (April 2009 credit bureau report); GE 4-11 (June 2005 credit bureau report); GE 4-12 (allegation 1.h.); GE 4-13 (2005 creditor letters regarding refunds); GE 4-14 (bank statement); GE 4-15 (ex-husband's credit bureau report ); GE 4-16 (car repair documents); GE 4-17 (2002 letter from Better Business Bureau); GE 4-18 (blank credit report dispute form); GE 4-19 (2005 form letters from unknown company); GE 4-20 (DOHA Interrogatory of March 2009).

Applicant, who is 43 years old, completed some college credits but did not earn a degree. She is currently separated from her husband. She has a 27-year-old son, and a 25-year-old daughter who served in the U.S. Army for approximately three years. Neither of the children currently lives with Applicant, although Applicant has provided them with significant financial support. She has worked in the information technology field since the mid-1990s. She has worked for a defense contractor since mid-2008, currently holding the position of sharepoint design developer. This is her first application for a security clearance (GE 1; Tr. 25-27, 63).

Applicant testified that she has been financially insecure since she was 16, when her first child was born and her first husband left. She attributes her financial problems to the need to support herself and her two children solely on her own income. Her children were born during her first marriage, and her subsequent husbands would not contribute to the children's support. Working as a contractor, Applicant had periods of unemployment in between contracts, including a few months in 2003 and a few months in 2007. Other than those periods, Applicant has been employed for the past ten years. However, many of her jobs were brief, lasting only a few months. In 2000, she filed a Chapter 7 bankruptcy petition, which was discharged the same year. She has not sought financial counseling or worked with a debt consolidation service, and she does not intend to file for bankruptcy (GE 1, 5, 6, 7, 8; Tr. 28-33, 53-58).

After taxes and deductions, Applicant earns monthly take-home pay of approximately \$8,300, for an annual net income of approximately \$99,000. According to her personal financial statement, Applicant's \$7,256 monthly expenses include rent, utilities, food, clothing, medical and household expenses. She also listed a car loan of \$954, and another unidentified loan of \$1,149 per month. She spends about \$200 per month on pet care and grooming. Applicant makes credit card payments of \$450 per month, and she testified that her credit card payments have been up-to-date for years. Until about September 2009, she also helped support her two adult children. In 2008, she provided them with \$40,000, for an average of approximately \$3,300 monthly. Applicant has about \$200 in a checking account, does not have a savings account, and does not contribute to a retirement plan. She reported a monthly net remainder of approximately \$1,050. She plans to use her monthly remainders to buy a camper so that, if she is unemployed in the future, and/or has to move out-of-state for employment, she could live in the camper (GE 4-9; Tr. 34-49; 51).

The 17 debts listed in the SOR accrued between 2003 and 2008, and total more than \$49,000. Each of the delinquent debts appears in Applicant's credit reports of November 2008 and January and June 2009 (GE 5, 6, 7). The status of the SOR debts follows.

- **Judgment: Allegations 1.b. \$4,251 and 1.e. (\$1,357).** Applicant failed to pay interest owed on a furniture purchase in 2007, and the company

prevailed in its suit (1.b.). She testified that the debt at allegation 1.e. is the same debt (\$1,357) before the interest, court costs and other fees were added. She also stated that payments of \$200 per month were garnished from her salary, and the debt is paid. She did not provide evidence that it is paid, and the debt appears as delinquent in her November 2009 credit bureau report (GE 5, 6, 7; AE E; Tr. 60-62; 70-71).

- **Rent: Allegations 1.c. (\$10,570) and 1.l. (\$10,570).** In about 2005, Applicant rented a house for her daughter, who failed to pay the rent. She left the house without notifying Applicant, who was unaware of the debt until her security interview. A judgment was filed against Applicant for unpaid rent. She has not paid the debt, and is uncertain about how she will deal with it. She also testified that allegations 1.c. and 1.l., are the same debt. Allegation 1.l. appears as delinquent in her November 2009 credit bureau report (AE E; Tr. 62-66).
- **Returned Check: Allegation 1.d. (\$70)** relates to a fast-food purchase in October 2004. Applicant paid with a check that was returned for insufficient funds. Although her current credit report shows an outstanding debt of \$70, she provided a money order receipt showing she paid the amount requested by the merchant, \$45. The receipt is dated December 8, 2004 (GE 4-1, 5; Tr. 66-70).
- **Credit cards - Allegation 1.f. (\$2,032) and 1.k. (\$1,109).** In 2003, Applicant's credit card was stolen. Applicant learned that the card had been used by the thief. She reported the theft to the police, and to the credit card company, which closed the account. However, the company claims that she then opened a new account. Applicant denies opening it, stating that the first name, maiden name, and address on the new account are not hers; she never possessed a card for the new account; and someone else opened the account and used the card. She disputed the new account with the issuing company by telephone, and with the three credit reporting agencies. The evidence shows that the account in allegation 1.k. became delinquent in 2005, and was sold to a collection agency (GE 4-2, 5). In 2007, when the balance was \$879, the agency offered Applicant a settlement (GE 4-2). She informed the agency that it was not her account based on the incorrect name and address. Applicant testified that these two allegations refer to the same credit card. However, the accounts at allegations 1.f. and 1.k. have different account numbers. Applicant offered no documentation to support her dispute (GE 4-2, 5, 6; AE A; Tr. 71-78, 97-99).
- **Repossession: Allegation 1.g. (\$3,086).** Applicant was making payments on her car loan but, after the company changed ownership numerous times, her payments were not credited. She contacted the company several times but was not told why her payments were not

credited. She testified, "We just couldn't come to terms." In December 2008, Applicant requested that the creditor take back her car. She has made no payments since that time, and has not been contacted by the creditor. Her November 2009 credit bureau report shows the delinquent balance to be \$10,020 (GE 5, 6, 7; AE E; Tr. 47-48, 78-81).

- **Credit card: Allegation 1.h. (\$1,932)** Applicant testified that this debt relates to a bank credit card that was stolen in 2003.<sup>4</sup> She reported the loss and continued to make payments on the balance in 2004 and 2005. However, she testified that the bank returned her checks because the account did not exist. As Applicant offered copies only of the front sides of the checks, it cannot be determined if the checks were mailed or cashed. The debt was sold to a collection agency, which contacted Applicant in April 2009 with a settlement offer; however, the debt remains delinquent in her November 2009 credit bureau report (GE 4-12; AE A, E; Tr. 81-89).
- **Credit card: Allegation 1.i (\$11,000)** Applicant disputes this debt, which appears on her 2008 and 2009 credit bureau reports. When Applicant called the card issuer, she was informed the account was her husband's. The document she provided states that her husband has an account with the creditor, and she has no liability for the account. However, the account number for her husband's account (see AE C and GE 4-10) is not the same as the account number for the account alleged at ¶ 1.i. in the SOR. Her conversations and online disputes are undocumented (GE 5, 6, 7; AE B, C, E; Tr. 89-92).
- **Short-term loan: Allegation 1.j. (\$575).** Applicant procured a loan of \$500 in 2005. She supplied a document showing a payment of \$575 in May 2005, although the payee is not legible. However, the debt was sold to a collection agency, which contacted her in April 2009 to inform her that they held the debt. She contacted the agency to say the debt was paid. She provided in her Interrogatory response a copy of a check for \$575 dated May 2005 (GE 4-5; Tr. 92- 95).
- **Collection account: Allegation 1.m (\$132).** Applicant has no knowledge of this debt and has made no payments on it. She does not think she investigated or disputed it (GE 6; Tr. 101-103).
- **Medical debt: Allegation 1.n. (\$130)** Applicant has no knowledge of this debt, and has not disputed it with the credit reporting agencies (GE 6; Tr. 103-105).

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<sup>4</sup> Applicant did not claim that the debt in allegation 1.h. refers to the same stolen credit card as the one discussed at allegations 1.f. and 1.k. The credit card issuer in 1.f. and 1.k. are the same, but allegation 1.h. refers to a different creditor.

- **Credit card: Allegation 1.o. (\$2,063).** Applicant testified that she did not recognize the account and that she called the company, which confirmed that she did not have an account. Several days after the hearing, she contacted the creditor to obtain information about the account, but she provided no further information (GE 4; AE D, E; Tr. 106-108).
- **Veterinarian: Allegation 1.p. (\$126).** In May 2009, Applicant attempted to pay this bill for care of her daughter’s cat. She provided documentation showing that her check was returned (GE 6; AE B: Tr. 108-110).
- **Collection account: Allegation 1.q. (\$875).** Applicant has made no payments on this debt, and does not recognize it. She has not contacted the creditor or disputed it (GE 7; Tr. 111-112).

### Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised AG.<sup>5</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole person” concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the government’s case.

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<sup>5</sup> Directive 6.3

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>7</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the judgment, reliability and trustworthiness to protect the national interests as her or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.<sup>8</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). Applicant owes more than \$49,000 in delinquent debt. Her debts became delinquent starting in 2003, and, but for three debts for which she provided proof of payment, they remain delinquent, indicating a history of failure to meet financial obligations.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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

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<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>8</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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.

Although Applicant's debts have been accruing for several years, they are not in the distant past, as they remain unpaid. The fact that most remain unpaid, despite Applicant's substantial income, indicates that they may well remain unpaid in the future. Her failure to make consistent attempts to resolve her debts raises questions as to her reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) is relevant because Applicant had children at a very young age. Her first husband left her to support the children on her own, and her subsequent husbands did not significantly help with her children's expenses. These factors had an effect on her financial status and were beyond her control. However, these events occurred many years ago. Since that time, Applicant has received the benefit of a clean financial slate after her debts were discharged through a Chapter 7 bankruptcy in 2000. Nevertheless, and despite steady employment and a substantial salary, Applicant has accrued a significant delinquent debt load. AG ¶ 20(b) does not apply.

AG ¶ 20(d) requires a good-faith effort to resolve debts. Applicant was on notice that delinquent debts were a security concern after she completed her security clearance application in 2008, yet she has accomplished little in the interim. She has not sought financial counseling. Although a few debts are paid, she still owes more than \$49,000, and her financial situation is not under control. Without evidence of a plan to resolve indebtedness, and steps taken to implement it, a good-faith effort to resolve debts cannot be substantiated. AG ¶ 20(d) does not apply.

Applicant disputes several debts, including ¶¶ 1.f., 1.i. and 1.k. She appears to have some grounds for disputing the credit card accounts related to the card that was stolen. Applicant provided a letter from her ex-husband confirming the theft. However, the mitigating condition also requires that an Applicant take steps to resolve the issue. Here, Applicant claimed that she reported the theft, but provided no documentary evidence that she reported the dispute to the creditor or credit reporting agencies. None of her credit bureau



reports note any disputed debts. Only partial mitigation is available under AG ¶ 20(e).

In all, the partial mitigation available to Applicant under AG ¶ 20(e) is insufficient to outweigh the disqualifying conditions that apply. I find against Applicant under Guideline F.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

As Applicant was a mature adult of approximately 37 to 42 years old at the time most of her debts became delinquent, her failure to respond to them cannot be ascribed to immaturity or inexperience. She has not established payment plans, and but for three debts, she has not provided evidence that shows focused efforts to resolve her financial situation. An applicant is not required to be debt-free, or establish that she paid every debt. But she must demonstrate that she established a plan to resolve her debts and has taken action to implement that plan. Here, Applicant has not established such a plan, and she still carries more than \$49,000 in debt, with no substantive efforts or reasonable plan to resolve it.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has not satisfied the doubts currently raised about her suitability for a security clearance. For these

reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraph 1.a. – 1.c.	Against Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e. – 1.i.	Against Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k. – 1.o.	Against Applicant
Subparagraph 1.p.	For Applicant
Subparagraph 1.q.	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to allow applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge