



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-05683
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esq., Department Counsel  
For Applicant: *Pro Se*

February 18, 2010

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 30, 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on November 10, 2009, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel

submitted the government's written case on December 11, 2009. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant responded to the FORM on January 6, 2010. She did not object to the admission of the items attached to the FORM and they are admitted. The case was assigned to me on January 28, 2010.

### **Findings of Fact**

Applicant is a 28-year-old employee of a defense contractor. She has worked for her current employer since June 2009. Applicant served on active duty in the United States Army from 1999 until she was honorably discharged for medical reasons as a sergeant in 2006. She attended college for a period but did not obtain a degree. She also attended a technical institute. She married in 2000 and divorced in 2003. She married again in 2008, but is separated. She has two children, ages eight and two.<sup>1</sup>

Applicant had sporadic employment after she was discharged from the Army, with periods of unemployment and low-paying jobs. Her current husband also had multiple jobs and they moved often before they separated. This led to a number of delinquent debts.<sup>2</sup>

The SOR alleges 33 delinquent debts. Applicant admitted owing the debts alleged in SOR ¶¶ 1.a, 1.d, 1.h, 1.j, 1.m, 1.t, 1.u, 1.v, 1.z, 1.aa, and 1.ae. Those debts total \$3,774, and range from \$53 owed to the U.S. Post Office (SOR ¶ 1.q), \$55 owed to a pizza restaurant for a returned check (SOR ¶ 1.ae), to \$823 owed for cellular telephone services (SOR ¶ 1.h).<sup>3</sup>

Applicant admitted owing the debts alleged in SOR ¶¶ 1.f and 1.ad, but she stated the debts had been submitted to her medical insurance for payment. She did not submit any documentation to support her assertion. The \$193 debt alleged in SOR ¶ 1.f is a medical debt. The collection company named in SOR ¶ 1.ad has a name that sounds like it might refer to an emergency room, but the debt it is collecting is a \$515 debt owed to a telephone services company. The \$193 debt is listed on credit reports obtained in May 2009 and August 2009. The \$515 debt is listed on the May 2009 credit report, but not the August 2009 report.<sup>4</sup>

Applicant admitted owing the debts of \$760 and \$630 alleged in SOR ¶¶ 1.w and 1.y, but she stated the debts were her ex-husband's accounts. The \$760 debt alleged in SOR ¶ 1.w is listed on the credit reports as an individual account that was opened in April 2006. The \$630 debt alleged in SOR ¶ 1.y is listed on the credit reports as an

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<sup>1</sup> Item 4; Applicant's response to FORM.

<sup>2</sup> Items 3, 4; Applicant's response to FORM.

<sup>3</sup> Items 1, 3.

<sup>4</sup> Items 1, 3, 5, 6.

individual account that was opened in August 2004. She did not submit any documentation to support her assertion that these debts were her husband's responsibility.<sup>5</sup>

Applicant admitted owing the debts of \$3,000 and \$10,427 alleged in SOR ¶¶ 1.q and 1.af, but she stated the debts were duplicates. She also stated that she is making payments to catch up. The credit reports indicate that these are duplicate accounts. The most recent report shows the debt as \$3,000 past-due, with a balance of \$11,000.<sup>6</sup>

Applicant denied the allegations under SOR ¶¶ 1.i and 1.o, which alleged she had a delinquent debt of \$4,296 and an unpaid judgment of \$13,789. She admitted she owed the creditors in SOR ¶¶ 1.i and 1.o, but she stated the amounts owed were less than what was alleged in the SOR. She stated she owed \$1,300 to the SOR ¶ 1.i creditor and \$8,000 to the unpaid judgment alleged in SOR ¶ 1.o.<sup>7</sup>

Applicant denied owing the delinquent debts of \$697, \$1,553, and \$1,460 alleged in SOR ¶¶ 1.e, 1.n, and 1.p, stating that the accounts were "[p]aid in full." The \$697 delinquent debt alleged in SOR ¶ 1.e is to a university. It is listed on both 2009 credit reports. SOR ¶ 1.n alleges an unpaid judgment of \$1,553 awarded to a computer company. SOR ¶ 1.p alleges an unpaid judgment of \$1,460 awarded to an apartment landlord. There is some indication in the May 2009 credit report that the judgments may have been satisfied. Based upon the inconsistent information in the credit reports, there is insufficient evidence for a finding that the judgments remain unpaid.<sup>8</sup>

Applicant denied owing the delinquent debt of \$257 to a collection company on behalf of what appears to be a jewelry company. This debt was alleged in SOR ¶ 1.r. She stated the account was over seven years old and "[k]eeps reappearing on credit report under another agency." The debt is listed on both credit reports from 2009.<sup>9</sup>

Applicant denied owing the delinquent debts alleged in SOR ¶¶ 1.b (\$1,328), 1.c (\$3,599), 1.g (\$306), 1.k (\$328), 1.l (\$268), 1.s (\$837), 1.x (\$718), 1.ab (\$42), 1.ac (\$46), and 1.ag (\$647). She stated she had "[n]o knowledge of [the] account[s]." All of the debts, with the exception of the debts alleged in SOR ¶¶ 1.ab and 1.ac, appear in the August 2009 credit report. Those two debts appear in the May 2009 report, but not the later report.<sup>10</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Items 1, 3, 5-7.

<sup>8</sup> *Id.*

<sup>9</sup> Items 1, 3, 5, 6.

<sup>10</sup> *Id.*

Applicant stated that she has had problems with the credit agencies reporting inaccurate information about her. She stated the credit reports showed two different social security numbers and reported that she was deceased as of July 2006. She placed a credit fraud alert on her accounts in December 2008. She retained a law firm to dispute inaccurate items on her report. She submitted documents from the law firm dated August 13, 2009 and October 13, 2009, indicating that the law firm sent challenge letters to the credit reporting agencies. She did not submit evidence of which debts were being challenged, nor did she submit any results of the challenges. She submitted no evidence of payments of any of the debts.<sup>11</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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 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

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<sup>11</sup> Item 3; Applicant's response to FORM.

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* 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 notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five 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;

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

(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.

Applicant has not resolved most of the debts alleged in the SOR. Her financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant attributed her financial problems to periods of unemployment and low-paying jobs after she was discharged from the Army. Her current husband also had multiple jobs, and they moved often before they separated. These all qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has worked for her current employer since June 2009. She did not submit evidence of any payments even on the small debts. She did not present a plan on how she will address her delinquent debts. I am unable to make a determination that she acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant may have received some financial counseling from the law firm that is assisting with her credit. She is employed, but there is insufficient information in the record for a finding that there are clear indications that her financial problems are resolved or under control. AG ¶ 20(c) is partially applicable.

Applicant has not made a good-faith effort to pay or resolve her delinquent debts. AG ¶ 20(d) is not applicable.

Applicant disputed owing a number of the debts alleged in SOR. She stated her credit reports showed two different social security numbers and reported that she was deceased as of July 2006. She placed a credit fraud alert on her accounts in December 2008. A law firm sent challenge letters to the credit reporting agencies, but Applicant did not submit evidence of which debts were being challenged, nor did she submit any results of the challenges. All the debts are listed on at least one of the credit reports in evidence. The debts alleged in SOR ¶¶ 1.ab and 1.ac appear in the May 2009 credit report, but not the August 2009 report. AG ¶ 20(e) is applicable to those debts and the duplicate debt alleged in SOR ¶ 1.q. It is not applicable to any other debt.

## 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 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 those guidelines, but some warrant additional comment. I considered Applicant's honorable service in the United States Army. She has experienced financial difficulties since being medically discharged related to unemployment and underemployment. She is now employed by a defense contractor. However, at this time, there is not enough evidence in the record for me to conclude that her finances are in order.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p-1.q:	For Applicant

Subparagraphs 1.r-1.aa:	Against Applicant
Subparagraphs 1.ab-1.ac:	For Applicant
Subparagraphs 1.ad-1.ag:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge