



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-04093
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

June 22, 2010

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire (e-QIP) on February 9, 2009. On November 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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) which became effective within the Department of Defense for SORs issued after September 1, 2006.

On December 18, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 5, 2010. The case was assigned to me on February 19, 2010. On March 11, 2010, a Notice of Hearing was issued, scheduling the hearing for April 20, 2010. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant testified and offered four exhibits which were admitted as Applicant Exhibits (AE) A - D. The record was held open until May 4, 2010, to allow Applicant to submit additional documents. On April 7, 2010, I granted

Applicant's request for an extension until April 23, 2010, to submit documents. No additional documents were submitted. The transcript (Tr.) was received on April 27, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, Applicant admits SOR allegations 1.a – 1.d, and 1.f - 1.h. She denies SOR allegations 1.e and 1.i.

Applicant is a 49-year-old corporate recruiter employed with a Department of Defense contractor. She has worked for her current employer for two years. This is her first time applying for a Department of Defense security clearance. She has a Masters in Business Administration. She is single. She has one adult daughter, age 33, and an adopted nephew. Her nephew currently lives with his mother. (Tr. 6-7, 18-19; Gov 1.)

Applicant's security clearance background investigation revealed that she has the following delinquent accounts: a \$1,345 medical account placed for collection in August 2007 (SOR ¶ 1.a: Gov 2 at 9, 49; Gov 3 at 1; Gov 4 at 1; Gov 5 at 10); a \$1,306 clothing store account placed for collection in February 2009 (SOR ¶ 1.b: Gov 2 at 8, 47, 52; Gov 3 at 3; Gov 4 at 2; Gov 5 at 9); a \$931 furniture store account placed for collection in February 2009 (SOR ¶ 1.c: Gov 2 at 6, 46, 53; Gov 3 at 3; Gov 4 at 2; Gov 5 at 4 - 5); a \$9,137 credit card account placed for collection in December 2007 (SOR ¶ 1.d: Gov 2 at 7, 44; Gov 3 at 3; Gov 4-5); a \$283 telephone account placed for collection in May 2007 (SOR ¶ 1.e: Gov 2 at 12, 49, 59; Gov 3 at 3; Gov 4 at 3; Gov 5 at 14); a \$2,592 credit card account placed for collection in October 2008 (SOR ¶ 1.f: Gov 2 at 43; Gov 4 at 3; Gov 5 at 5, 11, 15); a \$5,382 credit card account placed for collection in June 2008 (SOR ¶ 1.g: Gov 2 at 44, 52; Gov 4 at 2; Gov 5 at 4); a \$1,810 bank account charged off in May 2008 (SOR ¶ 1.h: Gov 2 at 9, 46; Gov 5 at 1,14; AE A); and a \$189 account placed for collection in May 2009. (SOR ¶ 1.i: Gov 2 at 47)

From September 1993 to July 2006, Applicant worked for the family construction business. She earned approximately \$60,000 annually. The business slowed and several employees were laid off including Applicant. From July 2006, to December 2006, she was self-employed as an insurance agent. She earned very little income in this job. For this reason, from September 2006 to February 2007, she was virtually unemployed. Between February 2007 and May 2007, she worked several temporary positions where she was paid \$20 an hour. From May 2007 to July 2008, Applicant worked as a recruiter for another company. She earned an annual salary of \$60,000. She began work for her current employer in July 2008. Her starting salary was \$65,000. She currently earns \$73,300. (Tr. 47-52; Gov 1; Gov 2)

When she was laid off in 2006, Applicant was unable to pay all of her bills. Several accounts became delinquent. She is now in a position where she can begin to resolve some of her accounts. (Tr. 12-13; Answer to SOR) On February 17, 2009, Applicant entered into an agreement with a debt repayment company. She agreed to

pay them \$550 a month. The company would negotiate settlements with her creditors. Applicant made monthly payments until July 2009. She decided that she could do a better job of negotiating settlements with her creditors on her own. She hopes to get the \$2,750 that she paid to the company refunded because they did not resolve any of her accounts. (Tr. 23-26; Gov 2 at 16-24)

Applicant has had several settlement offers from her creditors. The creditors all want lump sum payments which she cannot afford. She has not resolved any of the accounts listed in the SOR. On April 1, 2010, the creditor who is collecting on the debt alleged in SOR ¶ 1.d offered to settle the \$9,173 debt for \$4,585. (AE D) On April 2, 2010, she received a settlement offer to settle the \$2,592 debt alleged in SOR ¶ 1.f for \$895. (AE C) On April 2, 2010, she received an offer to settle the \$5,382 debt alleged in SOR ¶ 1.g for \$1,843. (AE B)

Applicant denies the debts alleged in SOR ¶¶ 1.e and 1.i. She claims that she did not have a telephone account with the creditor alleged in SOR ¶ 1.e. She disputed the account online but provided no proof of the dispute. She denies the debt alleged in SOR ¶ 1.i because she does not recognize it. (Tr. 33-35; 45-46)

Applicant's net monthly income is \$4,285. Her regular monthly expenses include: first mortgage payment \$1,644; second mortgage payment \$562; groceries \$200; utilities \$595, medical co-payments \$50; car payment \$432; car expenses \$179; credit card payment \$25; hair \$75. Her monthly expenses total approximately \$3,762. She has \$523 left over each month after her regular monthly expenses. (Tr. 55-63; Gov 2 at 67) Applicant's first mortgage payment used to be \$2,468. She recently modified the mortgage payment so it was reduced to \$1,644. She is current on federal and state income tax obligations. She has approximately \$10,000 in a 401(k) retirement account. (Tr. 58, 63, 73)

Applicant now has a better grasp on her monthly expenses. She has not attended financial counseling. (Tr. 69-71)

### **Policies**

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

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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant has had financial difficulties for the past several years. The SOR alleged nine delinquent accounts, a total approximate balance of \$23,065.

The government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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) partially applies. Applicant got into financial trouble after she was laid off in 2006 and underwent a period of unemployment and lower paying jobs. However, she has not resolved any of her delinquent accounts even though she has matched her previous income of \$60,000 a year since May 2007. For this reason, this mitigating condition is given less weight. Applicant's unresolved debts raise questions about her reliability, trustworthiness, and good judgment.

AG ¶ 20(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) partially applies. Applicant was unemployed for five months from the fall 2006 to the spring 2007. A period of unemployment and underemployment resulted in several delinquent accounts. For AG ¶ 20 to fully apply, it must be found Applicant acted responsibly under the circumstances. I cannot conclude Applicant acted responsibly under the circumstances because she has been gainfully employed since May 2007 and has not resolved any of her delinquent accounts. She started to resolve her delinquent accounts in February 2009 when she entered into the debt repayment program. However, she stopped making payments in July 2009 because she thought she could do a better job on her own. She never followed through with making any payments towards her delinquent accounts. While circumstances beyond her control contributed to Applicant's financial problems, she has not acted responsibly with regard to resolving her delinquent accounts.

AG ¶ 20(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) does not apply. Applicant did not attend financial counseling. At the close of the record, none of the delinquent accounts were resolved.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. While Applicant has made several initial attempts to resolve her delinquent accounts, she has never followed through with paying her delinquent accounts. All of the debts alleged in the SOR remain unresolved.

Applicant has not mitigated the concerns raised under Guideline F.

### **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 considered Applicant's period of unemployment and underemployment between July 2006 to May 2007. While Applicant made initial attempts to resolve her delinquent accounts, she never followed through with her intentions to resolve any of the delinquent accounts alleged in the SOR. None of the delinquent accounts are resolved. While there were mitigating circumstances in this case, they do not outweigh the concerns raised due to Applicant's lack of effort towards resolving her delinquent accounts. She has been gainfully employed since May 2007, but has not resolved any of her delinquent accounts. I find Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision.

### **Formal Findings**

Formal findings 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 – 1.i:	Against Applicant

## **Conclusion**

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

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ERIN C. HOGAN  
Administrative Judge