



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-02745
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: Janet Horgan, Esquire

February 22, 2010

**Decision**

HOWE, Philip S., Administrative Judge:

On October 29, 2008, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On September 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 20, 2009. Applicant requested her case be decided on the written record in lieu of a hearing.

On November 13, 2009, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on November 13, 2009. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on November 20, 2009. Applicant's attorney filed a Response to the FORM on December 15, 2009, within the 30 day time allowed that would have expired on December 20, 2009. I received the case assignment on January 29, 2010. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

### **Findings of Fact**

Applicant denied all allegations in Paragraph 1, except Subparagraphs 1.g and 1.i, which she admitted. (Item 4)

Applicant is 51 years old, married, and has worked for a defense contractor since 1981. She has held a security clearance for 27 of the 28 years she worked for the contractor. She and her husband own a house, two cars, and a \$40,000 motorcycle. (Items 5 and 6)

Applicant's husband changed jobs in 2002 to start work in construction. His income decreased by half of what he earned previously as a result of that change. Their expenditures and debts remained the same or increased from 2002 to 2004. Her husband was injured in 2003 while working. He later returned to work. In early 2009, Applicant sought to sell her house, but the current status of that sale is not disclosed by Applicant in her Answer or FORM Response. The government investigator's summary of the interview with Applicant in January 2009 states that Applicant and her husband were separated but not divorced. Her FORM Response does not make any mention of a marital separation or divorce. As a result of her spending habits from 2002 to 2009, Applicant has 11 delinquent debts totaling \$49,160 that were alleged in the SOR. Applicant admitted to the government investigator that she did not change her spending habits for several years after 2003. (Items 1 and 6, FORM Response)

Applicant consulted with a company in 2006 which purported to assist her in paying her delinquent debts. She paid the company \$100 to \$200 per month for an unspecified time. Applicant did not submit a copy of any agreement with the company, including a list of the debts it intended to resolve for her. The company did not repay any of her debts. She later terminated any connection with that company, but did not submit documents showing when that disconnection occurred. Applicant did not consult with any other debt resolution company after 2006. (Items 6 and FORM Response)

Applicant's financial records in the file, comprised of three credit reports from December 4, 2008 (Item 9), March 23, 2009 (Item 8), and July 30, 2009 (Item 7), show she had 10 credit cards between 2000 and 2009. She used some of them to purchase

household items and groceries. She used the credit card alleged in Subparagraph 1.j of the SOR to pay other delinquent debts. (Item 6)

Three of Applicant's delinquent debts were repaid after the creditors obtained judgments against Applicant and used garnishment procedures under state law for collections. These debts total \$30,192. One of these debts was for a credit card in the amount of \$2,269 and the judgment was granted in December 2007 (SOR Subparagraph 1.a.). The second debt was for another credit card in the amount of \$7,249, for which a judgment was granted in July 2007 (SOR Subparagraph 1.b). The third debt was her house mortgage in the amount of \$20,674 (SOR Subparagraph 1.c). These three debts were paid in 2009. (Items 4, 7-9, FORM Response)

Applicant has eight delinquent debts, which are unresolved. They total \$18,968. They are set forth in SOR Subparagraphs 1.d. to 1.k. These debts are credit card debts incurred between 2002 and 2009. (Items 4, 6-9)

Applicant stated in her FORM Response that the debts in Subparagraph 1.e. and 1.h. were to be settled and she was waiting for the creditors to send her installment payment agreements. She did not submit any documents to show agreements were reached with these creditors or that she made any payments. (Items 4, 6-9)

Applicant claims the delinquent debts set for in Subparagraph 1.j. is the same as the debt in Subparagraph 1.b, which is the judgment collected through a garnishment. She also claims the debt in Subparagraph 1.k. is the same as the debt in Subparagraph 1.c. I compared all the account numbers, the judgment file numbers, the amounts, and reviewed the three credit reports contained in the file. I conclude they are not the same debts nor are they subsumed or part of the judgments in each case. (Items 4, 6-9)

Concerning the department store credit card debt in Subparagraph 1.i., Applicant claims it has a balance in December 2009, of \$446.82 with a \$55 payment past due. Applicant did not submit any persuasive evidence that this debt was being paid regularly each month. The previous payment was \$114 in October 2009. None of the eight debts described above are resolved. (Items 4, 6-9)

### **Policies**

When evaluating any 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 useful in evaluating any applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

overarching 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.

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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.”

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 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.

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* 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Of these nine conditions, two conditions are applicable to the facts found in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

From 2002 to the present, Applicant accumulated 11 delinquent debts for a total of \$49,160 that were unpaid or unresolved. Applicant's three debts that were paid were done only after judgments were obtained against her and her wages garnished. Applicant was unable to satisfy those debts except through court actions taken by creditors against her. She has a seven year history of not meeting her financial obligations. AG ¶ 19 (a) and (c) apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three mitigating conditions may be potentially applicable.

(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.

AG ¶ 20 (b) would apply if the change of employment by her husband seven years ago was shown by Applicant to have had a substantial effect on her ability to repay her debts. However, Applicant's husband voluntarily changed his employment. He took a job that paid him half of what he earned in his previous job. Applicant and her husband did not alter their spending habits after their income decreased. They did not act responsibly under the circumstances. She failed to meet her burden of proof on that issue and the mitigating condition does not apply.

I considered the mitigating condition pertaining to financial or debt counseling (AG ¶ 20 (c)), but did not find it applicable because Applicant did not submit any documentary evidence concerning her alleged counseling. Whatever counseling she received, it obviously was not efficacious.

I also considered the good-faith effort to repay creditor mitigating condition (AG ¶ 20 (d)). It is not applicable because Applicant had to be sued by three creditors, who then had to use the garnishment of her wages to collect on the judgments. Resolving debts through garnishment does not demonstrate a good-faith effort to pay debts. She also failed to meet her burden of proof on this mitigating condition because she did not provide any persuasive documentation that the eight remaining debts were being resolved in any way. Her FORM Response seemed designed to obfuscate rather than elucidate the status of the debts.

### **Whole-Person Concept**

Under the “whole-person concept”, the administrative judge must evaluate any 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 facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She has not taken any voluntary action to resolve her delinquent debts. Instead, the evidence shows that judgments had to be entered against her to collect the money owed to three creditors. She has done nothing clearly designed to resolve the other eight debts. There is no plan articulated to resolve these debts in the future. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Her lack of action continues to this day, and is obviously voluntary. Her inaction will continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment or reliability by failing to make

payments on any of her delinquent debts during at least the past five years since 2004 when her husband returned to work from his injury. She has worked for the government for 27 years and has held a security clearance for most of those years, indicating that she has gone through the process in the past and should be aware of the Government's concerns with delinquent debts. Applicant has nearly \$19,000 in delinquent debt continuing to be owed and unresolved by any repayment method.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole person" concept against Applicant.

### **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 through 1.c:	For Applicant
Subparagraphs 1.d through 1.k:	Against 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.

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PHILIP S. HOWE  
Administrative Judge