



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 09-04362 |
| SSN:                             | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: Edward A. Blanchard, Personal Representative

May 12, 2010

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On November 19, 2009, 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 December 13, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on February 2, 2010, and reassigned to me on February 25, 2010. DOHA issued a notice of hearing on February 18, 2010, and the hearing was convened as scheduled on

March 9, 2010. The Government offered Exhibits (GE) 1 through 5, which were received without objection. Applicant testified on her own behalf, called three witnesses, and submitted Exhibits (AE) A through N, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 17, 2010.

### **Procedural Rulings**

I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice.

### **Findings of Fact**

Applicant is a 48-year-old engineer for a defense contractor. She has worked for her current employer since 1988. She is seeking to retain a security clearance she has held since 1985. She has a bachelor's degree in electrical engineering awarded in 1985. She was married from 1980 to 1986 and from 1990 to 1997. She married her current husband in 1997. She has three children, ages 18, 16, and 11.<sup>1</sup>

The SOR alleges 15 delinquent debts with balances totaling about \$191,000. Applicant admitted owing all the debts alleged in the SOR.

Applicant's finances were stable until about 2004. A credit report from December 2004 showed no delinquent accounts. She and her second husband shared custody of their two children, with neither having to pay child support. They split the expenses such as schooling and medical. Applicant, her current husband, and their child moved to another county in 2004. There were costs involved in the move, including unexpected repairs to their new home. Her second husband went back to court and used Applicant's move to seek full custody of their children. After a costly legal battle, her second husband was awarded full custody of the two children, and Applicant was ordered to pay \$1,667 per month in child support. She has visitation at her home on Thursdays and the first, third, and fifth weekends of each month. Applicant is also required to pay half the children's medical expenses and education costs. Her second husband also obtained judgments against her for \$4,610 and \$6,000. The judgments are for attorney's fees and education costs and are alleged in SOR ¶¶ 1.n and 1.o.<sup>2</sup>

Applicant's current husband handled the family finances. He worked part-time and managed their rental properties, but mostly he was the primary caregiver for their child as a "stay-at-home dad." In addition to their other financial issues, one rental property was severely damaged by a tenant, and some properties went without tenants for a period. He attempted to keep up by opening new accounts at low interest rates and transferring balances. However, he was late and missed payments, and the interest rates were raised to high levels. Applicant knew they were accumulating debt, but she was unaware of the scope of their debt until 2008, when she tried to charge a gasoline

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<sup>1</sup> Tr. at 29-33, 48-50, 60; GE 1.

<sup>2</sup> Tr. at 33-41, 50-59, 76, 104-111; GE 2, 4.

purchase and her card was denied. She went home, talked with her husband, and checked her credit report. Her debts were not delinquent at that time, but the balances were far higher than she realized. Several accounts were opened by her husband without her knowledge. Applicant reported her financial situation to her company's security officer.<sup>3</sup>

Applicant and her husband followed the advice of several people and contracted with a law firm in September 2008 to assist in resolving their debts. The law firm told them to stop paying all their debts. They enrolled 14 of their debts, totaling about \$174,500, in the law firm's debt settlement program (DSP). The law firm charged an "engagement fee" equal to about 5.75% of the enrolled debt, which amounted to \$10,330. There is a \$78 per month fee for costs. Applicant and her husband agreed to send the company \$1,518 each month to be used to settle their debts after the engagement fee was paid. The company would negotiate settlements with their creditors and pay the settlement out of the accrued funds. The company would receive an additional fee of 25% of the difference between the creditor's claim and the amount the creditor agreed to accept as settlement of the debt. Applicant has continued in the program and settled a number of debts.<sup>4</sup>

Applicant has paid about \$27,000 to the law firm since she contracted with the firm. She settled the debt alleged in SOR ¶ 1.j (\$895). She settled a \$22,794 debt to a bank for \$7,467. The SOR listed three debts to this bank. The DSP listed four debts to this bank. It is unclear whether this was one of the three debts to this bank alleged in the SOR or the fourth debt that was not alleged. She paid the law firm 25% on the amount saved by settling the debts. The creditor of the debt alleged in SOR 1.a (\$23,161) issued an IRS Form 1099-C in December 2009, cancelling a \$19,306 debt. It is unclear if that figure represents the difference between the debt and a settlement on the debt or the creditor simply cancelled the debt without a settlement. The DSP lists all the debts alleged in the SOR except for the judgments alleged in SOR ¶¶ 1.n and 1.o. Applicant intends to pay the judgments after her child support obligation ends. The child support obligation for her oldest child will end after the child graduates from high school this year. Her obligation should decrease about \$200. She will have to pay for her second child for another three years.<sup>5</sup>

Applicant has not received financial counseling. Her husband still manages the finances, but she monitors them to ensure they are being addressed. She admitted they were living beyond their means for a time. They were spending at a rate that did not take into account that she was paying a large amount each month in child support. They have since adjusted their standard of living to reflect their lower income. They are now living within their means and not acquiring new delinquent debt.<sup>6</sup>

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<sup>3</sup> Tr. at 41-46, 104-111; Applicant's response to SOR; GE 2; AE M.

<sup>4</sup> Tr. at 42-47, 79-83; GE 1, 2; AE A-E.

<sup>5</sup> Tr. at 40-41, 76-80; GE 2; AE A-I.

<sup>6</sup> Tr. at 66-72, 102, 109.

Applicant did not want to file bankruptcy because she wanted to pay her debts. She did not consider Chapter 13 bankruptcy, which would have permitted her to pay her debts in a structured plan approved by the court and supervised by a trustee. Her brother is knowledgeable about these matters. She did not consult him before she contracted with the law firm. He feels she is paying exorbitant fees to the law firm that could have been used to pay her debts. She intends to continue to pay her debts, whether through the law firm or by using another option.<sup>7</sup>

Applicant is a valued and trusted employee as reflected in her performance appraisals and witnesses' testimony. A co-worker and a friend both praised her integrity, judgment, reliability, and trustworthiness.<sup>8</sup>

### **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 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. 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

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<sup>7</sup> Tr. at 119-122.

<sup>8</sup> Tr. at 114-118; AE J.

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 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 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* Executive Order 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, as follows:

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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations. She was admittedly living beyond her means. The evidence is sufficient to raise the above disqualifying conditions.

Four 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant still has a number of delinquent debts. Her financial issues are current and ongoing. AG ¶ 20(a) is not applicable.

Except for some problems with her real estate properties, Applicant's financial difficulties did not result from conditions that were outside her control. AG ¶ 20(b) is not applicable.

Applicant's husband managed the family finances, and she did not realize how much credit card debt they had accumulated until her credit card was rejected when she attempted to buy gas. Applicant has not received financial counseling, but she followed the advice of several people and contracted with a law firm in September 2008 to assist in resolving her debts. She has paid \$1,518 each month since then to pay the law firm's fees and settle her debts. Applicant 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 that Applicant acted responsibly under the circumstances; there are clear indications her financial problems are being resolved and are under control; and she has made a good-faith effort to repay her creditors. AG ¶¶ 20(c) is applicable to the debts in her payment plan, and 20(d) is applicable to the debts that have been paid.

### **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.

I considered Applicant’s favorable character evidence. I also found Applicant to be honest and candid about her finances. I believe she is sincere about getting her finances in order. As indicated above, an applicant is not required to establish that she has paid every debt listed in the SOR. All that is required is that an applicant demonstrate that she has established a plan to resolve her financial problems and taken significant actions to implement that plan. I find that Applicant has established a plan to resolve her financial problems and has taken significant action to implement that plan. Her finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

**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:                      FOR APPLICANT

    Subparagraphs 1.a-1.o:                      For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge