



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



In the matter of: )  
)  
) ISCR Case No. 09-03257  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel  
For Applicant: Michelle Hallman, Personal Representative

January 20, 2011

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant acquired at least seven debts, totaling almost \$8,800, that became delinquent around 2003. She presented little documentary evidence of payments or good-faith efforts to resolve them. Instead, she waited for seven years until they were removed from her credit report. She failed to establish financial responsibility in the acquisition of the debts, good-faith efforts to resolve the debts, or a current track record of financial responsibility. She also failed to file annual Federal income tax returns for tax years 2001 through 2007. Moreover, she failed to disclose her delinquent debts in her security clearance application. Clearance denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on December 30, 2008. 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 for a security clearance.

DOHA issued Applicant a Statement of Reasons (SOR) (not dated), which specified the basis for its decision - security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the adjudicative guidelines (AG).<sup>2</sup>

Applicant provided an incomplete, undated answer to the SOR. She submitted a complete sworn answer on June 22, 2010, and requested a hearing before an administrative judge. The case was assigned to me on August 20, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on September 10, 2010, convening a hearing on September 30, 2010. At the hearing, the Government offered exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified, and presented exhibits (AE) 1 through 3, which were admitted without objection. I kept the record open, allowing Applicant additional time to submit documentary evidence. She submitted AE 4, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 12, 2010.

### **Findings of Fact**

Applicant admitted the SOR allegation under SOR ¶ 1.m. She neither admitted nor denied the allegations of SOR ¶¶ 1.a through 1.i, and 2.a. I considered all these allegations denied. Her admission is incorporated as a finding of fact. After a thorough review of the evidence, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

Applicant is a 49-year-old accountant employed full-time by a defense contractor since September 2007. She married her first spouse in December 1982, and divorced him in May 1988. She married her second spouse in July 1988, they separated in March 1997, and were divorced in June 2005. She has an 18 year-old-daughter from this marriage. Her daughter is attending college and Applicant provides her with financial assistance. She married her third spouse in October 2005, and they were divorced in August 2009.

Applicant completed her master's degree in business administration (MBA) in 2003. She is currently attending college and working on a master's degree in accounting. She financed her and her daughter's college education through student loans. She owes approximately \$99,000 on student loans that are currently in

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<sup>1</sup> Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

<sup>2</sup> Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

deferment. She anticipates she will start making payments on her student loans when she completes her master's degree in 2012.

According to her December 2008 SCA, Applicant was employed from May 1999 until August 2004; unemployed from September 2004 until November 2004; and employed from November 2004 until present. She started working for her current employer in September 2007. She worked for another government agency from 1991 until 1996, and held access to classified information. There is no evidence that she has ever compromised or caused others to compromise classified information.

In her answer to SCA section 27 (asking about her financial record), Applicant disclosed that in 2008, the Internal Revenue Service (IRS) levied her pay because she failed to file income tax returns for tax years 2001 through 2007, and that she owed the IRS approximately \$11,000. Applicant explained that she elected not to file her income tax returns because she did not have the money to pay the owed taxes. In 2008, she filed all her past due income tax returns, including that for tax year 2008. When her income was levied, Applicant established a payment plan. Between July 2008 and July 2009, she made one payment of \$250. And, between July 2009 and July 2010, she made seven payments totaling \$1,175. As of August 2010, she still owed the IRS approximately \$7,974 (SOR ¶ 1.m).

In her answer to SCA section 28 (asking whether in the last seven years she had been 180 delinquent on any debts and whether she was currently over 90 days delinquent on any debts), Applicant answered "No." She stated that she had not requested a copy of her credit report and she did not know what may be on it.

Applicant's background investigation revealed the 12 delinquent or charged-off debts alleged in the SOR. She acquired the debt alleged in SOR ¶ 1.a when she broke the lease of the apartment she rented one month before the lease expired. She was charged for that month's rent, one additional month rent as penalty for breaking the lease, and other charges. Applicant claimed her second ex-husband promised to pay this debt for her, and that she believed he had paid it. She presented no documentary evidence to support her claim. After her February 2009 background interview, she contacted the landlord and asked to settle for less than what she owed. The landlord refused. Applicant disputed the debt through the credit bureaus, but as of her hearing date, she had taken no further steps to resolve her debt.

SOR ¶¶ 1.b, 1.c, and 1.g alleged two charged-off debts and a delinquent credit card debt, all of which Applicant personally acquired. She stopped paying them in 2003. Applicant claimed that her second ex-husband promised to pay these debts, and that she believed he paid them. She also claimed she made some payments on the credit card debt, but was not able to continue with the payments and her ex-husband agreed to pay for it. She presented no documentary evidence to support her claims.

SOR ¶¶ 1.d and 1.f alleged debts for telephone services, both of which were incurred by Applicant and became delinquent. She claimed that her third ex-husband agreed to pay for them, and that to her knowledge the debts were paid.

SOR ¶ 1.e alleged a delinquent cable debt incurred by Applicant in 2003. She claimed she paid it in April 2009, and promised to submit documentary evidence of her payment. She failed to do so.

Concerning the debts alleged in SOR ¶¶ 1.h, 1.i, 1.j, and 1.l, Applicant claimed she did not recognize these creditors and that she believed these were not her debts. She paid the debt alleged in SOR ¶ 1.k in August 2009, which originated from her overdrawn checking account.

After her hearing, Applicant presented documentary evidence (AE 4) showing that she disputed the debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, and 1.j through the credit bureaus. All of these debts were subsequently removed from her credit report. However, Applicant's evidence failed to establish the basis of her disputes and the reasons for the deletion of the debts from her credit report. Applicant also failed to present any documentary evidence showing that she made any payments to satisfy any of these debts, or that she contacted the creditors to negotiate or settle any of her debts. Considering the record as a whole, it appears the debts were removed from her credit report because they were more than seven years old and not because they were paid or were not her debts.

At her hearing, Applicant claimed that, at the time she submitted her December 2008 SCA, she was not aware she had any delinquent debts. She claimed that her second spouse made a notarized statement agreeing to pay some of her outstanding financial obligations if she did not take him to court to claim financial support for their daughter. (Tr. 42) Applicant did not submit a copy of that notarized agreement. She also claimed that her third husband had agreed to pay some other delinquent accounts, but that he never did before he died around July 2009. She averred that since both ex-husbands had promised to pay her debts, she assumed that those debts were paid. Although these were her personal debts and not her ex-husbands' debts, she never inquired about the status of her debts until after she was confronted by a Government investigator about her delinquent debts in February 2009.

Applicant claimed she started to address her delinquent debts shortly after her February 2009 background interview. Her evidence shows she requested a credit report, disputed some of the debts, and paid only one SOR debt (SOR ¶ 1.k) and two other small debts not alleged in the SOR.

### **Policies**

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v.*

*Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## 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.

The evidence established that Applicant acquired at least seven debts (SOR ¶¶ 1.a – 1.g) that became delinquent around 2003, totaling almost \$8,800. Applicant presented no documentary evidence of payments toward her debts, or that she paid, settled, or resolved any of these debts. She simply waited until the debts were seven years old and then asked that they be removed from her credit report. She also failed to file annual Federal income tax returns for tax years 2001 through 2007. AG ¶ 19(a): “inability or unwillingness to satisfy debts;” AG ¶ 19(c): “a history of not meeting financial obligations,” and AG ¶ 19(g): “failure to file annual Federal, state, or local income tax returns as required,” 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 favorable evidence does not support any mitigating conditions. Her financial problems are ongoing and her evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence of circumstances beyond her control that may have contributed to her inability to pay her debts, e.g., her three month period of unemployment in 2004, her divorce, and her status as a single mother. Notwithstanding, Applicant's documentary evidence is not sufficient to corroborate many of her claims and show that she acted responsibly in the acquisition of her debts, that she made good-faith efforts to resolve her debts, or that she has a track record of financial responsibility. AG ¶¶ 20(b) and (d) do not apply.

Applicant apparently retained an attorney to help her dispute her debts. Additionally, she is an accountant by profession, has an MBA degree, and is working on a master's degree in accounting. Considering her education and work experience, she should have been more responsible and diligent in addressing her delinquent obligations and filing her income tax returns. In light of the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, the limited evidence of efforts to resolve her financial obligations, her employment history, and her education, Applicant's information is insufficient to establish that her financial problems are unlikely to recur. Applicant does not seem to understand what is required of her to be eligible for a security clearance. She failed to show financial responsibility and good faith in addressing her legal obligations. AG ¶ 20(c) does not apply. The remaining mitigating conditions are not reasonably raised by the facts in this case.

### **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 deliberately failed to disclose in her 2008 SCA that she had at least seven debts (SOR ¶¶ 1.a – 1.g) that had been delinquent for more than 180 days in the previous seven years, or were more than 90 days delinquent at the time she submitted

her SCA. She claimed that two of her ex-husbands agreed to pay most of her debts after she was either separated or divorced from both. She promised to submit post-hearing a notarized document memorializing her second ex-husband's agreement to pay her debts, and evidence she paid two debts. She was given a period of time after her hearing to submit additional documentary evidence to support her claims. She submitted evidence that some of her delinquent debts were removed from her credit report and that she paid SOR ¶ 1.k, but she failed to present documentary evidence of her ex-husbands' agreements, payment of other debts, or of negotiations with creditors. I find Applicant's claims and her testimony are not credible.

Applicant's deliberate falsification triggers the applicability of the following disqualifying condition:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

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. Applicant falsified her 2008 SCA. Her falsification is a serious, recent offense (felony-level).<sup>3</sup> She made no effort to correct her falsification. To the contrary, during her testimony she was not candid about her acquisition of the debts and her efforts to resolve or pay her debts. Her behavior shows questionable judgment, untrustworthiness, unreliability, and lack of candor.

### **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 receives credit for her work for two Government contractors. She is a good mother and provides financial support for her daughter. She had some circumstances beyond her control that may have contributed, to some extent, to her inability to pay her debts.

Notwithstanding, security concerns remain. Applicant's evidence failed to show financial responsibility in the acquisition of the debts, good-faith efforts to resolve her

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<sup>3</sup> See 18 U.S.C. 1001.

legal obligations in a timely manner, or a current track record of financial responsibility. Her behavior shows that she does not understand what is required of her to be eligible for access to classified information. Moreover, Applicant deliberately falsified her 2008 SCA. The record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial considerations and personal conduct.

### **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.g, and 1.m:	Against Applicant
Subparagraphs 1.h - 1.l:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT.
Subparagraph 2.a:	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 to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge