



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 09-04556  
)  
)  
Applicant for Security Clearance )

For Government: Stephanie C. Hess, Esquire, Department Counsel  
For Applicant: *Pro se*

April 13, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On November 8, 2007, Applicant submitted a security clearance application (SF 86). On September 15, 2009, 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 17, 2009, and requested a hearing before an administrative judge. On January 22, 2010, DOHA assigned the case

to me. On February 17, 2010, DOHA issued a Notice of Hearing, setting the case for February 25, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence without objection. Applicant testified. DOHA received the hearing transcript on March 9, 2010. The record remained open until March 15, 2010, to give Applicant an opportunity to submit information. She timely submitted four documents that were marked as Applicant Exhibits (AE) A through D and admitted into the record without objection from Department Counsel.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted all allegations contained in ¶¶ 1.a through 1.j.

Applicant is 34 years old and divorced. At the age of 18 years old, she enlisted in the U.S. Army. She honorably served from April 1993 until February 1998, when she was discharged as an E-4. She worked in the area of logistics. While in the Army, she married another soldier in February 1996. They divorced in June 2005. (GE 1.) They have a 14-year-old son, who lives with her. She held a Secret security clearance throughout her military career.

Applicant completed an associate's degree in business management in the fall of 2000. In October 2000, Applicant began working for federal contractors. In November 2001, she started her current position as a senior technician logistics researcher with another federal contractor. In that position, she performs work support the U.S. troops. Her performance evaluations grade her as "excellent or outstanding." (Tr. 19; AE B.)

After her divorce decree was entered in June 2005, Applicant's husband ceased paying child support for six months. At the time, she was earning \$15 per hour and could not pay the household expenses without the monthly child support payment of \$660. As a result, she was unable to pay her mortgage or car loan and began accumulating debt. In November 2005, she filed a Chapter 13 bankruptcy and paid all of her outstanding debts in November 2006. To-date, her former husband owes her \$2,500 in child support arrears, but is paying current child support on a monthly basis. (Tr. 20-21.)

Based on credit bureau reports dated November 2008 and July 2009, the September 2009 SOR alleged that Applicant accumulated nine delinquent debts totaling \$37,682, which include six federal student loans that total \$28,600. The debts started to become delinquent after November 2006. The status of each of the debts is as follows:

- (1) Applicant disputed the dental debt alleged in ¶ 1.b for \$571. She asserted that Tricare is responsible for the debt because she incurred it while married in early 2005. She testified that she will pay the debt if she cannot resolve it. (Tr. 24-27.) According to AE C that she submitted on March 15, 2010, she will pay the debt on April 26, 2010, as she cannot locate her correspondence to Tricare because she is in the process of moving.

(2) Applicant paid the \$142 debt alleged in ¶ 1.c, owed to a daycare company for her godchild, who was staying with her for a period of time. (AE C; Tr. 27.)

(3) Applicant makes monthly payments of \$175 on the \$8,362 debt owed for a 2007 automobile repossession alleged ¶ 1.d. She claimed that warranty issues arose regarding the car, affecting its performance. She has made payments for the past eight months and has included the payment in her budget. (GE 3; Tr. 28; AE D.) The debt is being resolved.

(4-9) In July 2008, Applicant began making monthly payments of about \$600 through a garnishment on the federal student loans alleged in ¶¶ 1.e for \$1,308; ¶ 1.f for \$4,213; ¶ 1.g for \$6,383; ¶ 1.h for \$5,585; ¶ 1.i for \$6,713; and ¶ 1.j for \$4,405. (AE A; Tr. 27-29.) In 2009, she paid a total of \$8,540 on the loans. (*Id.*) By February 20, 2010, she paid another \$1,588 on them.<sup>1</sup> These debts are being resolved.

In summary, Applicant is addressing the delinquent debts alleged in the SOR, the majority of which consists of student loans. To-date, she has paid at least \$13,000 of the \$28,600 federal student loan debt. She paid the \$142 debt, is paying \$175 a month on the automobile debt, and will pay the \$541 Tricare bill at the end of April 2010. Applicant submitted her budget. Her net monthly income is \$2,650 and includes a \$750 child support payment that she now receives.<sup>2</sup> After paying her expenses, she has approximately \$582 remaining at the end of each month. (AE D.) Recently, she helped pay her brother's funeral expenses, which depleted her savings. (Tr. 30.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying 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,

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<sup>1</sup>In 2009, Applicant also paid \$5,072 toward her state student loans through a second garnishment. As of February 20, 2010, she has paid an additional \$1,059 on those loans. These state loans were not alleged in the SOR. Hence, they are not considered for disqualifying purposes in this case, but will be considered under the Whole-Person Analysis.

<sup>2</sup> Twenty percent of Applicant's salary is automatically deducted from her pay for the federal student loans, and ten percent is deducted to pay the state student loans. (Tr. 29.)

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.

According to 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 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 an 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.”

## **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 potentially raise security concerns. Under AG ¶ 19(a), “an inability or unwillingness to satisfy debts” is potentially

disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has a history of accumulating delinquent debt that began in 2005 as a result of insufficient income. She resolved some of her debt through a Chapter 13 bankruptcy she filed in September 2005. However, she subsequently accumulated additional debts, in particular student loans, which she did not begin to address until 2008. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes six conditions that could mitigate security concerns arising from financial difficulties, three of which may be applicable to this case:

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant started accumulating debt after she and her former husband divorced in June 2005, when she earned a low hourly salary and did not receive child support for at least six months. Those circumstances were beyond of her control. By November 2006, she had responsibly resolved all of her outstanding debt through a Chapter 13 bankruptcy. Since then, she incurred additional debts and her student loans became past due. There is insufficient evidence to support the application of this mitigating condition to those debts, as there is no evidence of the presence of circumstances that were beyond her control after November 2006.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Applicant did not present evidence that she obtained formal financial counseling; however, she submitted copies of pay stubs that document payments on her student loans, along with a paid receipt for one of the alleged debts, and her budget includes a monthly payment for an automobile loan. The documents indicate that her current financial obligations are under control. This mitigating condition has some application.

AG ¶ 20(e) is partially applicable in this case. It provides mitigation when “an 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 provided evidence of actions to resolve the issue.” Applicant testified that she consistently disputed the \$571 dental debt because it should have been paid by Tricare. In her recent document submission, she stated that she will pay the bill at the end of April 2010, because she cannot find the earlier correspondence with Tricare that documents the dispute.

### **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). They include the following:

- (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 include 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 34-year-old single mother, who honorably served her country for five years in the military. Since leaving the Army, she has been employed by federal contractors. In her last performance evaluation, her employer rated her as "excellent" in several categories.

In November 2006, Applicant resolved debt that she accumulated as a consequence of her divorce through a Chapter 13 bankruptcy. Currently, student loans comprise the majority of her delinquent debt, along with an automobile loan. In 2008, she began repaying all of her student loans, albeit through garnishment proceedings. At this time, she has a good job that affords her the means to pay the debts and achieve financial stability. She has repaid about \$13,000 of the federal student loans, \$6,000 toward the state student loans, and about \$1,400 on the automobile debt. Given the progress she has made in resolving her debts, and an awareness of the potential employment problems that additional delinquencies could create, it is unlikely that similar security concerns will arise in the future.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude that Applicant mitigated the security concerns pertaining to financial considerations. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.j:	For Applicant

## **Conclusion**

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

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SHARI DAM  
Administrative Judge