



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



In the matter of: )  
)  
) ISCR Case No. 09-06067  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esquire  
James F. Duffy, Esquire, Department Counsels  
For Applicant: *Pro se*

August 10, 2010

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On February 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 April 30, 2010, and requested a hearing before an administrative judge. The case was assigned to me on May 28, 2010. DOHA issued a Notice of Hearing on June 7, 2010. I convened the hearing as

scheduled on July 12, 2010. The Government offered Exhibits (GE) 1 through 6. Applicant did not object and they were admitted. Applicant testified and offered Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcript (Tr.) on July 20, 2010.

### Findings of Fact

Applicant admitted all the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 24 years old. She graduated from high school in 2003. She is single and has no children. She has been employed by a federal contractor since August 2009, as an administrative assistant/junior program manager. From August 2008 to August 2009 she was unemployed for periods of time, but was able to do temporary work when available. From June 2007 to August 2008, she was employed and collected unemployment benefits. She experienced other periods of unemployment before then.<sup>1</sup>

There are 22 delinquent debts listed in the SOR totaling approximately \$33,000. Eight debts are for medical accounts (SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.i, 1.m, 1.n.) Applicant incurred in 2007. She stated she was unemployed at the time. In 2008, she was in a car accident. She was employed at the time. The accident was her fault and she had to buy another car. She explained she did not pay her medical bills because she did not have the full amount and she has not been able to make payments.<sup>2</sup>

Applicant paid the debt in SOR ¶ 1.r for \$50.<sup>3</sup> She also paid the debt in SOR ¶ 1.v for \$175.<sup>4</sup> She has not paid any of the other delinquent debts in the SOR. She has made some settlement offers to creditors and some creditors have made offers to her. She stated she will not agree to settle any of her delinquent debts until she is able to pay them.<sup>5</sup>

Applicant explained that the bulk of her delinquent debts are from when she was unemployed in 2007 and 2008. She was evicted for being unable to pay her rent and owes a deficiency amount on a lease and other expenses (SOR ¶1.j, \$7,502). Her fiancé was living with her and was working, but he did not contribute to any of the household expenses.<sup>6</sup>

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<sup>1</sup> Tr. 18-25, 82.

<sup>2</sup> Tr. 25-33.

<sup>3</sup> Tr. 33-42; GE 4.

<sup>4</sup> Tr. 38-42; GE 4.

<sup>5</sup> Tr. 42-44.

<sup>6</sup> Tr. 45-48, 55-57.

The debt in SOR ¶ 1.f (\$694) is for utilities owed when she was leasing an apartment. The debt in SOR ¶ 1.h (\$103) is for cable service. The debts in SOR ¶¶ 1.o, 1.p, and 1.q (\$949, \$734, \$511) are for telephones services. She stated she had terminated the services and owed extra fees. On another account she added a family member who was to pay a portion of the bill, but did not. Applicant has not paid any of these debts.<sup>7</sup>

The debt in SOR ¶ 1.k is a credit card debt (\$1,051) that Applicant stopped paying in 2008. She was using the card for living expenses. It is unpaid.<sup>8</sup>

The debt in SOR ¶ 1.l is a credit card debt (\$3,117). She stopped paying the debt sometime in 2008. She reached the credit limit and she was unemployed and was supporting her fiancé at the time and could not pay it.<sup>9</sup>

The debt in SOR ¶ 1.s (\$1,183) is for a laptop computer that Applicant cosigned on a rent-to-own agreement for her fiancé at the time. The debt is unpaid.<sup>10</sup>

The debt in SOR ¶ 1.t (\$10,973) is a personal loan she acquired in 2006. She used the loan to pay off a car loan for a car purchased in 2001. She traded the car in after she paid it off with the loan money. She then purchased a 2007 truck. She financed the purchase of her truck for approximately \$9,000. She had an accident and the vehicle was beyond repair. The insurance company paid the company that financed the loan. She stopped making payments on the personal loan in 2008.<sup>11</sup>

The debt in SOR ¶ 1.u is a personal loan she obtained in 2006 (\$2,916). She does not recall what the loan was for. She stated she consolidated the loans in SOR ¶¶ 1.u and 1.t, and owes a total of \$14,000. She is not making payments on this debt. It is unclear when the debts were consolidated.<sup>12</sup>

Applicant moved in with her mother to save money and pays \$200 for rent. She is looking for a second job. Since 2006, she has reviewed her credit reports at least six times. In 2008, she had about \$25,000 in delinquent debts. In 2009, she had about \$35,000 in debts, but she stated that not all of it was delinquent. She stated her most

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<sup>7</sup> Tr. 50-52, 58.

<sup>8</sup> Tr. 66-68.

<sup>9</sup> Tr. 68-70.

<sup>10</sup> Tr. 53-55.

<sup>11</sup> Tr. 70-76.

<sup>12</sup> Tr. 76-79.

recent credit report shows she has about \$47,000 of debt, but some of it is not delinquent.<sup>13</sup>

Applicant sought assistance from a military financial counselor about a month before her hearing. A budget was generated for Applicant that included her expenses and income. It does not appear the budget is accurate because it does not list certain expenses, such as gasoline for her car, and a termination fee of \$175 for canceling her gym membership, and a monthly manicure. Applicant stated she intended to repay her delinquent debts in about a year. She is hoping to settle the debts for lesser amounts. She admitted she missed her last car payment, but is now caught up. Additionally, Applicant has three payday loans (\$390, \$505, \$650). She stated she pays \$180 a month for her loan of \$390, because she has not paid it off. She pays \$210 a month for the \$505 loan, and \$300 a month for the \$650 loan. She stated she has been making payments on the first two loans since January 2010. It is unclear what her contract stipulates for fees on the loans. She owes her mother \$200 for clothes she bought using her credit card. She also owes approximately \$118 for her checking account. She has a \$14,000 loan for a 2005 vehicle she owns. She also owes her state department of motor vehicles \$240 for two traffic tickets. One she received in September 2009 and she could not recall when she received the other. The amounts are not paid. Applicant is also hoping to win a lawsuit she filed regarding a car accident that she was in and then use the money she hopes to get from the suit to pay her debts. There is no court date set.<sup>14</sup>

Applicant attributes her financial problems to unemployment. She stated she was in and out of work for two to three years and had a lot of medical bills she could not pay. She is working with a debt counselor to resolve her delinquent debts. She applied for a second job. She stated that in one year, there is no reason why she could not take care of all of her debt. Applicant's monthly income after taxes is \$2,200.<sup>15</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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching

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<sup>13</sup> Tr. 45, 84-86.

<sup>14</sup> Tr. 58-66, 91-108; The debts that are not included on the SOR are not considered for disqualifying purposes, but are considered when analyzing Applicant finances, ability to repay her debts, and the "whole person."

<sup>15</sup> Tr. 81-88.

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, 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 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 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 *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 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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Applicant has 22 delinquent debts and owes more than \$33,000. She has been unable to pay her debts and has accumulated other debts. I find there is enough evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions 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 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 was unemployed for lengthy periods and was unable to pay her debts. Her unemployment was beyond her control. She also supported her fiancé who was working and not contributing to the expenses. She was in a car accident that was her fault. She assumed responsibility for a phone contract and allowed another to be placed on it. Her unemployment was beyond her control, but she was responsible for other matters that exacerbated her financial problems. She did not begin to address the problems until shortly before her hearing. Although she has a budget, it is incomplete. I find AG ¶ 20(b) only partially applies because Applicant did not act responsibly under the circumstances. She does not have a realistic plan for resolving her financial problems.

Applicant paid two small debts, the remaining debts listed on the SOR and others are still owed. She has not implemented a plan to repay her delinquent debts. I find mitigating condition AG ¶ 20(a) does not apply.

Applicant's delinquent debts are unpaid and unresolved. Although she recently sought budget counseling there are no clear indications the problem is being resolved or is under control. Applicant recently attempted to reduce her expenses by moving in with her mother, but she has not initiated a good-faith effort to repay her creditors or resolve her delinquent debts. Her plan to repay her delinquent debts in a year is not realistic when considering her income and the amount of debt she owes. I find mitigating conditions AG ¶¶ 20(c) partially applies because Applicant recently received some financial counseling. I find AG ¶ 20(d) does not apply.

### **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. Applicant is a young woman who experienced periods of unemployment that impacted her finances. She has approximately \$33,000 of delinquent debt that she admits she owes. She also has other delinquent debts and expenses that she owes. She recently sought financial assistance and created a budget. It does not appear that the budget includes all of her expenses. She has paid two small debts, but the rest remain delinquent. Applicant plans to repay all of her delinquent debts within a year. Based on her income and her past actions in addressing her delinquent debts, this does not appear to be realistic. 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 failed to mitigate the security concerns arising under the guideline for 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.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s-1.u:	Against Applicant
Subparagraph 1.v:	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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge