



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-05390  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

August 10, 2010

**Decision**

---

LYNCH, Noreen A., Administrative Judge:

On March 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). DOHA acted 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).

On April 2, 2010, Applicant answered the SOR and requested a hearing. DOHA assigned the case to me on May 20, 2010. DOHA issued a Notice of Hearing on June 23, 2010, and I convened the hearing as scheduled on July 20, 2010. Department Counsel offered four exhibits, which were admitted without objection as Government Exhibits (GE) 1-4. Applicant testified on her own behalf. She did not submit any exhibits for the record. DOHA received the transcript (Tr.) on August 3, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.s and ¶ 1.u. She denied the factual allegations in ¶¶ 1.p, t, v, and w.

Applicant is a 47-year-old employee of a defense contractor. She graduated from high school in 1981. Applicant held a security clearance for approximately three years in the 1990's. (Tr. 47) She has been with her current employer since January 2009. (Tr.18)

Applicant is divorced and has two children. She supports her family without any child support from her ex-husband. (Tr. 12) Although, she has tried, she has been unsuccessful in having her ex-husband's wages garnished to provide child support. Applicant held various full time positions but was unemployed from March 2003 until June of 2003. (GE 1) Until then, she claimed her financial status was fine. In order to seek career advancement, she moved to another state in late 2003. However, the higher cost of living prohibited Applicant from locating a reasonable place to rent. (Tr. 11) She incurred additional expenses and used credit cards to help pay for her household needs.

In 2006, Applicant moved to another state to accept a position with a new company. (Tr. 20) Applicant was assured that she would receive a raise due to higher living costs. (Tr. 21) When Applicant did not receive a higher salary, she decided to return to her home state. She was unsuccessful in her attempt to find a less expensive place to rent or to live with friends. She had to finally return to a state that had a more reasonable cost of living. She had purchased a vehicle in 2006, but she was unemployed for a few months and could not maintain the car payments. (GE 2) The vehicle was repossessed in August 2007. (Tr. 23) Applicant obtained employment in 2007 but at a lower rate of pay. She worked full time until she obtained her current employment in 2009.

When Applicant received the SOR, she did not recognize many of the accounts. She also believed that the medical and hospital bills had been paid by insurance. She does not have any documentation to support the claims because she has moved and has shredded old statements. (Tr. 14)

The SOR alleges 23 delinquent debts, including a vehicle repossession, hospital and medical accounts, and delinquent credit card debt. The approximate total for Applicant's debts is \$36,000 (GE 4). The current status of Applicant's delinquent debts is described below.

When answering the DOHA interrogatories, Applicant believed she would have approximately \$3,000 to pay some of the accounts listed in the SOR. She loaned money to several people years ago and they were to pay her back recently. This did not occur and Applicant had no money to pay any of the accounts listed in the SOR. (Tr. 37)

The debts alleged in SOR ¶ 1.a through ¶ 1.w have not been paid. Applicant stated at the hearing that the debts that she had denied in her answer to the SOR are her debts but she disputes some of the interest and penalties. (Tr. 40) She has called some of the collection agencies but she has not been able to arrange a settlement for any of them. (Tr. 41) Applicant elaborated on the fact that many of the bills are from 2006 when she moved out of state. She has no repayment plan for the accounts.

Applicant's current monthly net income is approximately \$2,237. (GE 2) She is current with her monthly expenses. Her net monthly remainder is approximately \$100 or less. She has no credit cards. She pays \$300 a month for her automobile. Applicant met with credit counselors who advised her to file for bankruptcy. (Tr. 45) She does not want to file for bankruptcy as she believes it would prohibit her from working for the Government. (Tr. 45)

At the hearing, Applicant was forthright and candid about her inability to pay her delinquent debts. She struggles to make ends meet each month. She intends to pay her debts but at the present time she cannot afford to do so. She wants to get a second job to supplement her income, but she has not been able to find one given the current economic climate. (Tr. 50) She is a hard worker and finds it stressful to manage each month. She acknowledges that it was a "bad decision" to move in 2006 because it only created financial hardship.

### **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 must be considered 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, 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 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 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 Executive Order (EO) 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 *a/so* 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(a), an inability or unwillingness to satisfy debts<sup>@</sup> is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations<sup>@</sup> may raise security concerns. Applicant accumulated delinquent debts on various accounts totaling approximately \$36,000. Her credit reports confirm the debts. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where Athe 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.<sup>@</sup> Applicant still has

unresolved delinquent debts. She is not able to pay her delinquent debts due to her low income. This mitigating condition does not apply.

Under AG & 20(b), the disqualifying condition may be mitigated 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's inability to pay her delinquent debts is partially due to several short periods of unemployment and moving to another state for a position that created problems due to the high cost of living. Applicant is divorced and does not receive any child support for her two children. She has been a single parent since 1990. This mitigating condition applies in part.

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). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Neither of these mitigating conditions apply. Applicant met with credit counselors who advised her to file for bankruptcy. She has not been able to settle any debts because she does not have sufficient income. Despite her good intentions to pay her delinquent debts, Applicant has not been able to do so. Applicant's efforts are insufficient to carry her burden in this case.

### **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 the circumstances. The administrative judge must 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 mitigating conditions in light of all the facts and circumstances surrounding this case and conclude they are insufficient to overcome the government's case.

Applicant has been a single parent for many years. She is a hard worker who supports her two children. She has tried to better her job opportunities by moving to another state. This decision to move only exacerbated Applicant's financial situation. Through no fault of her own, she has not been able to find a second job to supplement her income. She admits that she struggles to pay her regular expenses each month. Applicant wants to pay her delinquent debts but does not have the ability to do so at the present time. She sought financial advice and was told to file for bankruptcy. She is reluctant to do so. She noted repeatedly that she will pay her debts when she is able to do so. Under Applicant's current circumstances, a clearance is not warranted.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under financial considerations.

### **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
Subparagraphs 1.a:-1.w:	Against Applicant

### **Conclusion**

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

---

NOREEN A. LYNCH  
Administrative Judge