



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-00967
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel  
For Applicant: *Pro se*

December 6, 2010

**Decision**

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 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 3, 2010, and requested a hearing before an administrative judge. The case was assigned to me on October 18, 2010. DOHA issued a Notice of Hearing on October 25, 2010. I convened the hearing as scheduled on November 8, 2010. Applicant waived the 15-day notice requirement. The Government offered Exhibits (GE) 1 through 6. Applicant did not object and they were

admitted. Applicant testified on her own behalf and offered Exhibits (AE) A through H, which were admitted without objections. The record was held open until November 15, 2010, to allow Applicant to submit additional documents. She submitted one document. It was marked as AE I, was admitted without objection, and the record closed. DOHA received the hearing transcript (Tr.) on November 15, 2010.

### **Findings of Fact**

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

Applicant is a 34-year-old single mother of two children, ages 13 and 9. She served in the Army from 1995 to 2004, and was honorably discharged. She earned an associates degree in 2006. She is employed by a federal contractor.<sup>1</sup>

Applicant's children have lived with her mother in a different state since 2002. Applicant only receives child support for one child. In the past, her mother received the child support directly. Applicant would send her mother approximately \$900 a month to pay for childcare expenses and other child-related expenses, to care for her children. Her mother and her children moved in June 2010 and now reside with Applicant.<sup>2</sup>

Applicant stated she has been working two full-time jobs since 2007. In 2004, she was unemployed for one month. She explained the reason she has financial problems is because she has maintained two households with her children living with her mother. Her mother is now retired.<sup>3</sup>

The debt in SOR ¶ 1.a (\$3,151) was a state tax lien owed from 2006. Applicant lived in State A and worked in State B. She was paying taxes to State B, when she should have been paying them to State A. She paid \$540 a month until the debt was completely paid in June 2010. State B reimbursed her for the taxes she paid.<sup>4</sup>

The debt in SOR ¶ 1.b (\$1,410) is for tuition owed to the university Applicant attended. The debt has been owed since 2006. She was contacted by the creditor in 2007 about the debt but stated she could not afford to pay it. She made a \$705 payment on November 10, 2010.<sup>5</sup>

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<sup>1</sup> Tr. 19, 28, 59-63.

<sup>2</sup> Tr. 54-55.

<sup>3</sup> Tr. 27, 31, 74-76.

<sup>4</sup> Tr. 24, 33, 63-69; AE E.

<sup>5</sup> Tr. 28-31, 40-45, 69-70, 80; AE I, proof of November 10, 2010 payment.

The debt in SOR ¶1.c (\$11,828) was for a line of credit Applicant obtained sometime prior to 2004. She stopped making payments on the debt prior to being discharged from the Army. She provided a copy of a settlement offer from the creditor that expired on July 8, 2010, but did not provide any proof she accepted the offer or made any payments. She stated that she and the creditor agreed she would pay \$500 a month. She stated she has made five \$500 payments on the debt, but did not provide documented proof of her payments or a copy of the agreement.<sup>6</sup>

The debt in SOR ¶1.d (\$13,060) is for a repossessed vehicle Applicant purchased while she was in the Army. She stopped making payments on the debt in 2003. She was aware the vehicle was sold and the balance is the amount owed on the deficiency. She did not contact the creditor until October 2010. She has not made any arrangements to pay the debt.<sup>7</sup>

The debt in SOR ¶ 1.e (\$70) is to a collection company. There is confusion about the debt. Applicant contacted the creditor and was advised the balance was now \$187. She provided proof that she paid the debt on August 3, 2010. Applicant stated she thought it was the debt alleged because the amount owed was the same. It is unclear if Applicant resolved the debt listed in the SOR or a different debt. She did not provide supporting documentation that the debt she paid is the same as the one alleged in the SOR.<sup>8</sup>

Applicant stated that in 2009 she was attempting to purchase a house and obtained a copy of her credit report. She used \$4,000 for a down payment. The purchase did not go through and the money was returned to her. In her interview with an Office of Personnel Management investigator, Applicant stated that she did not make efforts to repay certain debts because she was trying to purchase a house and was using her money for that effort. She stated she did not receive financial counseling when she was in the Army. She has tried to curb her expenses and hopes now that she and her family reside together she will have more expendable income. She has approximately \$2,000 in savings and no money in her checking account. She believes she owes about \$5,000 on the balances of her credit cards. They are not delinquent. Applicant did not have an explanation for why she has not paid her past-due debts, other than she was sending her mother money to care for her children and saving for a house. Based on her personal financial statement she provided with her interrogatories, she has approximately \$2,000 remaining each month after paying her expenses. She stated at her hearing that she did not realize she had that much expendable income, and does not have that amount at the end of the month.<sup>9</sup>

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<sup>6</sup> Tr. 26-27, 34-40, 70; AE G.

<sup>7</sup> Tr. 45-47, 70.

<sup>8</sup> Tr. 24-25, 47-52; AE F.

<sup>9</sup> Tr. 53-58; 70-73, 77-80; GE 2.

Applicant provided a copy of a contract for a debt consolidation program, but did not provide any evidence that she has accepted the terms of the program and is participating in it. She stated the credit counseling service provided her tips on reducing her debt and building a savings account. She also provided a copy of a budget.<sup>10</sup>

Applicant provided character letters that I have considered. A manager who has worked with her for four years considers her extremely professional and a highly effective team member. She has a positive impact on team morale. She is considered extremely responsible and takes holding a clearance very seriously. He considers her very trustworthy and focused. Another coworker for whom Applicant has worked for and with describes her as smart, hardworking, reliable, and kind. She has received awards for her performance, and she is willing to go above and beyond what she was hired to do. She is dependable and considered an invaluable component of the team. Another coworker describes her as extremely dedicated to her work and family. She is well organized, efficient, and competent. She works well under pressure and quickly adapts to new technologies. She is a key player to the organization.<sup>11</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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

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<sup>10</sup> Tr. 25-26; AE A, H.

<sup>11</sup> AE D.

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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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 the following are potentially applicable:

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

Applicant has approximately \$26,000 in delinquent debts that are unpaid or unresolved. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has delinquent debts that are many years old that she has not paid or resolved. She made no attempt to address most of the debts until her security clearance became an issue. I find that AG ¶ 20(a) is not established because Applicant's delinquent debts are numerous, ongoing, and not the result of circumstances making them unlikely to recur.

Applicant is a single mother and her children lived with their grandmother. Applicant sent her mother money to care for her children. This situation was beyond Applicant's control. AG ¶ 20(b) partially applies. To be fully applicable Applicant must have acted responsibly under the circumstances. She did not. Applicant had old delinquent debts that she ignored for many years. Her personal financial statement showed she had excess income after paying her expenses, but she did not use it to repay her debts, but rather she saved it to purchase a house. She did not act fiscally responsible. Applicant has resolved the tax lien in SOR ¶ 1.a and paid another small debt, but it is unclear if it is the one alleged in the SOR. Applicant provided a copy of a contract for a debt consolidation plan, but did not provide any substantiation that she is participating in it. She stated she received financial counseling from the debt consolidation company. She provided a budget. She has not provided proof that she is making consistent good-faith payments on any of the remaining delinquent debts. Therefore, I find that although she has received financial counseling, there are not clear indications the problem is being resolved and is under control. Perhaps now that Applicant's family is in one household she will be able to manage her finances and decrease her delinquent debts. However, at this juncture, it is too early to conclude that she is acting responsibly toward resolving her delinquent debts. Therefore, I find AG ¶¶ 20(c) and 20(d) do not apply.

## 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has a good work record and is praised by her managers and coworkers. She served in the Army and was honorably discharged. She is a single mother and her children lived with their grandmother until they recently consolidated their households. Applicant has worked two jobs since 2007 and had excess income to resolve her delinquent debts, but she did not. Her delinquent debts are several years old and she has taken very little action in the past to address them. She saved money to purchase a house instead of paying her past debts. She did not purchase a house, but also has not paid her delinquent debts. She owes approximately \$26,000. Applicant did not provide a clear plan on how she intends to resolve her debts. Applicant failed to meet her burden of persuasion. Overall, the record evidence leaves me with questions and doubts about 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.e:

Against Applicant

**Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge