



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



In the matter of: )  
)  
) ISCR Case No. 09-05165  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro se*

June 30, 2010

**Decision**

MASON, Paul J., Administrative Judge:

Since 2003, Applicant has accumulated 19 delinquent debts totaling approximately \$22,000. Applicant's job losses and her enrollment in a credit restoration company in December 2009, without more, are insufficient to overcome the adverse evidence under the financial considerations guideline. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted her Security Clearance Application (SCA, GE 1) on April 14, 2009. She was interviewed by an investigator from the Office of Personnel Management (OPM) on May 4, 2009. In her interrogatory answers submitted to the Government on October 3, 2009 (Item 2), Applicant agreed with the investigator's summary of her May 2009 interview, and that it could be used in a security clearance hearing to determine her security suitability. (Interrogatory answers, GE 2) On December 14, 2009, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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).

Applicant submitted her answer to the SOR on December 18, 2009. DOHA issued a Notice of Hearing on January 18, 2010, for a hearing on February 24, 2010. The hearing was held as scheduled. At the hearing, six exhibits (GE 1 through 6) were admitted in evidence in support of the Government's case. Applicant objected to certain debts she admitted to in the May 2009 interview (GE 2) because they were not her responsibility. (Tr. 13-15) Her objection to GE 2 was overruled. I advised her that her agreement with the contents of the interview (GE 2) was verified by her check mark on the last page of GE 2 acknowledging she agreed with the interview, and that it could be presented in a security clearance hearing to determine her suitability for a security clearance. (Tr. 16) Applicant testified and submitted one exhibit (AE A1).

The record remained open until March 4, 2010 (Tr. 78), to allow Applicant an opportunity to submit additional evidence. She submitted six exhibits (AE A through AE F) in a timely fashion. Those exhibits have been entered into the record. AE A contains a discharge summary and a short term disability application. AE B contains a letter from Applicant to her former employer dated March 2, 2010, requesting a copy of a termination letter and notation of rehire. AE B also contains a statement indicating she had paid a bill on March 31, 2005, and an undated letter from her claiming the medication she was taking prevented her from thinking clearly enough to file a medical claim within two days. Her reference in the letter to "you guys" suggests the undated letter was submitted to her former employer who terminated her in November 2008 for having three successive absences without notification. (*Id.*) See also, AE C.

AE C contains emails between Applicant and the father of one of her children, a termination letter from Applicant's former employer advising her on October 29, 2008, that she was being voluntarily terminated for having absences of three successive days without appropriate notification. (Because some sentences in the letter cite dates in November 2008, the letter should have been dated November 29, 2008 instead of October 29, 2008.)

AE D contains a tax form indicating that for tax year 2005, Applicant had \$225 federal tax income withheld from \$2,209 in unemployment compensation that she received. The exhibit also contains an incomplete tax form for tax year 2006, showing she received \$2,274 in unemployment compensation, with an adjusted gross income of \$7,985.

AE E contains copies of most of the medical records in AE A. AE F chronicles emergency room/medical clinic visits during September and October 2008. The exhibit concludes with a medical report dated October 22, 2008.

DOHA received the transcript on March 12, 2010. The record closed on March 12, 2010.

### **Findings of Fact**

Under Guideline F, the Government alleges Applicant owes approximately \$22,590 for 21 delinquent debts. Applicant admitted SOR 1.b, 1.e, 1.f, 1.i, 1.l, and 1.m. She denied the remaining allegations, and, regarding several delinquent debts, provided a short explanation for her denial. Based on Applicant's response to the SOR, the transcript and exhibits, I make the following additional factual findings.

Applicant is 27 years old and divorced. She has two children, ages nine and six. She is expecting her third child. Applicant receives no child support for her two children. (Tr. 50) She has taken courses at the community college in 2002, 2006, and 2009.

Applicant has been employed as a customer service representative by a defense contractor since April 2009. She seeks a security clearance.

From February 2004 to August 2005, Applicant was employed as a senior teller for a bank. (GE 1) From August 2005 to January 2006, Applicant worked for a temporary secretarial agency. From January to June 2006, Applicant was unemployed. From June 2006 to March 2008, Applicant worked for a temporary secretarial agency. From March to November 2008, Applicant was employed as a service advocate for a health insurance company, but was terminated while on medical leave. From November 2008 to April 2009, Applicant was unemployed. (*Id.*)

The listed debts will be discussed in the order they appear in the SOR. The delinquent debt information presented in the SOR is located in Applicant's May 2009 interview (GE 2), and three credit bureau reports, dated April 22, 2009 (GE 4), August 4, 2009 (GE 5), and October 15, 2009 (GE 6). Four fraud alerts were applied to Applicant's credit report in April and May 2009. See GE 6.

SOR 1.a, \$5,250, collection account, karate membership, individual installment account. Applicant denied the account as she claims she cancelled the contract. The credit records show the account became delinquent in January 2007. (GE 4) Applicant remembered opening the account in 2005 when she filled out a form offering her a chance to win a week of free karate instruction. (GE 2) She was subsequently notified that she had won. When she went to the martial arts location, she was told she could sign up for a full membership with a post-dated check that would become effective at the end of the free week of instruction. Applicant was told that the contract could be cancelled within a week. (*Id.*) She signed something because she received a karate outfit. (Tr. 59-61) She testified that two days later she cancelled the contract because her grandmother became sick. (Tr. 45-47) Even though she was instructed to send a letter by facsimile to the corporate headquarters requesting the contract be cancelled, Applicant decided to call the sales representative to cancel the service. She presented no documentation to support her assertions. She is responsible for the account.

SOR 1.b, \$448, personal check, collection. Applicant admitted she owes for the check. The account was considered delinquent in August 2006. Applicant told her personal bank not to pay the amount. The account remains unpaid.

SOR 1.c, \$632, wireless services, collection, individual account. (GE 4) There is no information indicating when the account was opened, but it became delinquent in August 2003. When Applicant was interviewed in May 2009, she told the OPM investigator that she and a friend opened an account for a beeper. She paid her portion of the bill, but her friend did not pay his portion. She claimed she disputed the account in 2007. She reported she tried to dispute the account in 2008, but was told she could not dispute the account until 2010. The account has not been paid.

At the hearing, Applicant asserted on many occasions, she contacted the collection agency identified in SOR 1.c. However, she testified she had no documentation at the hearing to show all the accounts she disputed because of the contract she is under with the credit restoration organization. (Tr. 23) She stated, "But I mean I do have which I can't really do too much because I'm under this contract with the creditor. I mean not the creditor but the creditor repair." (*Id.*) The account remains unpaid. No additional information was provided as to why she could not produce information about disputing the listed accounts.

SOR 1.d, \$673, cell phone, collection account, individual installment. (GE 4) The account was opened in 2006 and became delinquent in September 2008. Applicant admitted the account was valid, but denied she owed the current delinquent amount. The account remains unpaid.

SOR 1.e, \$600, pay day loan check cashing company, collection account. In her May 2009 interview, Applicant indicated she took out a loan of \$500 and planned to have \$85 deducted from her checking account. According to Applicant, the creditor made two unauthorized withdrawals from her account. The funds were returned to her account. For unknown reasons, the automatic withdrawals of \$85 every two weeks were stopped. She has not resolved the debt.

SOR 1.f, \$7,186, installment auto loan, repossessed in approximately October 2008 after unsuccessful negotiations by telephone. (Tr. 40-41) Applicant lost her job due to medical problems as set forth in AE A and AE F. This account remains Applicant's responsibility.

SOR 1.g, \$54, insurance, collection account. Applicant believes she disputed this account with the credit bureau. (Tr. 62) No documentation was presented to support her dispute. The account has not been satisfied.

SOR 1.h, \$1,758, medical services. The services were rendered in September 2005. Though she denied the account in her answer to the SOR, she admitted the account in her May 2009 interview. The account has not been paid.

SOR 1.i, \$2,487, lease, collection. The account has been delinquent since March 2009. Applicant admitted she owes the debt. While she was on medical disability from her job in approximately September 2008, she fell behind in her rent by two months and was evicted. (GE 2)

SOR 1.j, \$116, bank account, collection, individual installment. Applicant opened the account while she was in college. (Tr. 63) GE 4 indicates the account was transferred for collection in April 2009. According to Applicant, after purchasing an item for her stepfather, she had \$4 in her bank account. She then called the bank to verify her balance. According to Applicant, the automated communications system of the bank mistakenly signed her up for a promotional banking offer. The bank kept deducting \$19 from her account without her approval. She contacted the bank the day she discovered her account was overdrawn by \$99. (Tr. 65) She testified she did not produce any documentation of the bank error because the account was closed in 2007. (Tr. 63-66) The account remains unpaid.

SOR 1.k, \$99, bank account, collection, individual installment. The account was transferred for collection in April 2009. Applicant explained she made a \$500 deposit into the account. Then, she made some purchases assuming the deposit would be posted immediately. According to her May 2009 interview, the deposit was not posted until several days later, causing a \$65 overdraft. She testified that her checking account balance eventually reached a negative \$300. (Tr. 68-69) She talked to a branch manager who refunded some of her money. A new branch manager told her that the mistake could be resolved if she paid some additional money. She paid the money, but the bank mistake was not resolved. (Tr. 66) Applicant provided no additional documentation about the original transaction or information as to why she had to pay additional money. She still owes the delinquent account.

SOR 1.l, \$3,287, installment car loan, repossessed. The account was opened in February 2005, and the car was repossessed in November 2005. The car was repossessed after Applicant lost her job in August 2005. From February 2004 to August 2005, Applicant was a bank teller. Applicant's son needed immunization shots, and she believed her supervisor allowed her to take her son to the medical center. (Tr. 48) When Applicant returned to work the next day, she was assigned to menial duties rather than her original teller responsibilities, then she was terminated. (*Id.*) After losing her job in August 2005 (Tr. 42), Applicant continued to make the car payments with her unemployment compensation. (Tr. 41-42) The car was repossessed in November 2005. Applicant still owes the account.

SOR 1.m, \$35, checking account overdraft, collection, individual. The overdraft occurred in April 2007. Applicant indicated she forgot about it. As she stated in her May 2009 interview, she was going to pay the account, but was advised not to by her credit repair (restoration) company. (GE 2; Tr. 43)

SOR 1.n, \$75, medical services, collection. The medical services were rendered in December 2008. Though she denied this account in her response to the SOR,

Applicant admitted this account in her May 2009 interview. The account has not been paid.

SOR 1.o, \$100, medical services, collection. Medical services were received January 2009. (GE 5) Though she denied the account in her response to the SOR, she admitted the account in May 2009 interview. (GE 2)

SOR 1.p, \$100, medical services, collection. The medical services were rendered in March 2009. Applicant denied the debt in her response to the SOR, but admitted the debt in her May 2009 interview. (*Id.*)The account remains her responsibility.

SOR 1.q, \$125, medical services, collection. The medical services were rendered in August 2005. In her May 2009 interview, Applicant stated she did not recognize the account. (*Id.*) I find she does not owe the account.

SOR 1.r, \$334, modeling classes, collection. Applicant paid \$300 and signed up for modeling classes in January 2007 (GE 4). She claimed that when the representatives told her after orientation that completion of the modeling classes did not guarantee a modeling job, she cancelled the modeling contract. The representatives advised her to send a cancellation letter by facsimile which she claimed she did. Applicant testified she spoke to a representative demanding a return of her \$300. (Tr. 68-70) Applicant indicated she did not bring documentation about the cancellation to the hearing. (Tr. 69) No additional documentation was provided regarding the modeling contract.

SOR 1.s, \$100, medical services, collection. The medical services were rendered in March 2009. Applicant denied the account in her response to the SOR, but admitted the account in her May 2009 interview. (GE 2, 4)

SOR 1.t, \$100, medical services, collection. The medical services were rendered in January 2009. Applicant acknowledged this account in her May 2009 interview (*Id.*), but denied it in her response to the SOR. Applicant still owes the account.

SOR 1.u., \$123, bank account, collection. The account was transferred for collection in June 2007. The account is cited in the credit report in GE 6, but not in the reports of GE 5 or GE 4. Applicant did not refer to this account in her May 2009 interview (GE 2), and denied the account in her response to the SOR. I find Applicant does not owe this account.

Applicant's personal financial statement (PFS) reflects that after subtracting her expenses of \$2,216 from her net monthly income of \$2,269, her net monthly remainder is \$53. (GE 3) While she has eliminated the monthly computer rental bill (\$164), she now has to pay her stepfather the same monthly amount she paid to rent the computer because he purchased a computer for her. (Tr. 30-31) She also purchased a six-month auto insurance policy for \$620. (Tr. 31-32)

Applicant testified she enrolled in a credit restoration plan on December 3, 2009. (Tr. 26) She opted for the plan because she could not resolve the debts on her own. (Tr. 33) In the past, she contacted the collection agencies to remove accounts that were not hers, but did not have documentation to support her claims. (Tr. 35) She was advised by her credit restoration company contract not to do anything about the delinquent accounts. (Tr. 36) As noted earlier under SOR 1.m, she was advised by the company not to pay the \$35 check overdraft.

Applicant has never had financial counseling. (Tr. 76) When asked whether she has a budget, Applicant identified the personal financial statement she submitted in GE 3. (Tr. 76-77) Applicant did not know whether her credit repair company offered financial counseling, but company officials told her they had helped others who were applying for a security clearance. (Tr. 55-56) She and her fiance plan to complete the credit restoration program, stay on top of their bills, and never have to encounter these financial problems in the future. (Tr. 55)

Applicant testified that some of the debts listed in her credit reports belonged to her former husband. She claims she paid some of his debts (unidentified) in 2003, but provided no documentation. Also, according to Applicant, the divorce decree required her former husband to pay debts which he did not pay. (Tr. 57) Applicant did not submit the divorce decree. Her SCA shows she divorced her former husband in May 2004. (GE 1)

The credit restoration plan documents show that on January 15 and January 29, 2010, she signed paperwork to enroll in the plan On January 15, 2010, she signed an agreement with the sponsors to pay a \$175 processing fee and other fees. (AE A) On January 29, 2010, Applicant signed an authorization to allow the credit company to obtain her credit history. On the same day, she signed a Policies and Procedures form. (*Id.*)

Applicant testified her fiance made the payments to enroll in the program. (Tr. 27) She had to make one payment after being advised that a payment had not been received. (*Id.*) Applicant provided no verification that any payments were actually made as required by the plan. She did not know how many creditors were included in the restoration plan. (Tr. 27)

### **Character Evidence**

Applicant provided no character evidence from individuals or supervisors on her job, or individuals in the community.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on commonsense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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.

## **Analysis**

### **Financial Considerations**

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The Government has the responsibility of presenting sufficient information to support all allegations of the SOR. Based on the credit reports, Applicant's interrogatory responses, and her answers to the SOR, the Government has presented sufficient information to establish all the allegations in the SOR, except for SOR 1q and 1u. AG ¶



19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*).

AG ¶ 19(a) applies based on Appellant's inability to pay the delinquent accounts. Having 19 delinquent accounts dating to 2003 triggers the application of AG ¶ 19(c).

Four mitigating conditions are potentially applicable. No mitigation is available under AG ¶ 20(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 reliability, trustworthiness, and good judgment*). Although several of the debts are dated, 12 of the debts became delinquent in the past two years. Because there is no evidence that any of the listed debts have been repaid, Applicant's ongoing financial difficulties continue to cast doubt on her current reliability, trustworthiness and judgment.

Applicant's loss of employment and unemployment entitles her to mitigation under AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*). The mitigation Applicant received because of her loss of employment in August 2005 is diminished by the fact that she waited until the last moment to obtain flu shots for her child so that the child would be permitted to attend school. In addition, her job termination should have provided unequivocal evidence that her supervisor was not authorized to grant her leave from work.

I have carefully evaluated the medical records and the reasons for Applicant's job dismissal in November 2008. As with her job termination in August 2005, Applicant should have adequately investigated her leave options and notified her manager of sudden changes in her health. Applicant has been employed with a defense contractor since April 2009. But, the record indicates that none of the 19 creditors/collection agencies have been satisfied. Though Applicant's employment problems provide her some mitigation under AG ¶ 20(b), the probative weight of her enrollment in the credit restoration program is problematic because she could not provide updated status information on any of the listed debts, or any other documentation of her contacts with the credit agencies. She could have contacted the plan, and submitted updated information in her post-hearing submission, but chose not to do so.

Applicant receives no mitigation under AG 20(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*). She has never had financial counseling and did not realize the purpose of a budget. She was unaware of whether the credit restoration company had financial counseling. Having had no financial counseling, and having paid none of the listed delinquent accounts, there is no basis to conclude Applicant's financial problems are being resolved or are under control. With no evidence showing that the creditors have been paid, Applicant receives no mitigation under AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) either.

AG ¶ 20(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 to resolve the issue*) is potentially applicable based on Applicant's assertions of disputing certain debts. To obtain mitigation credit under AG ¶ 20(e), an individual must not only have a reasonable dispute with a creditor, but he or she must also provide documented proof to substantiate the dispute or provide evidence of actions to resolve the issue. Applicant has had fraud alerts placed on her credit report. But, while she has persistently claimed that she disputed several of the delinquent accounts with the listed creditors or credit agencies, she provided no documents indicating she disputed specific accounts with the credit agencies. When an applicant challenges specific accounts with the credit agencies, he or she receives specific responses from the credit agency indicating the status of the debt. Applicant has not provided that documentation. Therefore, Applicant has failed to provide documented proof of the basis for the dispute or evidence of actions to resolve the delinquent accounts. Applicant has not overcome the financial problems set forth in the SOR.

### **Whole Person Concept**

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Since 2003, Applicant has accumulated 19 debts totaling more than \$22,000. Even though she has made repeated claims of disputing the listed debts and paying off unlisted debts, the only documentation she provided of a paid debt is dated March 31, 2005. (AE A) She claimed she was victimized by the martial arts creditor and the modeling service creditor. Yet, she presented no documentation to support her testimonial claims. Applicant's sudden job loss in August 2005 occurred after failing to get proper authorization from her employer before taking her child to a medical center for flu shots. While the medical records show Applicant was ill in September and October 2008, it was Appellant's responsibility to ensure she had proper authorization for medical leave, and that she kept her employer aware of her health situation.

A key element in the whole-person analysis of financial cases is whether an applicant has launched a meaningful track record of reducing her debts. While the track record does not mean that all debts have to be resolved at the same time, the track record should demonstrate a plan and measurable actions to implement the plan. In certain instances, a reasonable plan could be payment of delinquent debts one at a time. Considering the evidence as a whole, Applicant has presented no evidence of paying off any of the listed delinquent debts. While the credit restoration company may assist in removing certain creditors from Applicant's credit report, her most pressing need is financial counseling on how to satisfy all her delinquent accounts, even if it includes seeking a discharge under the bankruptcy laws. Without a comprehensive plan to deal with her creditors, her current financial problems will continue in the future. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9). Applicant has not met her burden of persuasion under the financial considerations guideline.

### **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
Subparagraph 1.a to 1.p	Against Applicant
Subparagraph 1.q	For Applicant
Subparagraph 1.r to 1.t	Against Applicant
Subparagraph 1.u	For Applicant

### **Conclusion**

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

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Paul J. Mason  
Administrative Judge