



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-02031  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

September 29, 2009

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted her Questionnaire for National Security Positions (SF86), on October 14, 2008 (Item 4). On June 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on June 16, 2009, and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on July 16, 2009. The Applicant received the FORM on July 24, 2009, and was given 30 days to submit any additional information. She submitted additional information on August 26, 2009. The Department Counsel had no objection to

this material and it is admitted into evidence as Applicant's Exhibit A. The case was assigned to me on September 9, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

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

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

The Government alleges that the Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admitted all of the allegations under this paragraph. Those admissions are hereby deemed findings of fact.

1.a. The Applicant admits that she is indebted to an automobile finance company in the amount of \$9,516 for a judgment entered against her in 2002. This debt has not been paid.

1.b. The Applicant admits that she is indebted to a credit card company in the amount of at least \$839 for a past due account with a balance of approximately \$1,332. This debt has not been paid.

1.c. The Applicant admits that she is indebted to a collection agency in the amount of \$135 for a telephone bill. This debt has not been paid.

1.d. The Applicant admits that she is indebted to a second collection agency in the amount of \$4,551. This debt has not been paid.

1.e. The Applicant admits that she is indebted to a bank in the amount of \$1,860. This debt has not been paid.

1.f. The Applicant admits that she is indebted to a second bank in the amount of \$773. This debt has not been paid.

1.g. The Applicant admits that she is indebted to a third bank in the amount of \$495. This debt has not been paid.

1.h. The Applicant admits that she is indebted to a third collection agency in the amount of \$797. This debt has not been paid.

1.i. The Applicant admits that she is indebted to a fourth collection agency in the amount of \$914. This debt has not been paid.

1.j. The Applicant admits that she is indebted to a fifth collection agency in the amount of \$34. This debt has not been paid.

1.k. The Applicant admits that she is indebted to a sixth collection agency in the amount of \$8,069. This debt has not been paid.

1.l. The Applicant admits that she is indebted to the sixth collection agency for a separate account in the amount of \$9,518. This debt has not been paid.

1.m. The Applicant admits that she has owed a tax lien in the amount of \$572 since 1999. This debt has not been paid.

1.n. The Applicant admits that she filed for Chapter 13 bankruptcy protection in March 2000. The case was dismissed in December 2001. This occurred after the Applicant became unemployed. The Applicant states:

I previously filed a chapter 13 bankruptcy to arrange with my creditors to make payments monthly so that I could provide relief for the expenses that I had incurred at that time. The attorney that I hired and paid turned out to be incompetent and as a result, I ended up losing my home and automobile. (Item 6 at 6.)

1.o. The Applicant admits that she considered filing for Chapter 7 bankruptcy protection. In Applicant's Exhibit A, the Applicant states that she is having discussions with a credit counseling service that she was referred to by her credit union. She states, "The impression that I want to project is that I am not a careless individual who continues to create debt and not be responsible enough to pay my creditors. It is my intention to try to remedy the debts not only to strengthen my credit history but also to show that I am reliable enough to trust with a security clearance." (Applicant's Exhibit A at 2.)

Concerning her debts, the Applicant submitted no evidence showing that she had made payments to any of her creditors. There is also no evidence of a payment plan with any of her creditors. The total amount of her admitted indebtedness is over \$38,000.

## **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 considered 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 over-arching 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 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 by President Eisenhower 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. The Applicant, by her own admission, has over \$ 38,000 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. The following conditions have possible applicability in this case:

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 are of long standing. By her own admission, she has paid none of her delinquent debts, no matter how small. This mitigating condition is not applicable 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 . . .), and the individual acted responsibly under the circumstances." The Applicant argues that many of these debts came from financial hardship. However, she has been employed by her current employer since 2003 and there is no evidence that she has acted responsibly with regards to her substantial debt during that time. She states several times that she will resolve these debts, but has not taken sufficient affirmative action. A statement that she intends to resolve the indebtedness in the future is not sufficient evidence that she can or will resolve the debts. I cannot find under these particular facts that the Applicant has acted responsibly under the circumstances.

AG ¶ 20(c) states that it may be mitigating where, "there are clear indications that the problem is being resolved or is under control." The Applicant's credit reports show that, in the main, she is making sufficient payments on her current indebtedness.

However, she has done nothing to resolve her past due indebtedness. A desire to resolve her substantial past due indebtedness is not enough. This mitigating condition is not applicable.

Based on all of the available evidence, I cannot find that the Applicant has mitigated the allegations under this Guideline. Paragraph 1 is found against the Applicant.

### **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. 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) in making such a decision:

(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 facts and circumstances surrounding this case. The Applicant has a history of not paying her debts. As set forth above, I find that there have not been permanent behavioral changes as required under AG ¶ 2(a)(6). In addition, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that there is a likelihood of recurrence (AG ¶2(a)(9)).

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 the Applicant has not mitigated the security concerns arising from her financial considerations.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

## **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 THE APPLICANT**

Subparagraphs 1.a. through 1.o.:            **Against the 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.

**WILFORD H. ROSS**  
Administrative Judge