



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



In the matter of:	)	
	)	
-----, -----	)	ISCR Case No. 09-02239
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

May 27, 2010

**Decision**

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WHITE, David M., Administrative Judge:

Applicant admittedly owed nine delinquent debts totaling more than \$62,000. She filed for Chapter 7 bankruptcy relief in August 2009, but failed to provide documentation concerning the outcome of that case. Her December 2009 credit report makes no mention of a bankruptcy filing, and she provided no evidence of other resolution of those debts. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on December 15, 2008.<sup>1</sup> On September 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup> 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*

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<sup>1</sup>Item 5.

<sup>2</sup>Item 1.

*Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 25, 2009, and again on November 22, 2009, and requested that her case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on December 30, 2009. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on January 22, 2010, and returned it to DOHA. She provided no further response to the FORM within the 30-day period, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on March 24, 2010.

### **Findings of Fact**

Applicant is a 61-year-old employee of a defense contractor, where she was hired in September 2008. She has no military service. This is her first application for a security clearance. She is single, with one adult child who lives in a different state. Applicant earned an associate's degree in May 2006. Prior to her current job, she worked in various occupations including as a telephone company agent, a pet groomer and trainer, a school custodian, and a restaurant bar manager.<sup>5</sup> In her responses to the SOR, she formally admitted the allegations in SOR ¶¶ 1.a through 1.i. Applicant's admissions, including her responses to the SOR, and to DOHA interrogatories, are incorporated in the following findings.

Applicant admitted owing each of the 9 delinquent debts alleged in SOR ¶ 1, totaling \$62,180.<sup>6</sup> All of these debts became delinquent in 2007 or 2008, after she was out of work for 2 months recovering from carpal tunnel surgery on both wrists and then quit her pet grooming job due to problems with new ownership.<sup>7</sup> She neither documented, nor claimed to have completed, arrangements to repay any of these debts. On August 26, 2009, she filed for Chapter 7 bankruptcy relief. She completed the first of two credit counseling sessions required in connection with her bankruptcy on

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<sup>3</sup>Items 3 and 4.

<sup>4</sup>The Government submitted 11 Items in support of the SOR allegations.

<sup>5</sup>Item 5.

<sup>6</sup>Item 3; Item 4; Item 7; Item 8.

<sup>7</sup>Item 4; Item 6.

May 26, 2009. This counseling session was conducted via the internet, and did not include preparation of a debt repayment plan.<sup>8</sup> In her second response to the SOR, dated November 11, 2009, Applicant stated that she had “finished going through bankruptcy for these bills,” but provided no additional documentation to substantiate the status of her bankruptcy.<sup>9</sup> Department Counsel submitted a credit report for Applicant, dated December 30, 2009, which makes no mention of any bankruptcy filing or discharge, and continues to reflect outstanding delinquent debts alleged in the SOR.<sup>10</sup>

Applicant provided no evidence of financial counseling, except that noted above. The only budget information she provided, from which to determine her present or future solvency, consisted of undocumented statements to the investigator from the Office of Personnel Management (OPM) in February 2009, and estimates contained in a letter she submitted on May 19, 2009. During the interview, she said her average monthly income was about \$1,405, and her monthly expenses averaged about \$1,267, leaving her a net remainder of \$138. In her May letter, she said her monthly bills were “about \$1,023 per month before eating,” and she made between \$900 to \$1,100 per month.<sup>11</sup>

Applicant submitted no other evidence describing her character, trustworthiness, or work performance. Department Counsel pointed out her lack of documentation concerning completion of bankruptcy proceedings, or other form of debt resolution, in the Argument section of the FORM, and identified the need for her to submit such documentation to establish mitigation. Applicant failed to respond to the FORM with any additional information. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According

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<sup>8</sup>Item 4. Applicant submitted only the “Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines” page of her bankruptcy case file. Neither schedules, nor documentation concerning a final discharge were provided.

<sup>9</sup>Item 3.

<sup>10</sup>Item 11.

<sup>11</sup>Item 6; Item 7.

to AG ¶¶ 2(a) and 2(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 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, “[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 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**

The security concerns relating to the guideline for financial considerations are 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.

Department Counsel argued that the evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.<sup>12</sup>

Applicant has been unable to satisfy nine delinquent debts, totaling more than \$62,000, which arose between 2007 and 2008. DC 19(a) and (c) were clearly established, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

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

Applicant's financial concerns involve nine different accounts, span the past three years, and continue to date, with no documentation of any effective steps toward resolution. She did not demonstrate that these obligations will be resolved anytime soon, or that she can avoid additional delinquencies in the future. The evidence does not support the application of MC 20(a).

Applicant was underemployed for some of the time since 2007, but she provided no evidence tending to show that the causes of this underemployment were largely beyond her control. She was off work for two months due to carpal tunnel surgeries, but other than these scheduled surgeries, she made no showing that the debts she incurred arose from conditions that were beyond her control. She told the OPM investigator that she quit her pet grooming job in 2007 because of problems she had with the new owner

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<sup>12</sup>FORM at 4.

of the business.<sup>13</sup> Finally, she provided nothing to substantiate that she acted responsibly under the circumstances, so only limited mitigation under MC 20(b) was established.

Applicant documented minimal financial counseling, and provided insufficient evidence of a good-faith effort to resolve her outstanding debts. If she can demonstrate that her former debts were discharged in bankruptcy, and that her present financial situation has improved to the point that she will not incur additional delinquent debt, that would provide much stronger mitigation should she reapply for a clearance when she is eligible to do so. On the present record, however, Applicant failed to establish mitigation under MC 20(c) or MC 20(d). “An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken significant actions to implement that plan.”<sup>14</sup> Applicant failed to meet her burden in this regard.

### **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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. Applicant is a mature, educated, and experienced individual, who is responsible for her voluntary choices and conduct that underlie the security concerns expressed in the SOR. Her financial irresponsibility spans the past three years, and continues at present from all indications in the record. She demonstrated little effective effort to resolve her debts since gaining her current employment almost two years ago. She remains subject to coercion and

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<sup>13</sup>Item 7 at 5.

<sup>14</sup>ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

