



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 09-03922

**Appearances**

For Government: Daniel Crowley, Esquire, Department Counsel  
For Applicant: David Price, Esquire

May 18, 2011

**Decision**

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WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding her finances. Eligibility for access to classified information is granted.

**Statement of Case**

On August 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and DOHA recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on September 7, 2010, and requested a hearing. The case was assigned to me on December 8, 2010, and was scheduled for hearing on December 14, 2010. The hearing was convened on that date. At hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (herself) and seven exhibits (AEs A-G). The transcript (Tr.) was received on December 28, 2010.

### **Procedural Rulings**

Before the close of the hearing, Appellant requested leave to supplement the record with documented resolution of her disputed debts. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant supplemented the record with letters disputing certain of her listed debts and removal from her credit reports of other reported debts. Applicant's submissions were admitted as AE E-1.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated (a) a state tax lien of \$756 and (b) 24 debts exceeding \$23,000. Applicant denied all of the listed debts. She disputed all of the reported debts following her layoff in 2001.

### **Findings of Fact**

Applicant is a 50-year-old web developer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant's parents are Holocaust survivors. (Tr. 27) Most of her family was exterminated in WW II. (Tr. 27-28) Her mother was an accomplished fiber artist and teacher at a local university. (Tr. 28) Her father was a Navy veteran who worked in the public health field. (Tr. 30-31) He practiced orthodontics after completing his public health tenure of duty. (Tr. 31) Her father was very secretive about his personal affairs and "turned up murdered" in another state. (GE 1; Tr.32-33) His experiences affected her entire family. (Tr. 34) Applicant left home at the age of 16 to attend college. (Tr. 34)

Applicant attended respected universities between September 1979 and September 1986. (GE 1 and AE B; Tr. 32-35) She earned no degrees from either of these universities. She attended an accredited art institute between September 1987 and September 1988 and earned a bachelor's degree. (GE 1) Applicant has never been married and has no children. She has no military experience.

Between January 1990 and January 2001, Applicant worked for an engineering consulting firm as a multimedia developer. (GE 1; Tr. 36) She was unemployed for a

period in 2001 and worked as a self-employed multimedia developer and consultant for about five years. (GE 1; Tr. 42-43) She was employed by a communications firm between January 2005 and January 2006 as a multimedia developer. Between January 2006 and February 2009 she worked as a web developer for several different firms and has been employed by her current employer since February 2009. (GE 1)

### **Applicant's Finances**

Before her lay-off in 2001, Applicant earned substantial money and enjoyed good credit. (Tr. 38-41) Following her lay-off, she sold the home she had built (costing her around \$200,000) for around \$400,000. (Tr. 38-39) Two years later, she financed the construction of another home with a construction loan. At this time, she still enjoyed good credit. (Tr. 55) For the ensuing several years, she relied on independent consulting assignments to pay her bills. With annual income of only \$40,000 between 2004 and 2005, she could not make her mortgage payments and lost her home to foreclosure in 2006. (Tr. 47-49) For the ensuing three years, she earned a modest income and managed to pay her bills while living within her means. She continues to live very frugally. (Tr. 69-70)

In July 2009, Applicant was asked to complete interrogatories for the Government in connection with her application for a security clearance. (GE 3) Upon reviewing her credit report (Tr. 55-57), Applicant wrote to listed creditors reporting debit balances and the credit reporting agencies listing these debts in July and September 2009, claiming she had no knowledge of the accounts. (GE 3 and AEs C, E, and E-1; Tr. 57-58)

Several of the listed creditors, whose claims were not time-barred, responded to her letter inquiries and advised they would be seeking the deletion of the accounts in question (i.e., creditors 1.i (\$777), 1.r (\$1,149), and 1.s (\$500). See AEs C, E, E-1, and G. One of the creditors acknowledged her dispute, creditor 1.d (\$3,036). See GE. 3. Others never responded to her formal disputes: creditors 1.a (a \$756 state tax lien); 1.c (\$141); 1.e (\$85); 1.f (\$137); 1.g (a deficiency claim of \$10,808 on a returned leased vehicle); 1.h (\$2,754); 1.j (\$435); 1.k (\$544); 1.l (\$42); 1.m (\$40); 1.n (\$527); 1.o (a \$2,142 lease claim); 1.q (\$441); 1.u (\$50); 1.v (\$353); 1.w (\$301); and 1.x (\$780). See GE 3 and AEs C, E, E-1, and G. Two listed debts are manifestly duplications of a single \$141 claim (creditors 1.c and 1.t). See GEs 2 and 4 and AEs C, F, and G.

Besides writing direct letters to a number of the listed creditors cited in her credit reports, Applicant wrote letters in August and September 2009 to the main credit reporting agencies. (AEs C, E, and E-1; Tr. 50-51, 81-82, 87) In these letters, Applicant recited key statutory provisions covering false reporting of claimed outstanding debts, and disputed the following listed creditors in her credit report and the SOR: creditor 1.c (\$141); creditor 1.d (\$3,036), creditor 1.e (\$85), creditor 1.f (\$137); creditor 1.g (\$10,808); creditor 1.h (\$2,754); creditor 1.i (\$777), creditor 1.j (\$435); creditor 1.k (\$544), creditor 1.l (\$42); creditor 1.n (\$527); creditor 1.o (\$2,142); creditor 1.p (\$82); 1.q (\$441); creditor 1.r (\$1,149); creditor 1.s (\$500); creditor 1.t (\$141); creditor 1.u

(\$50); creditor 1.v (\$353); creditor 1.w (\$301); and creditor 1.x (\$780). See GE 3 and AEs C and F.

Several years previous (in 2005), Applicant wrote to her mortgage company seeking hardship relief from her late mortgage payments. (GE3) She cited the lack of full-time employment as the principal contributing factor causing her to default on her mortgage payments. She asked to work with the mortgage company to avoid foreclosure of her home. (GE 3). Applicant was unable to arrange modified financing from the lender and avert foreclosure of her home. She wrote to the mortgagee again in July 2009 when she found a \$42,790 debt still listed in her credit report. While she received no response to her letters, the claimed debt does not appear in any of her recent credit reports and is not covered in the SOR.

In none of her dispute letters admitted at hearing and in her post-hearing submissions did Applicant provide any documentary proof to corroborate her disputes of the debts alleged to be owing in the SOR. The law firm she engaged to track down and identify any legitimate debts helped her to identify creditors with valid debts, but could not substantiate any of the debts listed in her credit reports and SOR. (AE C; Tr. 59-60, 73-74, 83-90) But neither could the Government provide any investigative inquiries of identified individual creditors and their representatives. Assessments must necessarily be made on the strength of the credit reports, Applicant's inquiries of the individual creditors listed in her credit reports, Applicant's answers to the Government's interrogatories, the SOR, and Applicant's hearing testimony.

Applicant currently nets close to \$3,500 a month. (AE C) She reports monthly expenses of \$2,525 and a net monthly remainder of \$975. (AE C) Her most recent credit reports reveal that Applicant is current with all of her undisputed debts. (GEs 2 and 4) She currently rents a home and drives a 1998 Honda Accord. (Tr. 68-69)

### **Endorsements**

Applicant is well regarded by her supervisor, coworkers, and friends as a reliable and trustworthy web developer and colleague and friend. (AE A). Her landlord of over a year described her as a very caring tenant who was always available to assist and make repairs to the home as needed. (AE A)

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that

could mitigate security concerns.” They must be considered before deciding whether or not a security clearance should be granted, continued, revoked, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs. AG ¶ 2(a) is intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors:

- (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*The Concern:* “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. 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.”

Adjudication Guidelines, ¶ 18.

## **Burden of Proof**

By virtue of the precepts framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

## **Analysis**

Applicant is a well regarded web developer for a defense contractor whose credit reports list a number of collection and charged-off delinquent accounts dating to 2006. Many of the listed accounts are small in amount. Some are larger, and one (the largest) represents a deficiency claim on a returned lease vehicle and exceeds \$10,000.

Applicant disputes each of the debts listed in the SOR and her credit reports. In all but one of the disputed debts, she claims a lack of any familiarity with the creditor and the charges. She acknowledged only the creditor covered by subparagraph 1.g as a creditor she dealt with. But she never received any paperwork from this creditor detailing the basis of any deficiency claim by this creditor and its collection agency, despite repeated inquiries. While several of the listed creditors have since removed their debt claims from Applicant's credit reports, most never responded to either her inquiries or those of the law firm she employed to assist her. Nor does she appear to have received any assistance from the credit reporting agencies who received her inquiries. The credit reports reveal one debt (creditor 1.t) that is a duplication of the listed creditor 1.c debt.

Security concerns are raised under the financial considerations guideline of the AGs where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can

raise questions about the individual's reliability, trustworthiness, and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of presumptively valid delinquent debts (based on produced credit reports) and her past inability to resolve these debts by the disputes process available to her warrant the application of two of the disqualifying conditions (DC) of the Guidelines ¶ DC 19(a), inability or unwillingness to satisfy debts, and ¶19(c) "a history of not meeting financial obligations."

Applicant's listed debts are uniformly disputed. She denies any familiarity with any of the delinquent debts listed in the SOR and credit reports and denies incurring any debts at any time with any of the listed creditors, with one exception. But while she admits to leasing a vehicle from creditor 1.g , she denies ever being noticed with any sale or deficiency. Her efforts to elicit substantive information from the creditor's collection agent were not successful.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases.

As a general rule, credit reports meet the substantial evidence standard and the Government's *prima facie* obligations under E3.1.14 of the Directive for establishing its requisite proof requirements. See ISCR Case No. 08-1184 at 7 (App. Bd. Jan 7, 2010). Applicant's listed debts are well reported in Applicant's 2009 and 2010 credit reports. But Applicant denies any familiarity with any of the listed debts and any legal responsibility for them. She backs her claims with letters of inquiry she wrote in July and August 2009 to each of the creditors and credit reporting agencies. She pulled her credit report upon receiving the Government's interrogatories and was surprised to find the listed debts in her report. Only three of the companies she inquired of responded to her letters, and these creditors (creditors 1.i, 1.r, and 1.s) deleted the debts from their own accounts and committed to having them removed from Applicant's credit reports.

In recognition of the considerable good-faith efforts Applicant made to identify creditors with valid outstanding debts, mitigation credit is available to her. All of her debts reflect documented, good-faith disputes. Applicant has mounted major communication initiatives with all of her creditors, and either has earned the removal of certain disputed debts or has never heard anything back from the individual creditors and the credit reporting agencies.

Applicant's good-faith efforts to resolve her debts merit the application of two of the mitigating conditions for financial considerations: ¶ MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," and ¶ MC 20(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.”

Consideration of Applicant’s background and circumstances surrounding her debt disputes, her steady income and good credit for most of her professional career, and the absence of any countervailing evidence outside of the credit reports themselves to discredit her disputes of the debts in issue all favor Applicant in her efforts to demonstrate her overall good judgment, reliability, and trustworthiness. Applicant’s proofs provide credible indicators of her ability to be trusted in times of stress and enable her to meet her own evidentiary burden of disproving the alleged debts.

From a whole-person standpoint, the evidence is substantial that Applicant has mounted good-faith efforts to resolve her debts. Since her return to full time employment in 2009, she has paid her current debts in a timely way and managed her finances responsibly. She is at low risk to any enforcement action by any of the named creditors in the SOR. And should any of the listed creditors with disputed claims seek to validate their claims, Applicant has ample resources available to resolve them.

Taking into account all of the extenuating facts and circumstances surrounding Applicant’s listed delinquent debts and the good-faith efforts she has mounted to seek merited explanations of the debts listed in the SOR and credit reports, Applicant successfully mitigates judgment, reliability and trustworthiness concerns related to her debts. Favorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparagraphs 1.a through 1.x: For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge



