



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-04353  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

January 5, 2011

**Decision**

HOWE, Philip S., Administrative Judge:

On June 20, 2008, Applicant submitted her electronic Security Clearance Application (SF 86)(e-QIP). On May 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on May 21, 2010. She answered the SOR in writing on May 28, 2010, and requested a hearing before an administrative judge. DOHA received the request on June 1, 2010. Department Counsel was prepared to proceed on June 29, 2010, and I received the case assignment on June 30, 2010. DOHA issued a Notice of Hearing on August 16, 2010, and I convened the hearing as scheduled on August 24, 2010. The Government offered Exhibits 1 through 6, which

were received into evidence without objection. Applicant testified and submitted Exhibits A through J into evidence without objection. DOHA received the transcript of the hearing (Tr.) on September 3, 2010. I granted Applicant's request to keep the record open until September 24, 2010, to submit additional matters. No additional documents were submitted. The record closed on September 24, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural and Evidentiary Rulings**

### **Notice**

At the hearing, Applicant indicated she received verbal notice of the hearing date from Department Counsel at least 15 days before the hearing date. I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days written notice before the hearing. Applicant affirmatively waived her right to 15 days written notice. (Tr. 13)

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.e, 1.j, and 1.g of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.d, 1.h, and 1.i of the SOR. Her admissions are accepted as factual findings. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 25 years old and married. She works in the office of a transport company. She has not had a security clearance previously. Her income is about \$26,000 annually. Her net income monthly is \$1,620. From that money she pays expenses of \$1,120. She pays an additional \$500 monthly to her father on her repayment plan for loans from him with which she repaid her car loan and two loans listed in the SOR (subparagraphs 1.h and 1.i). (Tr. 17-25, 31, 36, 39, 48-50, 56, 80; Exhibits 1-6, B, C, H, I)

Applicant has nine delinquent loans or debts listed in the SOR totaling \$36,516. She claims she now owes only \$28,627 plus her five student loans, which are not included in the SOR and are not delinquent. Her parents took out her student loans for her college education. She completed three years of that education. Applicant decided to repay the three largest debts first and then pay the smaller ones. She has four delinquent debts over \$4,500 each. Applicant repaid three of the nine SOR-listed loans for a total of \$12,714 based on the amounts listed in the SOR. Two of the three debts paid were large amount debts. She repaid the \$90 owed to a medical provider (subparagraph 1.a). It was for an annual medical checkup. This debt was paid in cash in 2010. Applicant also paid the \$4,968 debt owed on a credit card (subparagraph 1.h) by borrowing the money from her father and now repays it to him at the \$500 monthly rate. She also paid the \$7,666 debt to the same bank credit card (subparagraph 1.i) in the

same manner. Deducting \$12,714 from the \$36,516 results in a balance owed of \$23,802. (Tr. 48-60, 80, 87; Exhibits 2-6, H, I)

Applicant owes the remaining six delinquent debts listed in the SOR (subparagraphs 1.b to 1.g). The debts in order are \$295 (subparagraph 1.b) owed to a medical provider for an annual wellness checkup. Next, the \$9,619 (subparagraph 1.c) owed to a medical provider for treatment she obtained when her lungs were burnt when she inhaled hot oil and spent four days in the hospital. She did not have health insurance. The next debt is \$429 (subparagraph 1.d) owed to a bank. Applicant thought this debt was part of a former auto loan she repaid but it is a separate debt. She paid the debt down to \$429 from about \$2,000. The next debt listed in the SOR is \$1,887 owed to a cell telephone company (subparagraph 1.e). Applicant incurred this debt when she was on disability from November 2008 to March 2009 for a broken back. Her income dropped substantially and she was not able to repay this debt. She attempted to make installment payments but the telephone company wants a lump sum payment of the total debt. Applicant owes a lender \$10,864 (subparagraph 1.f) on a car loan she incurred when she purchased a car for a friend. He did not make the payments and she returned the car to the lender. The car was sold but the lender wants her to pay the balance on the loan. The final delinquent debt is \$698 owed to a television service provider (subparagraph 1.g). Applicant purchased equipment from a store so she would have television service in her truck cab as she and her husband drove the tractor trailer trucks for her employer. The television service took the position she did not purchase the equipment but only rented it. The debt is for the rental payments. None of these debts are resolved at the present time. (Tr. 40-60, 80; Exhibits 2-6, D-I)

Applicant drove a truck for a while until she went on disability in 2008. Now she works as a dispatcher for her employer. In her profit and loss statements for 2008 and 2009 she showed losses for both years. Her income taxes are paid for all years. (Tr. 27-37, 50; Exhibits 2-6, D-I)

Applicant incurred her delinquent debts between 2003 and 2007. She has not incurred any delinquent debt later than 2007. Applicant had a difficult time in college and was taken advantage of financially by several people she thought were her friends. They used her credit and money for themselves, leaving her with the debts. Applicant testified credibly about her maturing process and her past problems. Applicant recently got her job that has a specified income. She made herself a "fixed spending" plan and changed her life to make it more stable. (Tr. 26, 34, 86; Exhibits 2-6)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated \$36,516 in nine delinquent debts from 2003 to 2007. Six debts remain unpaid due to her lack of income. These debts are listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be 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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant was on disability for five months in 2008 and 2009. Her income was reduced. She has had some problems in life with her financial management and former friends who refused to repay her for monies they borrowed. The car purchase in

subparagraph 1.f is an example of that conduct, along with some of the credit card debts. Her lack of health insurance and medical problems caused two large debts to occur. Applicant has not incurred additional long-term debt since 2007. She lives on \$1,620 monthly and testified credibly about her budget and repayment procedures to her father for loans. She has acted responsibly in view of her limited income and employment opportunities. AG ¶ 20 (b) has some application.

Applicant paid three debts of the nine listed in the SOR. She paid two of the three debts with money borrowed from her father. She is repaying that loan at the rate of \$500 monthly. The debts repaid total about \$12,600. At her rate of repayment Applicant should discharge her obligation to her father on those debts in two years. That rate of repayment is reasonable. She stated an intention of repaying her six remaining debts from her income or by borrowing from her father after she completes payment on the first three debts she paid. AG ¶ 20 (d) has partial application because she made a good-faith effort to repay two large debts using a practical lending source and procedure.

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, “[a]n applicant is not required to show that [she] has completely paid off [her] indebtedness, only that [she] has established a reasonable plan to resolve [her] debts and has ‘taken significant actions to implement that plan.’”<sup>1</sup>

Two recent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533, the Applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. She filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The Applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support. The Appeal Board determined that AG ¶ 20(a) was “clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment)” even though that Applicant’s debts were unresolved at the time the Administrative Judge’s decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence<sup>2</sup> of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an Applicant who had been sporadically

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<sup>1</sup>ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

<sup>2</sup> Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

unemployed lacked the ability to pay his creditors noting that “it will be a long time at best before he has paid” all of his creditors. The Applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The Applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not “responsible” in light of his limited circumstances.” *Id.*

### **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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant is a young adult, who has had financial problems in college and subsequently in obtaining gainful employment. She permitted her former friends to borrow money from her without repaying it. She did not have health insurance when she suffered injury. Her truck driving job did not earn her enough money to resolve her delinquent debts. Her profit and loss statements showed for two recent years she incurred losses. Since 2009 Applicant has changed her behavior and now acts responsibly regarding her income and debts. These are permanent behavior changes as she matures and becomes more experienced in financial matters. She now has an office position as a dispatcher that pays more money on a regular pay schedule and allows her to resolve her debts, albeit slowly. There is no likelihood her former conduct will recur based on the experiences she has had in the past five years. There is no potential for coercion, duress, pressure, or exploitation on her debts because she can borrow money from her father with which to resolve the debts. There is no other derogatory information in the record that raised a security concern.

I give Applicant substantial credit for admitting responsibility for six of nine SOR debts, only denying the debts she paid. Applicant did not accrue more delinquent debts. Instead she made adjustments in her lifestyle, reduced her expenses, and paid down some of her delinquent debts with her father's assistance.

I am confident she will keep her promise to continue resolving the SOR debts and avoid future delinquent debt. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his 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. 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.



