



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



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| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 09-02404 |
| SSN: -----                       | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

April 30, 2010

**Decision**

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WESLEY, Roger C., Administrative Judge:

**History of Case**

On December 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 Adjudicative Guidelines (AGs) promulgated by the President on December 29, 2005.

Applicant responded to the SOR on December 22, 2009, and elected to have her case decided on the basis of the written record. Applicant received the government's File of Relevant Material (FORM) on February 22, 2010, and responded with additional information within the 30 days permitted. The case was assigned to me on March 19, 2010. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have (a) filed for Chapter 13 bankruptcy relief in May 2007 (dismissed in April 2008); (b) accumulated two charged off debts, exceeding \$7,700, as follows: creditor 1.b (\$142) and creditor 1.c (\$7,602); and (c) accrued one past due account of \$1,012 on a \$15,249 debt.

In her response to the SOR, Applicant admitted each of the debts but denied any suggestions of poor self-control, lack of judgment, or unwillingness to abide by rules and regulations.

## **Findings of Fact**

Applicant is a 48-year-old training specialist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant married her former spouse in May 1985 and divorced him in August 1992. (Item 5) Applicant has been married to her current spouse since May 2008. (Item 5) She has no children from either marriage.

Applicant accumulated a number of delinquent debts between 2006 and 2007. After falling behind in her mortgage payments, she lost her home to foreclosure. (Item 5) After exploring payment options with a legal consulting firm, she determined to petition for Chapter 13 bankruptcy relief from mortgage, credit card, personal loans, and other liabilities.

Appellant filed her petition for Chapter 13 relief in May 2007. (Item 7) She scheduled her mortgage as a secured claim (\$318,638) and listed \$34,344 in unsecured claims in her petition (see Item 6). She proposed monthly payments of \$530 a month for 60 months for a gross funding of \$31,800 (Item 7). When she failed to make her monthly payments under her proposed plan, the Chapter 13 trustee objected to the court's approving plan. In the objection he filed in July 2007, the trustee noted the absence of any (a) plan payments, (b) documented support of her claimed monthly rental income, and (c) paystubs from her new job that the trustee had requested at the creditors' meeting. (Item 7) The trustee concluded that Appellant's Chapter 13 plan failed to satisfy the feasibility requirements of the Bankruptcy Code. (Item 7) Stressing Applicant's lack of cooperation, he opposed confirmation of her plan.

Before the bankruptcy court could rule on the trustee's objections to Applicant's Chapter 13 plan, Applicant filed a motion in April 2008 to voluntarily dismiss her Chapter 13 petition. In turn, the bankruptcy court granted Applicant's motion to dismiss her petition in April 2008, without any reference to the trustee's objections.

In her interview with an investigator from the Office of Personnel Management (OPM) in November 2008, Applicant insisted she paid all of the claims listed in her Chapter 13 bankruptcy petition. She could provide no details of her payments, however,

and her credit reports indicate her listed accounts in her Chapter 13 petition were either closed or paid. (See Items 8 through 11)

When responding to the SOR, Applicant admitted the three listed debts without any explanations of the payment status of the debts in question. Prior to receiving the FORM, she provided no documentary proof of any repayment or contact with any of the listed creditors since the dismissal of her Chapter 13 petition.

After receiving the FORM, Applicant furnished documented payment arrangements with two of her listed creditors. In her March 4, 2010 submission, she attached a copy of a forbearance agreement with creditor 1.d that calls for an initial monthly payment of \$455 (payable by February 26, 2010) and monthly forbearance payments of \$295, commencing in March 2010. The agreement contains Applicant's signature, but not the mortgagor's. Addressing her creditor 1.c debt, Applicant provided a payment agreement that calls for a \$1,000 payment by February 22, 2010 and \$275 a month, thereafter. Applicant provided no documentation of any payments made on either of these accounts. She was advised of the need for documentary proof of repayment or contact with any of her creditors, and was, accordingly, on notice of the importance of providing documentation. Without some payment documentation, Applicant cannot be credited with any payments on the accounts covered in subparagraphs 1.c and 1.d of the SOR and admitted by Applicant in her response to the FORM.

Applicant claims full payment of the \$142 charged off account covered in subparagraph 1.b. While she confirms her satisfying this \$142 debt, she provided no documentation of this payment. Absent payment documentation, Applicant cannot be credited with any payments on this SOR-covered account either.

Applicant does not provide any information about the circumstances that contributed to her delinquency problems. She provided no details of the reasons for her pursuing Chapter 13 relief in 2007, or for her failure to follow through with her petition. She does provide earnings information in her answers to interrogatories in May 2009. (Item 6) She reported net monthly earnings of \$2,266, monthly expenses of \$1,893, and monthly debt payments of \$3,542, leaving a net monthly deficit. This reflects a considerable reduction in net monthly income from what she reported in May 2007 with her Chapter 13 petition. In her petition, she reported \$4,974 (including \$650 of rental income) and \$4,626 of monthly expenses. (*Compare* the figures provided in Item 6 with those furnished in Item 7) The differences are not explained.

Without more financial information from Applicant about herself and her spouse during the pertinent period of reported debt delinquencies and recent financial changes in their financial fortunes, her monetary circumstances cannot be properly evaluated. Neither her current financial circumstances nor her payment history is documented in ways that facilitate an assessment of her payment capabilities at this time.

Applicant provided no information either about her family or work. Although she was afforded an opportunity to supplement the record, Applicant provided no

endorsements or performance evaluations on her behalf. Nor did she provide any proof of community and civic contributions.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. 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 ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is a training specialist for a law firm. She accumulated a number of delinquent debts between 2006 and 2007. Her accumulation of delinquent debts and her past inability and unwillingness to address these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and ¶19(c) "a history of not meeting financial obligations."

Applicant's pleading admissions of the debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)).

Each of Applicant's listed debts are fully documented in her latest credit reports and provide ample corroboration of her debts.

Applicant's debts are attributable to her experiencing unexplained financial problems during the 2006-2007 time frame. She was concerned enough about her finances to pursue Chapter 13 bankruptcy relief in May 2007. Before her plan could be approved, however, she was required to satisfy the Chapter 13 trustee's documentation requests and demonstrate the feasibility of her plan. This she failed to do, and the trustee filed an objection to the confirmation of her plan. Before the bankruptcy court could take any action on the trustee's objections, Applicant moved for a voluntary dismissal of her petition. Her voluntary request for dismissal was approved by the bankruptcy court in April 2008. The only three listed debts that were included in Applicant's Chapter 13 petition are covered by payment arrangements, sans any documented payments to date.

Based on the documented materials in the FORM, no identifiable extenuating circumstances are associated with Applicant's inability to pay off or otherwise resolve her debts. As a result, MC ¶ 20(b), "the conditions that resulted in the behavior 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," is not available to Applicant.

Moreover, some judgment problems persist, too, over Applicant's unexplained delinquencies and her failure to demonstrate she acted responsibly in addressing her listed debts once she her Chapter 13 petition was dismissed. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are her listed debt delinquencies ongoing, but she has failed to document any payments on them. Probative evidence of mitigation is not demonstrated by Applicant based on available documentation in the record.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also implicit in financial cases. Failure of the applicant to make concerted efforts to pay or resolve her debts raises security-significant concerns about whether the applicant has demonstrated the trust and judgment necessary to safeguard classified information.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by her accumulation of delinquent debts. Since her

Chapter 13 dismissal in April 2008, she has not established any track record for paying her listed debts. Resolution of her delinquent accounts is a critical prerequisite to her regaining control of her finances and mitigating financial concerns.

While underemployment conditions might have played a considerable role in her accumulation of delinquent debts between 2006 and 2007, Applicant failed to provide any explanatory material for consideration. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of her overall clearance eligibility, but were not provided. Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable her to establish judgment and trust levels sufficient to overcome security concerns arising out of her accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, her lack of any explanations for her debt accruals, and her failure to provide any documented payments on any of the listed delinquency debts in the SOR, it is too soon to make safe predictive judgments about Applicant's ability to repay her debts and restore her finances to acceptable levels commensurate with the minimum requirements for holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.d.

In reaching my decision, I have considered the evidence as a whole, including each of the 2(a) factors enumerated in the AGs.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, and conditions any deliberate attempt to conceal adverse information about her debts listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparas. 1.a through 1.d:

Against Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

