



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-03478
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro Se*

February 22, 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 October 14, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines 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 November 9, 2009, and requested a hearing before an administrative judge. The case was assigned to me on December 21, 2009. DOHA issued a Notice of Hearing on January 7, 2010. I convened the hearing as scheduled on January 26, 2010. The government offered Exhibits (GE) 1 through 4.

Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through H, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on February 3, 2010.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR except ¶¶ 1.k and 1.r. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 57 years old and works as an administrative assistant for a federal contractor. She has been employed with the same contractor since 2002. From 2000 to 2002, she worked in the office of her church. Applicant has been married three times. Her first two marriages ended in divorce. She was married to her third husband from 1990 to January 2002, when he passed away from cancer. She has two grown children, ages 38 and 24.<sup>1</sup>

In February 2006, Applicant became aware that something was wrong with her mother. In approximately June 2006, Applicant's mother was diagnosed with Alzheimer's disease. Her disease progressed until she passed away in December 2009. Her father also had severe medical problems. Their only income was Social Security benefits. Applicant felt an obligation to take care of her parents during their time of need. She moved into their home to care for them. Her mother's disease progressed and her father had difficulty handling the issues associated with the disease. Her mother's doctor recommended her mother be placed in adult day care. Applicant paid approximately \$550 a month to pay for the day care, and additional medical and other expenses associated with her mother's needs. Her mother's Social Security benefit was \$400. She was not approved for Medicaid until shortly before she passed away.<sup>2</sup>

Applicant admitted that while she was caring for her parents, she did not focus on her financial issues. She was focused on caring for her parents. At one point, the day care center could no longer provide care for her mother, and Applicant became responsible for the full-time care of her mother, including feeding, dressing, and bathing her.

In March 2006, Applicant fell in the parking lot at work. She tore her rotator cuff and needed surgery. She was denied worker's compensation. She worked only part-time from March through May 2006. After her surgery on May 22, 2006, she did not work until July 7, 2006. She did not receive any income during this period. She had to take additional time off work for physical therapy, so was not working full-time. During this period, Applicant fell behind in paying her bills.<sup>3</sup>

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<sup>1</sup> Tr. 43-46.

<sup>2</sup> Tr. 24-30; AE C, D, E.

<sup>3</sup> Tr. 30-32; AE F.

The debt in SOR 1.a is a judgment for a credit card debt (\$3,188). Applicant began making payments on the judgment in 2008. She has satisfied all but the remaining balance of \$216, which she intends to pay.<sup>4</sup>

The debt in SOR 1.b is a judgment for a credit card debt (\$2,363). Applicant has been making payments to resolve the debt and the current balance owed is \$1,352.<sup>5</sup>

Applicant admits she owes the remaining debts on the SOR to include 1.c, a credit card judgment (\$3,422), 1.d, a credit card debt (\$694), 1.e, a medical bill (\$320), 1.f, an unknown medical account (\$97) that Applicant believes is a duplicate of 1.h (\$97), 1.g, a medical bill (\$268), 1.i, a credit card debt (\$3,176), 1.j, a credit card debt to a clothing store (\$765), 1.l, a credit card debt (\$7,705), 1.m, a credit card debt (\$732), 1.n, is for a debt to an eyeglass store (\$690), 1.o, is a debt to a clothing store (\$777), 1.p, is a credit card debt (\$1,968), 1.q, is a debt for a gasoline credit card (\$563), 1.r, is a debt for telephone services (\$119), 1.s is a debt for telephones services (\$83), 1.t is a debt for telephone services (\$320), 1.u, is an unknown debt (\$1,279), 1.v, is a debt for mail-order vitamins, 1.w, is an unknown account (\$367), and 1.x, is for medical services (\$341). Applicant has not made any payments on these debts and has not contacted the creditors to resolve the debts. She did not have the money to make settlement offers or payment arrangements, and did not want to agree to pay an amount she knew she would not be able to meet.<sup>6</sup>

The debt in SOR 1.k is a credit card that is in Applicant's father's name and she is a card holder. Applicant stated that her father has held this card since the 1960s and she was a card holder. She made purchases using the card over the years and stated she paid her portion of the bill when she made the purchases. She stated that she has made payments on behalf of her father to help satisfy the bill. The creditor will not discuss the bill with her because she is not listed as the primary holder of the account.<sup>7</sup>

Applicant does not have a budget, but she did provide a written plan of how she intends to pay her delinquent debts. Applicant's net monthly income is approximately \$3,000 and her monthly expenses are approximately \$1,852, and her remaining income is \$1,148. The plan she provided calls for making \$1,850 payments towards her delinquent debts, which is more than she has remaining. She has approximately \$800 in savings. Applicant intends on starting the plan this month.<sup>8</sup>

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<sup>4</sup> Tr. 32-34, 47; AE A.

<sup>5</sup> Tr. 34-36, 47, AE G.

<sup>6</sup> Tr. 36-43, 47-63.

<sup>7</sup> Tr. 20-24, 55-56; AE B.

<sup>8</sup> Tr. 63-81; AE H.

## 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.

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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 significant history of being unwilling or unable to meet her financial obligations. She has many debts that remain unpaid and delinquent. 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 unpaid. She has not taken action to resolve most of her debts. She has a budget and hopes to start paying her debts, but she has not started to implement it. At this point, it is too early to conclude that her financial problems are unlikely to recur. I find mitigating condition (a) does not apply.

Applicant has been assisting her parents financially and caring for them. She also had an injury that kept her from working. These were conditions that were beyond her control and raise the application of mitigating condition (b). In order for that mitigating condition to be fully applicable, Applicant must have acted responsibly under the circumstances. In this case, Applicant has made some effort to make payments on two judgments, and resolve a debt that was attributed to her, but belonged to her father. However, she admitted she did not focus on her bills while she was caring for her parents. I find mitigating condition (b) only partially applies.

There is no evidence Applicant has received financial counseling, although she has put together a budget. She is paying two judgments and it appears another debt belongs to her father. Applicant has not taken any other action to resolve her delinquent debts Applicant does not have any payment plans in place and has not contacted creditors. At this juncture, until Applicant makes further progress towards reducing her financial delinquencies, it is too early to conclude that the problem is resolved or under control. She has not made good-faith payments to most of her creditors. I find mitigating conditions (c) and (d) do not apply. Applicant disputed the debt owed by her father. I find mitigating condition (e) applies to this debt.

### **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 took on the responsibility for caring for her parents when they became sick. She moved in with them and helped them out financially. She admitted she did not stay focused on her finances during this time and accumulated delinquent debts. She was injured and was out of work, which exacerbated her financial problems. Applicant has a budget that includes repaying her delinquent debts, but she needs time to implement it and establish a record of being fiscally responsible. Once she does this, she is likely to be a viable candidate for a security clearance. However, at this time, 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.j	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l-1.x:	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