



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



In the matter of: )  
)  
) ISCR Case No. 09-04021  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro se*

June 11, 2010

**Decision**

CREAN, Thomas M., Administrative Judge:

On January 16, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), as a requirement for her employment with a defense contractor (Item 1). On October 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F (Item 1). 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 in the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 31, 2009. (Item 4) Applicant admitted 15 of the allegations. She denied one because it is a duplicate of another listed SOR allegation. She denied another allegation since the debt belonged to a former husband. She also denied that her finances raised a security concern for financial considerations. She provided an explanation for and information on some of her accounts. She initially requested a hearing before an administrative judge. On March 5, 2010, she elected to have the matter decided on the written record in lieu of a hearing (Item 9). Department

Counsel submitted the Government's written case on March 30, 2010. On April 7, 2010, Applicant received a complete file of relevant material (FORM), and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant responded in an undated response received at DOHA on May 5, 2010. The case was assigned to me on May 21, 2010. Based on a review of the case file and pleadings, eligibility for access to classified information is denied.

### **Findings of Fact**

I thoroughly reviewed the case file, and the pleadings. I make the following findings of fact.

Applicant is 31 years old and has been employed as a planner and scheduler for a defense contractor for approximately one year. She recently received her bachelor's degree in business administration. She is married for the third time. Her first two marriages ended in divorce in 2005 and 2008. She has two children who live with their father. She has never held a security clearance. (Item 1, e-QIP, dated January 16, 2009).

Credit reports (Item 6, credit report, dated August 27, 2009; and Item 7, credit report, dated February 24, 2009); show a collection account for a bank for \$880 (SOR 1.a, and SOR 1.p); another collection account for a different bank for \$610 (SOR 1.b); two medical debts for \$1,108 (SOR 1.c), and \$55 (SOR 1.d); a collection account for cable service for \$99 (SOR 1.e); a charged-off account for \$691 (SOR 1.f); a credit card account charged off for \$394 (SOR 1.g); a telephone service debt in collection for \$665 (SOR 1.h); a credit card account placed for collection for \$728 (SOR 1.i); a credit card account charged off for \$8,958 (SOR 1.j); a collection account for \$793 (SOR 1.j); a collection account for \$793 (SOR 1.k); a medical account in collection for \$903 (SOR 1.l); a collection account for \$752 (SOR 1.m); a collection account for \$640 (SOR 1.n); a cable debt in collection for \$560 (SOR 1.o); and a credit card debt for \$10,775 (SOR 1.q). Applicant denies that her finances create a security concern.

Applicant admits all of the above debts except for the credit card debt listed at SOR 1.q for \$10,775. She states that this debt is her former husband's credit card debt and she was only an authorized user of the card. Applicant and her first husband separated in early 2000 and their divorce was final in February 2005. During the separation, she had difficulty paying her debts. She married again in January 2006, but her new husband was unemployed for a year, she was pregnant, and she was unable to work. There were no extra funds so only the fundamental debts were paid. In August 2006, she separated from her second husband, and lived on her savings until January 2007 when her second divorce was final. She held temporary jobs until hired by a defense contractor in January 2009. She has not consulted a debt management company or received financial counseling. (Item 5, Answers to Interrogatories, at 4)

In response to the SOR, Applicant presented information to show that the cable debt in SOR 1.e was paid in full. In response to the FORM, Applicant presented information to show the \$55 debt at SOR 1.d was paid in full. She established that the debt at SOR 1.p is a duplicate of the debt at SOR 1.a. She also stated that the debt at SOR 1.q is from her last husband's credit card on which she was an authorized user. She states she is not responsible for the debt, and under state law, she is only at most responsible for half of the debt.

In response to the FORM, Applicant stated she had no issue with paying her debts once she had a job and salary that allowed her to make payments on her debts. Her debts were the result of two failed marriages, medical problems, and unemployment or underemployment. She was required to pay her college the remaining tuition of \$9,000 by July 2009 to receive her degree. She made the payments by July 2009. She was working to pay her debts when she was placed on leave without pay in October 2009 because of the status of her security clearance. If not for being required to pay her tuition and now being unemployed, she would have been able to pay her other delinquent debts.

Applicant notes in response to the FORM that she was never requested to provide proof of financial counseling, a monthly budget, or a debt repayment plan, but that the analysis in the FORM held this lack of information against her. She has not used a credit card since 2006, and her debts in the credit reports and on the SOR are from medical and utility bills, bank fees, and two credit cards that she no longer uses. She states that she now has the funds to pay her debts, but since her security clearance and job are in doubt, she cannot in good conscience pay these debts. She feels it is in her best interest to save money rather than pay old debts. She has held various financial positions and sensitive-information jobs in the past with no questions concerning her trustworthiness. She believes her employer has no questions concerning her trustworthiness.

### **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 must be considered 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 over-arching 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.

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.

## **Analysis**

### **Financial Considerations:**

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, 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) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant’s delinquent debts listed in credit reports and admitted by Applicant raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts); and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Applicant encountered delinquent debts after two

divorces and some periods of unemployment. The credit reports and admissions establish that Applicant had delinquent debt since 2002 that has still not been addressed or resolved. This information establishes that Applicant has a history of not meeting financial obligations caused by either unwillingness or inability to meet her financial obligations.

The government produced substantial evidence by way of credit reports, answers to interrogatories, and Applicant's admissions and statements to establish the disqualifying conditions in AG ¶¶ 19(a) and 19(c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government.

I considered Financial Considerations Mitigating Condition (FC MC) 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), and conclude it does not apply. While the debts may have been incurred in the past, most are still unpaid and thus current. There are a number of different accounts and debts, so the debts were not incurred infrequently. Applicant has not presented any information to establish that the delinquent debts will not recur. Her continued debts and financial situation cast doubt on her current reliability, trustworthiness, and good judgment.

I considered FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separations) and the individual acted responsibly under the circumstances). Applicant was divorced twice and had periods of unemployment. But she did have periods of employment and has been employed for approximately a year. She has funds by her own admission to pay her past due obligations. She chose not to use her funds to pay debts but save them to use later. Applicant has not established that her divorces and periods of unemployment caused her financial problems. Applicant has not acted reasonably and responsibly to use her funds to pay her debts, except for two small debts, casting doubt on her current reliability, trustworthiness, and good judgment. Applicant has not provided sufficient information to establish that her financial issues are under control.

I considered FC MC ¶ 20(a) (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). Applicant presented no information to indicate she received financial counseling. Even if she had received counseling, there is no indication her financial problems are being resolved or under control. She is not making payments on her delinquent debts, and does not have a plan to resolve her delinquent debts.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). Applicant presented

documentation that two of her small delinquent debts have been paid. For FC MC ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Appellant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is that she has a plan to resolve her financial problems and takes significant action to implement that plan. The entirety of her financial situation and her actions can reasonably be considered in evaluating the extent to which her plan to reduce her outstanding indebtedness is credible and realistic. Evidence of past irresponsibility is not mitigated by payment of a debt only under pressure of qualifying for a security clearance.

Applicant presented information to show that she only paid two of her smallest debts, both debts being less than \$100. Paying only these debts is not a good-faith effort. She has not established that she acted with reasonableness, prudence, honesty, and an adherence to duty or obligation. Paying two debts of less than \$100 each is not a meaningful track record of debt payment. She has not established a plan to pay her financial obligations. In fact, she states she will not pay the debts because of her job uncertainty. She denied responsibility for paying one debt because she was only an authorized user on her husband's credit card. She has not established that she is not responsible for this debt. She was an authorized user and has some responsibility for the debt. She has not presented any information from the creditor that establishes she is not obligated for the credit card debt. She does not have a plan to resolve her financial issues. Her finances are not under control and she has not acted reasonably and responsibly in regard to her finances. Her only plan seems to be that she may pay her past due obligations if she is employed and receiving sufficient income. She has not presented information to mitigate security concerns for financial considerations.

### **Whole-Person Analysis**

Under the whole person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 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 has not presented information to show she has taken sufficient action to resolve her financial issues. Applicant has not established a "meaningful track record" of debt payment by presenting information to show she is taking sufficient, consistent, reasonable, and responsible action to resolve her financial issues. She did resolve two small delinquent debts. But this is only a small part of her delinquent debts. She does have an obligation to pay the debt on a credit card she was authorized to use. She did not present a plan to show she intends to resolve and pay her remaining delinquent debts. Applicant has not demonstrated she is responsibly managing her finances under the circumstances. She does not have a consistent record of actions to resolve financial issues. She has not established that she has or will take reasonable steps to address her remaining delinquent debts and resolve her financial problems. The record shows she has been irresponsible towards her financial obligations. The lack of responsible management of financial obligations indicates she will not be concerned or responsible, but will be careless, in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation. Eligibility for access to classified information is denied.

### **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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant

Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant (duplicate of SOR 1.a)
Subparagraph 1.q:	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 eligibility for access to classified information. Access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge