



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



In the matter of: )  
 )  
 ) ISCR Case No. 09-04278  
 )  
 SSN: )  
 )  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

September 29, 2010

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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).

Applicant answered the SOR on April 12, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 14, 2010. DOHA issued a notice of hearing on July 13, 2010, and the hearing was convened as scheduled on August 10, 2010. The Government offered Exhibits (GE) 1 through 8. GE 1 through 4

and 8 were received without objection. GE 5 through 7 were admitted over Applicant's objection. Applicant testified and submitted Exhibits (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents that were marked AE H through V and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on August 18, 2010.

### Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. She has held a clearance from another agency. She is applying for a DoD security clearance. She attended a university from 1998 to 2002 but was several credits short of a degree. She earned the credits at a community college, and the university awarded her bachelor's degree in 2004. She has never been married, and she has no children.<sup>1</sup>

Applicant worked her way through college. She also received grants and student loans. Her family did not provide much financial support as her mother lost her job during her freshman year. Her employment after college was somewhat sporadic, with low-paying jobs and periods of unemployment. She was engaged to be married for a period. Her fiancé was in law school, and they worked to pay his way through school. Applicant accrued a number of debts during college and shortly thereafter that became delinquent. She has been steadily employed since 2004, and she has worked for her current employer since 2006.<sup>2</sup>

Applicant had several student loans. She started paying a student loan of more than \$20,000 in 2003. She has consistently paid the loan since then. She had an additional student loan of \$7,500. She thought that loan was consolidated with the larger loan. It was not and became delinquent. She entered into a payment plan to pay \$100 per month starting August 2010.<sup>3</sup>

The SOR alleges 18 delinquent debts, as established through credit bureau reports (CBR) and Applicant's admissions. The delinquent debts raising security concerns in Applicant's case are addressed in the diagram below.

<b>SOR</b>	<b>AMOUNT</b>	<b>STATUS</b>	<b>EVIDENCE</b>
1.a. Medical account	\$245	Plans to pay.	Tr. at 19, 46.
1.b. Collection company/cable services	\$79	Paid July 2010.	Tr. at 19-21; AE E.
1.c. Bank	\$427	Settled for \$278 August 2010.	Tr. at 21-22; AE E, I.

<sup>1</sup> Tr. at 39-40, 45-46; GE 1, 2; AE Q.

<sup>2</sup> Tr. at 41-44, 64; GE 1, 2.

<sup>3</sup> Tr. at 24-26, 47-50, 64; AE G.

1.d. Collection company/ telephone services	\$137	Disputed. Stated same debt as SOR 1.e.	Tr. at 23-24; GE 5-7; AE A-C, F.
1.e. Collection company/ telephone services	\$60	Paid July 2010.	Tr. at 23-24, 46; AE E.
1.f. Collection company/ telephone services	\$55	Paid July 2010.	Tr. at 24; AE E.
1.g. Student loan	\$7,748	Payment plan to pay \$100 per month starting August 2010.	Tr. at 24-26, 47-50; AE G, N.
1.h. Judgment/ collection company/bank	\$2,004	Balance of \$3,810 settled for \$2,600 July 2010.	Tr. at 26-27, 51-54; AE E, L.
1.i. Collection company/ department store	\$684	Deleted from CBR because of age. Applicant admitted owing original creditor in 2002.	Tr. at 27-29, 55; GE 5-7; AE A-C, F, U.
1.j. Collection company/ telephone services	\$41	Paid July 2010.	Tr. at 23-24, 29, 55; AE E.
1.k. Insurance company	\$213	Plans to pay.	Tr. at 29, 55.
1.l. Collection company/gym	\$157	Disputed. Not listed on most recent CBRs.	Tr. at 29-30, 55-56; GE 5-7; AE A-C, F, V.
1.m & 1.o. Collection company/bank	\$6,012/ \$12,135	Same accounts. Current balance \$14,650. Plans to pay.	Tr. at 30-31, 56-61; AE H, K, M.
1.n. Credit card	\$1,275	Settled for \$382 July 2010.	Tr. at 31; AE E.
1.p. Apartment	\$2,928	Disputed. Not listed on most recent CBRs.	Tr. at 31-37, 61-63; GE 5-7; AE A-C, F.
1.q. Collection company/bank	\$348	Disputed. Not listed on most recent CBRs.	Tr. at 37-38, 63; GE 5-7; AE A-C, F.
1.r. Unnamed medical account	\$183	Originally disputed. Discovered it was a valid debt. Plans to pay.	Tr. at 38, 63.

In summary, Applicant paid or settled seven debts; she has a payment plan for her student loan; she disputed five accounts including two that were duplicates of other debts; she has plans to pay four accounts but has not yet made any payments; and one account has been deleted from her credit report apparently because of age.

Applicant had not received financial counseling as of the date of the hearing. She enrolled in a credit counseling program after the hearing. She has a stable job with a good salary. She paid or settled several delinquent debts that were not alleged on the SOR. She is not accruing new delinquent debts. Her testimony that she plans to pay her delinquent accounts was credible.<sup>4</sup>

Applicant submitted a number of documents attesting to her volunteer work and involvement in community activities. Applicant worked for a period for a member of the U.S. Congress. That Congresswoman wrote a letter praising Applicant's outstanding job performance, stating Applicant is an "exemplary individual."<sup>5</sup>

### **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 are to be 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, administrative judges apply the guidelines 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 the applicant or proven by Department Counsel." The applicant 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

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<sup>4</sup> Tr. at 64-72; AE F, H, J, O.

<sup>5</sup> AE P, T.

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 EO 10865 provides that adverse 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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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 still has a number of delinquent debts. Her financial issues are current and ongoing. AG ¶ 20(a) is not applicable.

Most of Applicant's delinquent debts were incurred while she was in college or shortly thereafter, while she had periods of unemployment and underemployment. Her employment issues could qualify as conditions that were outside her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has been steadily employed since 2004, and she has worked for her current employer since 2006. Most of her actions on her finances have come recently, after the issuance of the SOR. There was insufficient action prior to the issuance of the SOR for a finding that she has acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable. She does not rate full mitigation under AG ¶ 20(d) for the same reason.

Applicant enrolled in a credit counseling program after the hearing. She paid or settled seven debts, and she has a payment plan for her student loan. She credibly testified that she plans to continue paying her debts. In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board discussed an applicant's burden of proof under these mitigating factors:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that

applicant's plan for the reduction of his [or her] outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

I find clear indications Applicant's financial problems are being resolved and are under control. AG ¶ 20(c) is applicable.

Applicant disputed owing the debts alleged in SOR ¶¶ 1.l, 1.p, and 1.q. Those debts have been deleted from her credit report. AG ¶ 20(e) is applicable to those debts. The debts alleged in SOR ¶¶ 1.d and 1.m are duplicates of other debts. AG ¶ 20(e) is also applicable to those debts. Applicant admitted owing the \$684 debt alleged in SOR ¶ 1.i in 2002. That debt has been deleted from her credit report, apparently because of age. AG ¶ 20(e) is not applicable to that debt.

### **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 relevant 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.

