



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



In the matter of: )  
)  
) ISCR Case No. 09-02193  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

July 13, 2010

**Decision**

---

RIVERA, Juan J., Administrative Judge:

Applicant lacks a track record of financial responsibility. Her financial irresponsibility dovetails with her misuse of a government credit card and her recalcitrant disregard of traffic laws and court orders. Her overall behavior shows lack of judgment, reliability, and an unwillingness to comply with the law. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 2, 2008, Applicant submitted a security clearance application. On November 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

On January 6, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on March 31, 2010. DOHA issued a notice of hearing on April 2, 2010. The hearing was convened as scheduled on April 29, 2010. The Government offered Exhibits (GE) 1 through 15, which were admitted without objection. Applicant testified, presented one witness, and submitted Exhibits (AE) 1 through 26, which were admitted without objection. AE 26 was submitted post-hearing. DOHA received the transcript of the hearing (Tr.) on May 6, 2010.

### **Findings of Fact**

Applicant admitted all SOR allegations. Her admissions are incorporated as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 36-year-old systems operator employed by a defense contractor. She has never been married and has a 14-year-old daughter. She receives only approximately \$85 per month in financial support. Shortly after graduating from high school, she enlisted in the U.S. Air Force where she served from 1991 until 1995. At the time of her honorable discharge, she had achieved the pay grade of E-4. She also served in a state National Guard from 1998 until 2001. During her time in the service, because of her military occupational specialty, Applicant had access to classified information at the top secret level. Her access to classified information was continued at the same top secret level up to her hearing date. There is no evidence that Applicant has compromised or caused others to compromise classified information.

Applicant has been consistently employed since March 1998, except for one-month in 2008, while in between jobs. She received her full salary as unemployment compensation. She estimated her gross yearly income since 1998 as follows: between March 1998 and July 2000, she earned \$27,000; between July 2000 and December 2002, she earned \$31,000; between December 2002 and December 2005, she earned \$41,000; between January 2006 and October 2008, she earned \$57,000; and from November 2008 to present, she has been earning approximately \$71,000 a year. (Tr. 82-86)

Applicant's background investigation addressed her financial situation, which revealed she has financial problems. The SOR alleges one bankruptcy case and eight

delinquent or charged off debts totaling approximately \$80,000, which include two judgments.

SOR ¶ 1.a alleges that Applicant filed for Chapter 7 bankruptcy protection and was discharged of all dischargeable debts in April 2002. A student loan was not discharged, and Applicant later paid it. She explained she was forced to file for bankruptcy protection because she was involved in a car accident. In 1996, she did not have the money to pay for her car insurance premiums, and she drove her car without insurance. She was determined to be at fault, and after the accident, she agreed to a monetary judgment to pay for damages. She made three \$300 payments and filed for bankruptcy protection. She claimed she could not afford to pay the judgment and her day-to-day living expenses. After the bankruptcy discharge, Applicant acquired another judgment related to her car accident for \$5,633. She paid it via a garnishment of wages. (Tr. 54, 87-89)

In 2006, Applicant purchased a condominium for \$190,000, and financed it with two mortgages, a first mortgage for 80% of the loan and the second for the remaining 20%. Within a year, she became financially overextended because of her limited income. She also claimed she was financially overextended because she provided financial assistance to her father, paid the increasing cost of gas, and bore the expenses associated with being a single parent with limited financial support. The condominium was foreclosed in October 2007.

SOR ¶¶ 1.b and 1.d (\$3,780) allege the same delinquent debt - an October 2008 judgment for past-due condominium maintenance fees. In March 2010, the creditor enforced the judgment through a \$150 monthly garnishment of wages.

The debt alleged in SOR ¶ 1.i is the deficiency owed on the condominium's first mortgage. Applicant's full pay off is around \$78,000. (AE 17) This debt is unresolved. The debt alleged in SOR ¶ 1.h (\$40,000) is the deficiency owed on the condominium's second mortgage. This debt is unresolved. Applicant claimed she does not have the financial means to address both debts and pay for her other financial obligations and her day-to-day living expenses. She intends to address her smaller debts first and then the larger debts.

SOR ¶ 1.c (\$860) alleges a judgment filed against Applicant in April 2004 for past-due rent. Applicant lived in an apartment from 1997 until 2004. During her first year as a tenant, she was frequently delinquent on her rent. Later on, she was sporadically delinquent. (Tr. 89-91) She became aware of the judgment in 2006 when she was processing the loans to purchase the condominium. She claimed she made the first efforts to resolve the judgment in 2008, but did not have the financial means to do so. She averred that in 2009, she attempted to identify the current account holder, but was unsuccessful. She then disputed the account through a credit bureau and it was deleted from her credit report. (AE 26) The basis for the removal of the account is not clear from the evidence presented.

SOR ¶ 1.e (\$1,022) alleges a collection account for telephone services Applicant received in 1999-2000. The account became delinquent in 2000. (GE 7) Applicant paid it in March 2010. (AE 26)

SOR ¶ 1.f (\$504) alleges a collection account for gas services Applicant received between 1998 and 2004, when she was living in an apartment. Applicant is paying the debt through a debt management plan she established in January 2010. (AE 25) Applicant testified she intends to add to her debt management plan several medical accounts, totaling \$315, that have been delinquent for approximately one year. (Tr. 119) These debts were not alleged in the SOR.

SOR ¶ 1.g (\$564) alleges a collection account for a musical instrument Applicant rented for her daughter. She lost the instrument in 2005, and stopped paying for it. Applicant settled the debt for \$345 and paid it in March 2010. (AE 15-16)

Applicant accepted responsibility for her financial obligations and candidly testified about her financial problems. She has been struggling to pay her debts for many years. She claimed her financial problems started when she left the Air Force in 1995. She attributed her financial problems to her limited earnings, the mistake of purchasing a condominium beyond her financial means, providing financial assistance to her father and brother, the increasing fuel costs, and the expenses associated with being a single parent with limited financial support. She claimed she has been making changes in her lifestyle to pay her debts and promised to pay her debts sometime in the future. She is addressing the small debts first and plans to address the remaining debts in order. She is now following a budget, prepared the week before her hearing with the assistance of her facility security officer (FSO). She testified she has participated in financial counseling.

In 2005, Applicant misused a government credit card (SOR ¶ 2.a). She used the government credit card to take an \$80 cash advance to pay for her pet's needs. (Tr. 72) She claimed she mistakenly used the government credit card instead of her own credit card. She also claimed she disclosed to her supervisor her misuse of the credit card when the account was reported delinquent. She paid the delinquent \$100 charge and received a letter of caution from the government agency.

Concerning the allegations in SOR ¶¶ 2.b through e, Applicant explained that in late 2007 she received a ticket for speeding. She failed to pay the ticket or to appear in court as required, and her license was suspended. In January 2008, she was stopped again and arrested for driving with a suspended license. Her license was then confiscated.

Applicant claimed that in March 2008, she did not have a ride to work and she drove to work without a valid driver's license and with expired license plates. She was stopped, arrested, and summoned to appear in court. The court ordered Applicant to serve one weekend in jail and to undergo a driving improvement course. In July 2008, Applicant failed to report for her weekend in jail and she was charged with Escape-

Second Degree, and a warrant was issued for her arrest. In August 2008, Applicant again drove without a license and was arrested. Her license was revoked for one year. Additionally, she served two weekends in jail, completed the ordered driving improvement course, and was placed on one-year probation. She completed her probation in early 2010. She testified that since August 2008, she has not been involved in any additional problems with the law.

Applicant is a productive, knowledgeable employee. Her supervisor considers Applicant to be an outstanding team member. Her performance was rated as excellent, and she often exceeds her position requirements. Applicant's FSO testified on her behalf. Applicant disclosed to her FSO her financial problems after receipt of the SOR, and requested guidance to address her financial problems. In the FSO's opinion, Applicant has put forth a lot of effort trying to resolve her debts. The FSO has no doubts about Applicant's character, loyalty, and trustworthiness. She recommended the continuation of Applicant's security clearance.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. They provide explanations for each guideline and list potentially disqualifying conditions and mitigating conditions, which must be considered 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 goal is to achieve a fair, impartial, and commonsense decision. 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. AG ¶ 2(c).

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 the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence."<sup>1</sup> Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts

---

<sup>1</sup> See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4 th Cir. 1994).

admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government.<sup>2</sup>

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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* Executive Order 12968 (Aug. 2, 1995), Section 3.

## **Analysis**

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

Under Guideline F, the security concern is that 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. AG ¶ 18.

Applicant has had financial problems since 1995 when she was discharged from the Air Force. She claimed she filed for Chapter 7 bankruptcy protection because she did not have the money to pay a judgment resulting from her failure to insure her car. After she was discharged of all of her dischargeable debts in 2002, she continued to acquire debts that became delinquent and remained delinquent for many years. She exacerbated her financial problems when she purchased a condominium beyond her financial means in 2006 that was foreclosed in 2007.

Applicant owes approximately \$115,000 as a result of the foreclosure. Additionally, she owes approximately \$3,780 on another account that is being paid through a garnishment of wages. She is paying one account through a debt management program. She plans to add several other medical accounts that have been delinquent for around one year to her debt management program. AG ¶ 19(a): “inability

---

<sup>2</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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.

Applicant’s being a single mother with limited financial support may be considered as a circumstance beyond her control, which contributed to her inability to pay her debts. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. Applicant’s evidence is not sufficient to show she acted responsibly under the circumstances. She was considered to be at fault in her 1996 accident, and she violated the law by driving without insurance. Thus, she could have prevented the financial problems resulting from her car accident. Her purchase of the condominium (beyond her financial means), the alleged support to her family at the expense of her own financial problems, and the continued acquisition of debt without the resolution of prior delinquent debts were also within her control.

Applicant has been consistently and fully employed from 1998 to present. She has been earning at least \$57,000 a year since January 2006. In November 2008, she started earning \$71,000 with her current employer. Other than payments made as a result of legal action, she presented little documentary evidence of good-faith efforts to pay, settle, or resolve her SOR delinquent debts prior to receipt of her SOR. Considering her income since November 2008, the debt in the debt management

program (\$504) and the delinquent medical accounts (\$315) that she intends to add to the debt management program are relatively small debts. If she had been more financially responsible, she could have established payment plans with the creditors of those accounts.

Applicant is not in control of her financial situation and has a substantial delinquent debt. Her behavior shows a lack of financial responsibility. Considering her lack of financial diligence, her financial problems are likely to continue. I find she does not understand the importance of having and maintaining financial responsibility. Her behavior shows lack of reliability and an unwillingness to pay her debts. None of the mitigating circumstances apply.

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

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

Applicant's misuse of the Government's credit card and her recent recalcitrant disregard of traffic laws and court orders raise security concerns under AG ¶ 15(c) "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations."

AG ¶ 17 lists seven conditions that could potentially mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is



unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the above mitigating conditions, I find none apply. The only mitigating conditions potentially applicable are AG ¶¶ 17(c) and (d). I give Applicant credit for acknowledging her behavior was improper. I also considered that her last traffic offense occurred in August 2008, and there is no evidence of Applicant's further involvement with the law. Although traffic violations are considered minor offenses, Applicant's repeated traffic violations, and recalcitrant disregard of court orders cast doubt on her reliability, trustworthiness, and judgment. Moreover, I do not consider her failure to appear in court a minor violation. Considering the evidence as a whole, I find Applicant's questionable behavior is recent. Not enough time has passed for Applicant to establish her questionable behavior is unlikely to recur.

### **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 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.

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. AG ¶ 2(c). I have incorporated in my whole-person analysis my comments on the analysis of Guidelines F and E.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant honorably served the United States in the Air Force and National Guard for approximately eight years. She has worked for the government or government contractors most of her adult life. She has possessed a security clearance for approximately 19 years. There is no evidence she has ever compromised or caused others to compromise classified information. She is considered to be an excellent employee. She is trusted by her FSO, who recommended her continued access to classified information. She has been a good mother, sister, and daughter. These factors show some responsibility, good judgment, and mitigation. Applicant also established some circumstances beyond her control, which contributed to her inability to pay her debts.

Notwithstanding, Applicant's evidence is not sufficient to show she acted responsibly under the circumstances. She presented insufficient documentary evidence of debt payments, contacts with creditors, negotiations to resolve her SOR debts, or of other diligent efforts to resolve her debts. Applicant's financial behavior shows that she is not in control of her financial situation and demonstrates a lack of financial responsibility. She still carries a substantial delinquent debt that exacerbates the financial considerations concerns.

Considering the evidence as a whole, I find Applicant has not demonstrated she understands the importance of having and maintaining financial responsibility. Her financial irresponsibility dovetails with her failure to insure her car, driving her car without insurance, her misuse of a government credit card, and her recalcitrant disregard of laws and court orders. Her overall behavior shows lack of judgment, reliability, and an unwillingness to comply with the law.

### **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
Subparagraphs 1.a, 1.b, 1.h, 1.i:	Against Applicant
Subparagraphs 1.c-1.g:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraphs 2.a-2.e:

Against Applicant

**Conclusion**

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

---

JUAN J. RIVERA  
Administrative Judge