



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



In the matter of: )  
)  
) ISCR Case No. 09-03410  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esq., Department Counsel  
For Applicant: *Pro Se*

January 12, 2010

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On July 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 September 16, 2009, and requested a hearing before an administrative judge. The case was assigned to me on November 16, 2009. DOHA issued a Notice of Hearing on the same day. I convened the hearing as scheduled on December 3, 2009. The government offered Exhibits (GE) 1 through 4.

Applicant did not object and they were admitted into evidence. Applicant testified and she offered Exhibits (AE) A through E. They were admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on December 10, 2009.

### **Findings of Fact**

After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. She is a systems engineer for a federal contractor. She married in 1991 and was separated from her husband for about 9 to 12 months in 1995, before they reconciled. They have three children, ages 17, 12, and 7. Applicant has a bachelor's degree and two master's degrees.<sup>1</sup>

In May 1998, Applicant had approximately \$42,000 in delinquent consumer debt discharged in bankruptcy under Chapter 7. She was earning approximately \$47,000 annually at the time. She attributed her financial problems to her separation from her husband that occurred in 1995, and her being responsible for paying the marital debts. She had two small children to care for at the time and had child care expenses. Her husband did not pay child support when he was not living with them. When he returned he was only working part-time.<sup>2</sup>

There are 26 debts alleged in the SOR. Applicant does not dispute the debts and has provided proof that she settled and paid the debts in SOR ¶¶ 1.b (\$462) and 1.w (\$118). Both were settled for less than the balance owed.<sup>3</sup>

Applicant and her husband bought a house in 2000. They moved to another state in 2001, and decided to retain the house and rent it. In 2003, they entered into a rent-to-own contract with the lessee. He was to pay a \$5,000 down payment, pay the monthly rent, and pay an extra \$100 a month toward the purchase of the property. After five years he would purchase the property. Applicant stated she received the payments for five years and the extra monthly payments and down payment, but decided she did not want to sell the property because the property had appreciated, and she wanted to cancel the contract. She offered to return the down payment and the other payments that were held in escrow. The lessee sued for fulfillment of the contract. Applicant decided to save money by not hiring an attorney and represented herself. She lost the lawsuit and a judgment for approximately \$120,000 was entered in September 2008. She has not paid that judgment and the lessee has placed liens on her current

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<sup>1</sup> Tr. 107-108.

<sup>2</sup> Tr. 22-23, 98-102.

<sup>3</sup> Tr. 25; Answer to SOR; AE C.

residence.<sup>4</sup> He also has a lien against a line of credit account Applicant has with a credit card company. Applicant had difficulties making the mortgage payments on the rental property. It was foreclosed in June 2009, and it has not been sold to date. The debt listed in SOR ¶ 1.v is the amount that was past due on the mortgage when it was foreclosed. Applicant has not received a deficiency notice, but she intends to include any amount owed in her bankruptcy. Applicant also testified that they were always losing money on the rental property because they would not receive enough rent to cover the mortgage and expenses. This continued to place a significant financial burden on her as did the lawsuit.<sup>5</sup>

Applicant admitted that she had approximately 20 credit cards at one time. She no longer has any open credit cards. She consulted with a credit consolidation company in November 2008, but because she had a large judgment against her they advised her to seek legal advice. She stated she contracted with a law firm to file bankruptcy. She stated that upon the advice of her attorney she and her husband stopped paying all of their debts around November 2008. She admitted that all of the debts listed in the SOR belong to her and she owes them, except for the two she settled. Some of her debts were not delinquent when she ceased paying them. She defaulted on several debts prior to her receiving advice from her attorney. She stated she did not pay those debts because she could not afford to do so. The debts are for credit cards, consumer purchases, gas, medical expenses, the purchase of a computer, and a line of credit. She used the credit cards to supplement her income. On a couple of occasions, Applicant made a small payment towards one or two of her debts, even after she was advised by her attorney. Applicant has not paid the balances owed on her debts and does not intend to pay any of the delinquent debts listed in the SOR, but will include them all in her bankruptcy petition.<sup>6</sup>

Applicant attributes her financial problems to poor legal advice she received from her attorney. She stated she received conflicting advice from the attorney about whether she would qualify for a Chapter 7, 11, or 13 bankruptcy. She paid a retainer fee to the attorney in November 2008. She claimed he procrastinated and did not initiate the bankruptcy. She continued to consult with the attorney until October 2009. Applicant hired a different attorney to file bankruptcy. She completed the required counseling for bankruptcy on November 12, 2009, and the case was filed under Chapter 13 bankruptcy on November 25, 2009. At this point, no plan has been proposed or approved.<sup>7</sup>

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<sup>4</sup> Applicant also noted that there is another lien from a credit card company based on an account held by her husband. I have not considered this for disqualifying purposes, but will consider it when analyzing Appellant's financial history and ability to pay her debts.

<sup>5</sup> Tr. 23, 54-58, 61-74.

<sup>6</sup> Tr. 27-54, 58-61, 73; GE 2.

<sup>7</sup> Tr. 81-84, 103-106; AE D and E.

Applicant earns approximately \$150,000 in annual salary. She has earned this amount for approximately two years. Her husband earns between approximately \$30,000 and \$40,000. In 2005, they purchased the house where they live now for approximately \$610,000. They owe more on the house than its assessed value. They own two cars, one purchased new in 2007, with a monthly payment of \$809, and the other a 2002 model with a monthly payment of \$643. They own a time share on which pay \$218 a month. Applicant owes more than \$100,000 in student loans that were deferred and became due in December 2009. The monthly payment is \$579. Applicant withdrew \$8,000 from her 401k retirement account and paid the tax penalty. She does not have any money in savings. Applicant's Personal Financial Statement from June 2009, shows a negative monthly remainder.<sup>8</sup> She does not have a written budget.<sup>9</sup>

Applicant's husband testified on her behalf and corroborated they received poor legal advice from their attorney. He attributes all of their financial problems to the judgment against them for breach of contract.<sup>10</sup>

Applicant's coworker and now manager testified and described her as a trustworthy person who has never had a security issue. She is considered very cautious and conscientious when handling sensitive material. She believes Appellant has a high level of integrity.<sup>11</sup>

Applicant provided a character letter from her supervisor who describes her as a trustworthy team member. Applicant's manager also provided a character letter for her and describes her as a person with a superior work ethic, high integrity, and solid character. She takes pride in ensuring her work assignments are accomplished to the best of her abilities. She volunteers for additional assignment, increased responsibility and any opportunity to improve her skills. She has had no security incidents and is a person of solid character.<sup>12</sup>

## **Policies**

When evaluating an 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 an applicant's eligibility for access to classified information.

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<sup>8</sup> GE 2.

<sup>9</sup> Tr. 58, 74-81, 85-98, 106.

<sup>10</sup> Tr. 112-117.

<sup>11</sup> Tr. 119-125.

<sup>12</sup> AE B.

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 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.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Appellant has a history of not meeting her financial obligations. In 1998 she had \$42,000 in consumer debt discharged in bankruptcy. She recently filed again for bankruptcy. She has many consumer debts. She admitted that at one time she had 20 credit cards and used some of them to supplement her income. She owes a large judgment that has not been resolved. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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; and
- (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.

Applicant's behavior is recent because her delinquent debts remain unresolved. She filed her second bankruptcy in November 2009, but the terms of it have not yet been completed. She has a considerable amount of consumer debt. I find the delinquent debts remain unresolved and, based on her financial history, I cannot find they are unlikely to recur. Applicant attributes her financial problems to her rental property that was a financial drain and the eventual lawsuit involving it. A judgment and lien were entered against her for breach of contract. This created more of a financial hardship. Applicant's husband was unemployed for a period of time. Together they now earn a substantial income. She has many other expenses and debts. It appears she has not made an attempt to satisfy the judgment because she does not have the money. She has a minimal amount of savings and no equity in her present home. Although these are all unfortunate circumstances, Applicant had control over how she proceeded with the sale of her property, and her change of heart in selling it caused the financial crisis. The conditions that resulted in Applicant's contractual dispute were within her control. Applicant's husband's unemployment was beyond her control. Applicant hired an attorney to file for bankruptcy, but had difficulties with him. She has not provided sufficient evidence to conclude she acted responsibly under the circumstances. Other than filing for bankruptcy she had no other plan for paying the judgment and delinquent debts. I find mitigating condition (b) only partially applies.

Applicant decided to file for her second bankruptcy and she sought legal advice, but believes she was provided poor advice. Applicant's household income is significant and she should have been in a position to pay her creditors. She stated she followed her attorney's advice and instead she chose to default on her debts and attempt to have everything included in her pending bankruptcy. She has received the mandatory financial counseling required of those filing bankruptcy. She does not have a budget. She has not made a good-faith effort to repay her creditors or resolve her debts.<sup>13</sup> Although bankruptcy is a legal mechanism to discharge debts, at this juncture it is too early to conclude that Applicant's financial problems are unlikely to recur. I find mitigating conditions (c) and (d) do not apply. I find the facts do not merit application of mitigating condition (e) because Applicant does not dispute the debts.

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<sup>13</sup> The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition [AG ¶ 20 (d)], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available options (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition [AG ¶ 20 (d)].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

## 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 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 the facts and circumstances surrounding this case. Applicant had \$42,000 discharged in bankruptcy in 1998. She has filed bankruptcy again. She lost a lawsuit and a judgment was entered against her. Her household income is significant, but with their expenses and other debts, it is unclear if they cannot or will not pay the judgment. She testified that based on their lawyer's advice they stopped paying their debts and are including them in their bankruptcy, even though she claimed many were not delinquent at the time she stopped paying. Although bankruptcy is a legal means to resolve debts, it is not considered a good-faith effort to pay creditors. Applicant has failed to provide sufficient evidence to conclude she has a budget or a financial plan that she will comply with and that she can live within her financial means. At this juncture, it is too early to make that conclusion. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

## 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:	Against Applicant
Subparagraphs 1.b:	For Applicant
Subparagraphs 1.c-1.v:	Against Applicant



Subparagraph 1.w:  
Subparagraphs 1.x-1.bb:

For Applicant  
Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge