



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-01753
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro Se*

October 8, 2009

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On June 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to 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 June 23, 2009, and elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on July 14, 2009. The FORM was mailed

to Applicant on July 15, 2009, and it was received on July 20, 2009. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information on July 30, 2009. Department Counsel had no objections to the additional information. The case was assigned to me on September 16, 2009.

### **Findings of Fact**

Applicant denied all of the allegations in the SOR except ¶ 1.a. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 35 years old and began employment with a federal contractor in September 2008. She stated in her response to the FORM that she was currently unemployed due to certain testing being done on a project by her employer. She was receiving unemployment benefits and was looking for new employment with the same contractor or a different government contractor. She married in 1993 and divorced in 1997. She has a daughter from her first marriage. She remarried in 2002 and has a son.

Applicant was laid off from her job in January 2007, and remained unemployed until February 2008. She was pregnant at the time and her son was born in March 2007.

In May 2009, Applicant and her husband had approximately \$31,000 in delinquent debt discharged in bankruptcy under Chapter 7. The debts included in SOR ¶¶ 1.b through 1.p were discharged in bankruptcy.<sup>1</sup> Applicant explained that she and her husband attempted to address their debts through a debt consolidation program in October 2006. In her response, she stated they were making monthly payments, but the debt consolidation company was charging more than the original creditors were charging.<sup>2</sup> She stated the consolidation company was not applying their payments toward the debts. She then lost her job, and because she was pregnant, she had difficulty finding employment. She received unemployment compensation for six months until it ran out in August 2007. She worked part-time at a store beginning in February 2008 until September 2008, when she was hired by her current employer.

Applicant stated in her security clearance application (SCA) dated November 10, 2008, that she owed approximately \$5,100 for a student loan. She stated she had an agreement with the creditor to pay \$68 a month that was to be paid by auto-draft from her account. In her response to the FORM dated July 26, 2009, she stated she set up an agreement with the student loan collection company to pay \$50 a month beginning on July 1, 2009, and make a second payment on July 2, 2009; thereafter payments would be \$50 a month. After nine consecutive payments the loan will be taken out of

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<sup>1</sup> Response to FORM.

<sup>2</sup> Applicant did not provide any supporting documents to verify her debt consolidation program.

default status and considered rehabilitated. It appears Applicant did not follow through on her promise to begin paying her student loan debt in November 2008.<sup>3</sup>

Applicant did not explain why she incurred such a large amount of consumer debts. The debt alleged in SOR ¶ 1.0 is for \$11,747. No information was provided regarding this debt.

Applicant provided a printout summary of certain monthly expenditures and deposits. It is unclear if this list includes all expenses. It is noted she has a car, but insurance and gas for the car are not included. She does not include clothing or other household expenses, including those incurred by her husband. It is also unclear if she has medical insurance or other out-of-pocket medical expenses, or any expenses associated with her children, other than day care.

Applicant received financial counseling as required for bankruptcy. She did not provide information about whether she has received additional financial counseling. She and her husband currently do not have any credit cards.

### **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 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.

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

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<sup>3</sup> Applicant's student loan debt was not alleged in the SOR and will not be considered for disqualifying purposes. It will be considered when analyzing the "whole person."

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 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 that 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. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had \$31,000 in delinquent debts discharged in bankruptcy in May 2009. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considering the following:

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

Applicant was having financial difficulties before October 2006, when she set up a plan to consolidate her debts for repayment. She stated she made payments, and she believed they were not being applied properly. She also stated she was paying more to the consolidator than she had been paying to her creditors. She did not provide any supporting evidence of a debt consolidation plan or the terms of the plan. It is clear she was having financial problems before she was laid off from work in January 2007. Her unemployment status exacerbated her already fragile financial situation. She was pregnant at the time and was unemployed for a period of time. I find that because Applicant's debts have been discharged in bankruptcy she no longer owes them. Bankruptcy is a legitimate and legal means for resolving debts. However, when addressing security concerns, it is imperative to look beyond the bankruptcy discharge and address the issues and reasons why Applicant accumulated debts and why she did not pay them. I do not have sufficient evidence to analyze the reasons why Applicant incurred so much consumer debt and why she could not pay it when she was employed. Without amplifying information, it is difficult to determine if she was acting responsibly toward her debts before her loss of employment.

Applicant provided a computer summary of her income and monthly payments. I am unable to determine if all of her expenses are included in this plan. It is unclear how long she has been using this plan. Applicant appears to be trying to get back on track financially and live within her means. I am concerned that she promised to make payments toward her student loans when she filled out her SCA in November 2008, and stated an automatic withdrawal would be made. She did not provide proof that she made any of those promised payments. Instead, she provided an agreement from July 2009 that shows that she will make monthly payments of \$50 toward her student loans.

It appears she did not make the payments as promised in November 2008. I have considered this information regarding Applicant's reliability and good-faith effort to repay her creditors. Applicant may be on the road to financial recovery, but too little information was provided and it is too soon to make that determination.

I find mitigating condition (a) does not apply because Applicant's debts have only recently been discharged in bankruptcy and she has not had a sufficient period of time to show she is being financially responsible. In addition, Applicant failed to explain how she incurred such a large amount of consumer debt, so I am unable to conclude the circumstances are unlikely to recur. I find mitigating condition (b) partially applies because Applicant's unemployment and difficulty in finding a job while pregnant and after she had her baby were conditions beyond her control. The question remains regarding when she first started experiencing financial problems. It appears that she was already having difficulty paying her bills before she was laid off. Without specific information, I am unable to conclude she acted responsibly under the circumstances. Applicant has resolved her delinquent debts through bankruptcy. She received the financial counseling that is mandatory for bankruptcy filers. I do give Applicant credit for establishing a summary of her income and expenses. I find mitigating conditions (c) and (d) apply. I find mitigating condition (d) applies.

### **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 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.

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 the facts and circumstances surrounding this case. Applicant was experiencing financial problems in October 2006, before losing her job. When she lost her job and was unemployed for a period of time it exacerbated her financial problems. She incurred more than \$31,000 in consumer debt. She did not provide details regarding the specifics of her debts. She provided information regarding how she is keeping track of her

finances, but it is unclear if it is a complete budget. It has only been five months since Applicant had her debts discharged in bankruptcy. It is too soon to make a determination that Applicant has changed her financial situation, is living within her means, and is consistently paying her debts on time. Applicant has the burden of persuasion to show she has mitigated the government's security concerns. She has not met that burden. Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

### **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:	Against Applicant
Subparagraph 1.b-1.o:	For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge