



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



In the matter of: )  
)  
) ISCR Case No. 09-02774  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel

For Applicant: *Pro se*

March 19, 2010

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, and exhibits, I conclude that Applicant has mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is granted.

**Statement of the Case**

Applicant submitted a Questionnaire for Sensitive Positions (Standard Form 86 [SF-86]), dated November 25, 2008, to request a security clearance required as part of her employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended. Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

On July 22, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations).

Applicant received the SOR on August 11, 2009. She signed a notarized Answer on September 10, 2009, and requested a decision without a hearing. In her Answer, Applicant admitted all the allegations in the SOR under Guideline F, except 1.d. On October 20, 2009, DOHA Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision to deny Applicant's request to be granted a security clearance. The FORM contained nine documents, identified as Items 1 through 9.

The FORM and attached Items were forwarded to Applicant on October 20, 2009, and she received the package on October 29, 2009. Applicant was given 30 days from the date she received the FORM to respond. Applicant's response included a cover letter and six exhibits, identified as Applicant's Exhibits (AE) A – F. The case was assigned to another administrative judge on January 11, 2010. The case was transferred to me on March 4, 2010 for an administrative decision based on the record.

### **Findings of Fact**

Applicant's admissions in response to the SOR are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, the government's FORM and Applicant's FORM response, I make the following additional findings of fact.

Applicant, 33 years old, was born in the Philippines and became a U.S. citizen in 2000. She was an enlisted member in the U.S. Air Force for 10 years. She served on active duty from 1998 to 2007, and in the reserves from 2007 to 2008. She deployed to the United Arab Emirates in 2005 and to Kuwait in 2006. She earned college credits between 2002 and 2003, but did not complete a degree. Applicant is married and has a five-year-old daughter. Since July 2007, she has been employed in base operating supply support at an Air Force base. (Item 4)

Applicant financial problems began when she was deployed and depended on her husband to manage the household finances. She discovered only later that he was not paying most of the bills and was overspending. At that point, delinquent balances had risen because of fines and interest. She admits she also made poor decisions. Eventually, they had "a big financial mess." (Item 7A; FORM response)

The Personal Financial Statement (PFS) that Applicant submitted In her interrogatory response of June 2009 included Applicant's and her husband's net monthly income of \$5,031; monthly expenses of \$2,851; and monthly debt payments of \$877. They had a net monthly remainder of \$1,303. (Item 7A; FORM response).

The PFS Applicant submitted with her FORM response in December 2009 had substantially different numbers. She noted that her first PFS was incorrect because it did not include all of her husband's expenses. Moreover, she could not account for his expenses because he does not inform her of all the monthly expenses he pays. She explained that she and her husband divide the expenses. They split the cost of family expenses such as rent, utilities, health insurance, food, furniture, and the cost of their child's education. The expenses she listed in December 2009 include her half of the rent, lunches and snacks for herself and her daughter, car expenses, insurance, day care, and support of her church ministry. Her monthly expenses total \$1,840. She listed monthly payments on the SOR debts, and her debt payments total \$801, leaving a monthly net remainder of \$247. (FORM response; Item 7A).

Applicant's earnings statements show that she earned \$2,919 in net income in November 2009, including \$260 overtime (AE A). The availability of overtime varies. Applicant's PFS of December 2009, which lists only her own income and share of the expenses, shows a net monthly income of \$2,888, which yields an approximate annual net income of \$35,000. Applicant and her husband do not have a joint budget. She manages her own bank account and maintains her monthly budget (AE F).

Applicant sought financial counseling through Consumer Credit Counseling Service. Without further explanation, she stated in her FORM response that she has "paid off Costumer [sic] Credit Corporation and is no longer on my budget paper." She took a 10-week financial course through her church. She also encouraged her husband to work with her on the bills. (Item 7A; FORM response).

The SOR includes six debts that total approximately \$17,500. Applicant admits to the bankruptcy cited at allegation 1.a. She is not responsible for two of the alleged debts: one was discharged in the bankruptcy (allegation 1.d.) and Applicant successfully disputed her liability for another (allegation 1.e.) After deducting these debts, the SOR includes approximately \$16,000 in unresolved debts, the bulk of which is represented by a \$14,000 delinquent car loan (FORM; Items 1, 5, 7A, 7C, 7D).

The status of Applicant's six SOR debts (allegations 1.b. through 1.g.) as of her the date of her FORM response December 4, 2009, follows.

**Telecommunications account, \$1,116, Payment Plan** (allegation 1.b.): Applicant provided documentation showing she has been making regular payments on this account since September 2009 (Item 6; AE B).

**Automobile loan, \$14,132, Payment Plan** (allegation 1.c.): In early 2008, Applicant's husband asked her to obtain a car loan for him, and she complied. When she completed her security clearance application in November 2008, she listed this account as past due, and stated that "my spouse is taking care of this account." Subsequently, he continued to miss payments, and the car was repossessed. Applicant has assumed the payments. She provided documents showing five payments, starting with \$150 in September 2009 and \$100 per

month since then. Applicant has a loan with the same company for her own car, which she opened in 2006, and it is in good standing (Items 2, 4, 6, 8; AE B, C).

**Finance company, \$255, Discharged in bankruptcy** (allegation 1.d.): Applicant provided documentation showing that this debt was discharged in her bankruptcy, and the government agrees that it was discharged (FORM; Items 2, 6, 7).

**Telecommunications account, \$1,137, Successfully disputed** (allegation 1.e.): Applicant's husband opened an account without Applicant's knowledge or permission. She disputed the debt and provided a letter from the creditor agreeing that no further action would be taken and that the creditor would direct the credit reporting agencies to remove the debt from her credit bureau report. The government agrees that this debt has been resolved (FORM; Item 6).

**Cell phone account, \$378, Payment Plan** (allegation 1.f.): Applicant provided documentation showing six payments made every two weeks starting in September 2009 (Item 6; AE B, D).

**Utility company, \$505, Payment Plan** (allegation 1.g.): Applicant stated the debt should have been included in her bankruptcy. She provided documentation showing she has made six payments, starting in September 2009 (Item 6; AE B, E).

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the revised AG.<sup>2</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole person" concept. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>3</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or

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<sup>2</sup> Directive. 6.3.

<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case.

Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>4</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as her or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>5</sup>

## 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.

Applicant carries approximately \$16,000 in delinquent debt, \$14,000 of which relates to a car loan. Applicant and her spouse filed a Chapter 7 bankruptcy petition, which was discharged. Her delinquencies support application of disqualifying conditions AG ¶19 (a) (inability or unwillingness to satisfy debts) and AG ¶19 (c) (a history of not meeting financial obligations).

Under AG ¶ 20, the following conditions that can potentially mitigate security concerns are relevant:

(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

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<sup>4</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>5</sup> See *Egan*; revised Adjudicative Guidelines, ¶ 2(b).

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.

The actions of Applicant's husband, which she could not control, had a negative effect on her financial status. He has a history of overspending and taking on financial burdens that he cannot meet. He opened an account under her name without her knowledge or permission. He needed Applicant to obtain the car loan for his car. This loan balance of approximately \$14,000 represents the bulk of Applicant's SOR debt. She acted responsibly under the circumstances by making payments on the loan, and the other smaller debts that now amount to less than \$2,000. AG ¶ 20(b) applies.

Applicant sought assistance in resolving her financial problems. She worked with Consumer Credit Counseling in 2009. She also completed a 10-week financial course sponsored by her church. Applicant is committed to paying her debts, and has demonstrated her good-faith efforts by her consistent payments since last fall. AG ¶ 20(c) and 20(d) apply in mitigation.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant accrued delinquent debts over the past several years. Her financial problems resulted from a combination of factors including her deployments while serving in the U.S. Air Force, the resulting need to place her financial obligations in the hands of her spouse, and her spouse's negligent attitude toward financial obligations. The record indicates that Applicant's husband's actions have caused a large part of the problems, and approximately 90 percent of Applicant's SOR debt stems from her husband's failure to fulfill his obligation to pay his car loan. In contrast, Applicant has made the loan payments on her own car loan, and kept the account in good standing, since 2006.

Applicant is credited under the whole person analysis with her service to the United States for ten years as a military member, including her two overseas assignments. She is an active and contributing member of her church. She has continued to support the government since 2007 through her employment with a defense contractor. She has been candid throughout the security clearance process, reporting her financial situation in her security clearance application, her security interview, her interrogatory response, and her FORM response.

Applicant has an established payment plan for the delinquent car loan and each of the other SOR debts. Despite her modest salary, she has made consistent payments. After paying these debts, and even without including her husband's salary, Applicant has approximately \$250 net remainder each month. The DOHA Appeal Board has held that an applicant is not required to have paid every debt in the SOR, but must show an established plan and actions taken to implement that plan.<sup>6</sup> Applicant has the intent to pay her debts, a plan to accomplish it, and has implemented her plan through consistent payments every two weeks.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has satisfied the doubts about her ability or willingness to protect the government's interests.

For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has satisfied the doubts raised by her conduct.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	FOR Applicant
Subparagraphs 1.a. - 1.g.:	For Applicant

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<sup>6</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

## **Conclusion**

In light of the foregoing, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

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RITA C. O'BRIEN  
Administrative Judge