



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 09-04257
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

May 7, 2010

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has not mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On December 2, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).<sup>1</sup> On January 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F for Applicant. 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

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<sup>1</sup> FORM Item 4.

the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

On January 18, 2010, Applicant acknowledged receipt of the SOR, and on January 30, 2010, Applicant submitted her Answer to the SOR.<sup>2</sup> She elected to have her case decided on the written record in lieu of a hearing.<sup>3</sup> A complete copy of the file of relevant material (FORM), dated March 12, 2010, was provided to her by letter dated March 15, 2010. Applicant received the FORM on March 24, 2010. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did submit material in refutation, extenuation, or mitigation in response to the FORM. On April 19, 2010, Department Counsel reviewed Applicant's material in response to the FORM, without objection. The case was assigned to me on April 27, 2010.

### **Findings of Fact**

Applicant admitted all of the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 47-year-old operator technician, who has been employed by a defense contractor since August 2008.<sup>4</sup> Applicant's e-QIP does not contain any information about her educational background. Applicant married in May 1989. Applicant's e-QIP does not list any dependents nor does it make reference to any previous background investigations for a security clearance.

In her December 2008 e-QIP, Applicant disclosed having financial problems, i.e., currently over 90 days delinquent on debts. Applicant's background investigation addressed her financial problems and included the review of her December 2008 e-QIP, her December 2008 and July 2009 credit bureau reports, and her August 2009 Responses to DOHA's Interrogatories.<sup>5</sup>

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<sup>2</sup> Items 2 and 3.

<sup>3</sup> Item 3.

<sup>4</sup> Item 4 (December 2008 e-QIP) is the source for background information in this decision, unless stated otherwise.

<sup>5</sup> Items 4 – 9.

The SOR alleges six delinquent and or charged-off accounts totaling \$183,115. As noted, Applicant admitted all of these debts. She provided insufficient documentation that any of her debts have been paid or resolved. Applicant's Response to the FORM indicates that she has entered into an agreement with a debt consolidation service, presumably for debts in SOR ¶¶ 1.a. – 1.d., and provided a letter dated April 1, 2010 from an attorney in which he states that he represents Applicant "with regards to debt issues." Applicant attributes her financial difficulties to (1) her husband's loss of full-time employment for all of 2009; (2) an unspecified business downturn; and (3) an unexpected medical emergency and family member's death.

Applicant's January 2009 Personal Subject Interview explains that in 2007, she and her husband refinanced their home using an Adjustable Rate Mortgage. A rate adjustment in 2008 caused their mortgage to double in amount, up to \$2,000 per month. During this period, three family members passed away – Applicant's mother, brother, and brother-in-law, resulting in certain unexpected, unspecified family and travel expenses. Applicant's husband also had a surgical procedure to insert a stent. Insurance did not cover all of the expenses for this procedure. Without more information, how these factors relate to her inability to pay her debts remains unclear.

In light of her financial history, Applicant's uncorroborated statements are not sufficient to show that she contacted creditors, settled debts, or has been making payments on her debts for which she is responsible.

### **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 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, 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**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude one relevant security concern is under Guideline F (financial considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by her admissions and evidence presented. As indicated in SOR ¶¶ 1.a. to 1.f., she has six delinquent debts totaling \$183,115 that have been in various states of delinquency since 2007. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) to (e) are potentially applicable:

(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 conduct does not warrant application of AG ¶¶ 20(a) or 20(b). Because there is more than one delinquent debt, her financial problems are not isolated. It was not until 2010 that Applicant retained the services of a credit consolidation service and an attorney for debt resolution. It is also unclear from the evidence what debts are being addressed and to what extent they are being resolved. Applicant referenced several unfortunate circumstances that may have a bearing on her financial difficulties.

However, too little information is known for her to receive full credit under this mitigating condition. For example, she provides no information about the cost of travel and family expenses associated with attending funerals for deceased family members. She provides no information regarding why her agreement to refinance her home with an Adjustable Rate Mortgage should be considered a circumstance beyond her control. Finally, she has not shown that she and her husband have taken any action beyond entry into the debt consolidation program. Applicant has not shown that she has "acted reasonably under the circumstances" as required by AG ¶ 20(b).

AG ¶¶ 20(c) and 20(d) are not applicable. There is no evidence that Applicant sought financial counseling and there are certainly no clear indications that her financial status is under control. There is insufficient information to establish that Applicant has paid or resolved any of her six debts. More is required than asserting that she retained a

credit consolidation service and an attorney. Details regarding payment arrangements, amounts and dates of payments, and other such information is required before credit can be given under this mitigating condition. Inasmuch as Applicant admitted all debts alleged and she is not disputing any of the debts alleged, AG ¶ 20(e) is not applicable.

### **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.

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. AG ¶ 2(c). I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Notwithstanding, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant has failed to show good-faith efforts to resolve her financial problems in a timely manner. The sparse mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her 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**

Subparagraphs 1.a. - 1.f.:

**Against Applicant**

## **Conclusion**

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

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ROBERT J. TUIDER  
Administrative Judge