



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 09-02189

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 31, 2010

**Decision**

WHITE, David M., Administrative Judge:

Applicant accrued substantial delinquent debt during the past six years, despite regular employment. She demonstrated neither any effort to resolve these debts, nor an ability to do so. She falsified her security clearance application concerning these problems, and failed to mitigate resulting security concerns. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted her security clearance application on September 8, 2008. On October 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 (DoD) for SORs

issued after September 1, 2006. Applicant acknowledged receipt of the SOR on November 4, 2009. She answered the SOR in writing (AR) on November 5, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 30, 2009, and DOHA assigned the case to me on December 7, 2009.

DOHA issued a Notice of Video Tele-Conference Hearing on December 7, 2009, and I convened the hearing as scheduled on December 14, 2009. Applicant affirmatively waived her right to 15 days notice before the hearing, and expressed her readiness to proceed on the record. (Tr. at 11-12.) Department Counsel offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on her own behalf, and offered Applicant Exhibits (AE) A and B, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 22, 2009.

### **Findings of Fact**

Applicant is a 26-year-old employee of a defense contractor, for whom she worked for 14 months under an interim clearance as a travel claim processor. That clearance was suspended and she was placed on unpaid leave in late October 2009, after her employer received the SOR. She is divorced, with an eleven-month-old child. In her answer to the SOR, Applicant admitted all the financial allegations set forth in ¶¶ 1.a through 1.x, and denied the personal conduct allegations in ¶¶ 2.a and 2.b. Her admissions and explanations, including those contained in her interrogatory responses (GE 2 and 3), are incorporated into the following findings of fact.

Applicant admitted, and credit reports confirm, that she owes 22 delinquent debts alleged in the SOR. The judgment debts alleged in SOR ¶¶ 1.b and 1.f, for \$249 and \$272, respectively, represent duplicate reports of the same debt by different credit bureaus. Two of the three credit bureau reports show the proper amount as \$249, so that amount will be used in further calculations below. Review of the evidence also reveals that the debts alleged in SOR ¶¶ 1.c and 1.o are also the same account. The latter was the originally reported deficiency after the repossession and sale of a vehicle, and the former, for \$6,992, shows the amount of the subsequent judgment obtained by the creditor. Accordingly, SOR ¶¶ 1.f and 1.o are found for Applicant as duplicate allegations of other SOR-listed debts. (Tr. at 45-49.) Deletion of these duplicates results in 22 delinquent debts totaling \$22,822. They range from bounced checks to multiple vehicle repossessions. (AR; GE 2 through 5; Tr. at 28-34.) Applicant also admitted being delinquent on a number of student loans that were not listed on the SOR. Her credit reports confirm these additional delinquencies. (GE 3 at 7; GE 4 at 3-4; GE 5 at 13-16.)

Applicant was married from April 2003 to December 2004. She stated that her husband was an alcoholic, and that financial problems contributed significantly to their divorce. Many of her delinquent debts date to that period of her life, but more than half accrued after her divorce. She also acknowledged her responsibility for the debts she

incurred during her marriage. She has also incurred some medical expenses due to a heart condition, but none of her large debts involve medical bills. She lived with another man for some period after her divorce, and he is the father of her child. He does not pay formal child support payments, but by mutual agreement he covers daycare expenses for their child. (GE 2 at 23-25; Tr. at 23-34; 37-39.)

Applicant reported continuous employment from August 2000 through her October 2009 placement on leave without pay when her clearance was suspended. (GE 1 at 14-22; Tr. at 8, 24.) During that time she continued to accrue delinquent debts, and offered no evidence that she resolved any of them, although ten of the debts ranged from only \$6 to \$100. She consulted a credit counseling service and, on their advice, also consulted an attorney about filing for bankruptcy relief. She was unable to save the \$1,400 in fees the attorney required to proceed. (GE 2 at 4, 6; GE 3; Tr. at 34-36.) She demonstrated no present financial ability to meet current expenses or avoid incurring additional delinquent debt. (Tr. at 35-43.)

Applicant falsely answered “No” in response to questions 27.d, 28.a, and 28.b on her security clearance application. Question 27.d inquired about unpaid judgments, of which she had those listed in SOR ¶¶ 1.a through 1.d (as well as the duplicate listing in ¶ 1.f). She claimed she was unaware of the judgments, although she readily discussed the vehicle repossessions underlying two of them during her interview by an investigator from the Office of Personnel Management.<sup>1</sup> (Tr. at 44-45; GE 2 at 4.) Questions 28.a and 28.b inquired about debts delinquent for more than 180 days and 90 days, respectively. She admitted during her hearing that she was aware of delinquent debts when she completed the form, but answered “No” because “I didn’t know exactly what I had out there and what I owed on and figured I either needed to have something or nothing.” (Tr. at 45.)

Two auditors who worked with Applicant and were involved with her initial training in financial procedures wrote memoranda expressing their high opinions of her dedication, job performance, and potential to succeed. (AE A; AE B.) Applicant’s testimony and demeanor during the hearing reflected her desire to obtain a security clearance so she could resume working in the finance office, but were unconvincing concerning the false responses on her security clearance application.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider and apply 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 used in evaluating an applicant’s eligibility for access to classified information.

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<sup>1</sup>Applicant also answered “No” to question 27.b, concerning property repossessions, although that falsification was not alleged in the SOR.

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 AG ¶ 2, describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and (c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 in 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides, "[a]ny determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter 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 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.

## **Analysis**

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

AG ¶ 18 expresses the security concern pertaining to 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel argued for the applicability of two of these potentially disqualifying conditions in this case: (a) “inability or unwillingness to satisfy debts;” and (c) “a history of not meeting financial obligations.” (Tr. at 50.)

Applicant has incurred more than \$22,800 in delinquent debts over the past six years, several of which are for less than \$100. She was unable or unwilling to resolve any of them, although she was continuously employed up until the time her SOR was issued. These facts clearly support security concerns under AG ¶¶ 19(a) and 19(c), shifting the burden of proof to rebut, explain, extenuate, or mitigate those concerns to Applicant.

AG ¶ 20 provides conditions that could mitigate security concerns arising from the foregoing financial considerations. Potentially applicable mitigating conditions are:

- (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; and
- (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.

Applicant failed to establish mitigation under AG ¶ 20(a) because her financial irresponsibility spans the past six years and continues to date. Her current financial

situation makes recurrence more likely than not. The problems were of her own making, and do cast doubt on her current reliability, trustworthiness, and good judgment.

Mitigation under AG ¶ 20(b) was barely established, if at all. Applicant had some medical problems, but they were not unexpected. She was divorced and some of her bad debts were incurred during her marriage. However, the divorce was more than five years ago, and she demonstrated no improvement in financial responsibility since that time. She was continuously employed for nine years, until issuance of her SOR identified substantial questions about her eligibility for the security clearance required by her position. That recent loss of employment did not contribute to the delinquency of any of the SOR-listed debts that gave rise to those security concerns, although it does cast additional doubt on her current ability to resolve any of them.

Applicant consulted with a credit counselor who suggested that she pursue bankruptcy. Although she claimed to be doing so in her interrogatory and SOR responses, she never saved the \$1,400 required to initiate the process. She offered no evidence that she contacted any creditors concerning her delinquent debts, or made any payments toward them. Accordingly, she established no mitigation under AG ¶¶ 20(c) or (d). Applicant did not dispute any of her delinquent debts under AG ¶ 20(e), and in fact admitted that, except for the duplications, they were valid debts.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation;

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The potentially disqualifying condition alleged in this case is:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant falsely answered “No” to three questions on her security clearance application. Her explanation for denying the existence of unpaid judgments was unconvincing, in that she admitted knowledge of the circumstances giving rise to three of the four underlying debts. Two of these involved vehicle repossessions she clearly knew about, but also denied on the same application. She admitted knowing that she had delinquent debts that should have been disclosed in response to the questions concerning 90-day and 180-day delinquencies, and that she should not have answered “No” in response to the questions asking about them. Security concerns under AG ¶ 16(a) were raised by these facts.

Other than self-serving statements that her falsifications were not intended to deceive the government, Applicant offered no evidence that would tend to support any mitigating condition under Guideline E. After careful review of the record, I find that none of them apply.

### **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):

(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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the pertinent facts and circumstances surrounding this case. Applicant’s conduct of

security concern spans more than six years. It involves more than \$22,800 in delinquent debts that she has been unable or unwilling to address, and falsification of her security clearance application in an attempt to conceal the problems. Her debts range from a \$6 bounced check to vehicle repossessions involving many thousands of dollars, yet she has done nothing to resolve any of them. Many were incurred when she was relatively young, but she was continuously employed while regularly spending beyond her means. She did not demonstrate either rehabilitation or behavioral changes that would indicate future responsible conduct. The potential for pressure, coercion, exploitation, or duress has increased recently, since she is responsible for a young child without evidence of financial resources to avoid additional debt. There is no evidence that continuation or recurrence are unlikely.

Applicant failed to mitigate security concerns arising from her lengthy history of failing to meet financial obligations, and her inability or unwillingness to pay her delinquent debts. She also failed to mitigate the security concerns raised by her falsifications about those debts on her security clearance application. The record generates significant doubts as to her present eligibility and suitability for a security clearance.

### **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 through 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g through 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p through 1.x:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a and 2.b:	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.

DAVID M. WHITE  
Administrative Judge