



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-06130
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

July 1, 2010

**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

On October 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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).

In an October 26, 2009, response, Applicant admitted some of the allegations set forth under Guideline F, but denied the sole allegation raised under Guideline E. She also requested a hearing before an administrative judge. DOHA assigned the case to me on December 16, 2009. The parties proposed a hearing date of February 11, 2010. A notice setting that date for the hearing was issued on January 25, 2010. The hearing ultimately was postponed until March 5, 2010, due to inclement weather. An amended notice was issued on February 18, 2010, reflecting that change. I convened the hearing as rescheduled. Applicant gave testimony and presented seven documents, accepted into evidence without objection as exhibits (Exs.) A-G. Department Counsel offered five documents, admitted as exhibits (Exs.) 1-5 without objection. The parties

were given until March 22, 2010, to submit any additional materials. The transcript (Tr.) of the proceeding was received on March 15, 2010. On March 30, 2010, Department Counsel forwarded 19 additional documents received from Applicant between March 16, 2010, and March 29, 2010. They were accepted into the record as Exs. H-Z without objection. The record was held open until receipt of additional material on April 15, 2010. On that date, Department Counsel forwarded three additional documents from Applicant. They were accepted into the record as Exs. AA-CC without objection. The record was closed on April 15, 2010. Based on a review of the testimony, submissions, and exhibits, I find Applicant met her burden in mitigating security concerns related to the guidelines raised. Clearance granted.

### **Findings of Fact**

Applicant is a 58-year-old engineer assistant employed by a defense contractor. She was first hired by the defense contractor in October 2008. Applicant is a high school graduate and received a diploma as an executive secretary in 1978. She is married and has three grown children.

Over the past decade, Applicant experienced multiple periods of unemployment. She was unemployed from August 1999 until July 2000, when she was hired as a summer instructor at a technical school. She then worked as an executive assistant from October 2000 until March 2002. Unemployed from March 2002 until May 2002, Applicant next worked as a production assistant from May 2002 until June 2004. She then faced a month-long period of unemployment. From July 2004 until February 2005, she worked as an executive assistant for a temporary agency, but that employment was followed by a period of unemployment lasting from February 2005 until December 2005. Work for another temporary agency followed from December 2005 until January 2006, followed by a period of unemployment from January 2006 until February 2006. Another temporary assignment lasted from February 2006 until June 2006. She was then unemployed until the end of 2006. This pattern continued and included about four months of unemployment in 2007 and nearly eight months of unemployment in 2008, when she began temporary work for her current employer in October 2008. She became a full-time employee in January 2009.

Throughout her life, Applicant has had allergy-related conditions that have caused her to incur a number of medical obligations and necessitated multiple emergency visits to the hospital. Having held a string of temporary positions, she has maintained health insurance through her husband. She has had many problems with its claims processing in the past.<sup>1</sup> Medical problems and erratic employment led to her acquisition of delinquent debt, some of which she was unaware of until the issuance of the SOR.

At issue in the SOR are nine debts, set forth as SOR allegations ¶¶ 1.a-1.h. Allegations ¶ 1.a and ¶1.c are identical and duplicative.<sup>2</sup> The debts cited are as follows:

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<sup>1</sup> Tr. 49.

<sup>2</sup> Tr. 11.

¶¶ 1.a and 1.c – Unpaid medical account (\$100) – *Paid*. This debt was incurred on an emergency room visit by Applicant due to an allergic condition. She assumed her coverage through her husband’s insurance carrier covered the charge. It remained unpaid until she received the SOR, when she learned the account was outstanding. It was satisfied by October 26, 2009.<sup>3</sup>

¶ 1.b – Unpaid medical account (\$40) – *Paid*. This account was similarly discovered upon receipt of the SOR. It was satisfied by October 21, 2009.<sup>4</sup>

¶ 1.d – Unpaid medical account (\$200) – *Paid*. This is another medical account that Applicant thought was paid through her husband’s health insurer. She was unaware it was owed until she received the SOR. This debt and the debt cited at allegation ¶ 1.g were paid on or before October 23, 2009.<sup>5</sup>

¶ 1.e – Collection account (\$3,068) – *In repayment*. This debt was incurred on a retail entity’s credit card. Applicant obtained the card in 2006 for her husband, who had poor credit. He was to pay any bills on the card, but, in 2008, he failed to do so. At the time, Applicant was unemployed and the account went unpaid. She sought help through a debt relief program to help address this and two other accounts.<sup>6</sup> Its methods were ineffective and, by November 2009, she resorted to repaying the debt on her own terms after a judgment was entered against her for the balance.<sup>7</sup> Applicant noted this account on her 2009 SCA in the space provided for additional information following Section 26. She is current on her repayments.<sup>8</sup>

¶ 1.f – Collection account (\$10,000) – *Satisfied*. This account was for \$5,500 of flooring. With interest and fees, the balance grew. The debt was settled on November 20, 2009 for an amount approximately equal to the original debt.<sup>9</sup>

¶ 1.g – Medical collection account (\$180) – *Paid*. See 1.d above.

¶ 1.h – Telecommunications collection account (\$759) – *Disputed/Unresolved*. Applicant orally disputed this account entry with the collection agent, stating that she never used the telecommunications carrier noted.<sup>10</sup> She was not told to put her dispute

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<sup>3</sup> Tr. 21-22, 49; Ex. A (Bank statement, dated Oct. 26, 2009).

<sup>4</sup> Tr. 23; Ex. G (Balance statement, dated Oct. 21, 2009).

<sup>5</sup> Tr. 23-24; Ex. C (Receipt, dated Oct. 23, 2009). Combined payment was made in the amount of \$380.

<sup>6</sup> Tr. 30.

<sup>7</sup> Tr. 28-30; Ex. D (Account information, judgment correspondence, and payment proof).

<sup>8</sup> Tr. 48

<sup>9</sup> Tr. 30-32; Ex. E (Collection statement, dated Jan. 29, 2010).

<sup>10</sup> Tr. 33.

in writing, so she did not submit a written dispute to that entity or the credit reporting bureaus.<sup>11</sup> She did, however, contact one or more of the credit reporting bureaus by telephone in the autumn of 2009 regarding her dispute.<sup>12</sup>

¶ 1.i – Book club collection account (\$79) – *Paid*. This debt was incurred by Applicant’s daughter, who was living with her at the time the product was received. It was satisfied on or before October 5, 2009.<sup>13</sup>

When Applicant completed her questionnaire for public trust positions (SF-85P) on January 22, 2007, no inquiry was made regarding her finances.<sup>14</sup> On May 18, 2009, she signed a security clearance application (SCA).<sup>15</sup> In response to Section 26(m) and Section 26(n), respectively, she denied having been over 180 days delinquent on any debts and currently being over 90 days delinquent on any debts. However, under Section 26(1) and (2) (If you answered “yes” to any question above [a-p], provide the information requested below), she provided in-depth information on two debts on which she was either in repayment or making repayment arrangements, for approximately \$11,434.95 and \$3,021.21, respectively.<sup>16</sup> She also noted that those debts were incurred during periods of unemployment.<sup>17</sup> This information was derived from her memory of balances on bills and paperwork received; she had not recently reviewed her credit report.<sup>18</sup> Applicant only knew of three outstanding delinquent debts, the two noted and the one cited at SOR allegation ¶ 1.f. She recalled those because they were part of her debt relief program.

Applicant thought she noted all three of the debts that were formerly part of her debt relief program when she completed the 2009 SCA.<sup>19</sup> In fact, she neglected to note one of those debts, the debt cited at SOR allegation ¶ 1.f. It has since been satisfied. She unintentionally failed to mention it because she thought she “had listed all three, [but the computerized version of the SCA] wouldn’t let [her] go further.”<sup>20</sup> It was at least

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<sup>11</sup> Tr. 33-34.

<sup>12</sup> Tr. 46.

<sup>13</sup> Tr. 34; Ex. B (Letter, dated Oct. 5, 2009).

<sup>14</sup> Ex. 5 (SF-85P, dated Jan. 22, 2007).

<sup>15</sup> Ex. 1 (SCA or Electronic Questionnaire, signed May 18, 2009). The SCA notes, however, that it was “Certified at 2009-04-15,” the date referenced in the SOR at allegation ¶ 2.a. The Government provided no explanation about this discrepancy.

<sup>16</sup> *Id.* at 55-56 of 57. The largest debt was not noted in the SOR. It was satisfied in the interim. Tr. 31. The smaller debt is the account noted in allegation ¶ 1.e.

<sup>17</sup> *Id.* at 56 of 57.

<sup>18</sup> Tr. 37.

<sup>19</sup> Tr. 36.

<sup>20</sup> *Id.*

the third or fourth SCA or corrected SCA she had completed. She may have been confused or failed to realize she had not detailed all three accounts.<sup>21</sup> She was unaware of the remainder of the debts at issue until she received the SOR and subsequently reviewed her credit report.

Applicant's husband is currently employed as an information technology specialist. Their home is in his name.<sup>22</sup> The two maintain separate bank accounts. He pays the home mortgage payments.<sup>23</sup> Applicant currently has a net monthly income of about \$2,750.<sup>24</sup> She pays their \$460 a month car payments, \$290 car insurance, various bills, and utilities. After all debts and expenses are paid, Applicant personally retains about \$300 per month.<sup>25</sup> She maintains a savings account that has a balance of about \$900, and a 401k with a balance of about \$6,500. Aside from her experience with the debt relief program, she has not received any formal financial counseling. She has training in business courses, including business math, and knows how to manage her budget.<sup>26</sup> Applicant now understands the importance of tracking bills and reviewing her credit report. She is now more careful to make sure no future debts slip "through the cracks."<sup>27</sup>

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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

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<sup>21</sup> *Id.* See also Exs. H-Q (Cover sheets and emails regarding Applicant's troubles completing her SCA between February and May 2009). When asked she left the debt noted as 1f off of her SCA because she was worried about not getting the job, she said "No," noting she knew her finances would be investigated and stating that the debt at ¶ 1.f was as big as another she did note. Tr. 39.

<sup>22</sup> Tr. 43.

<sup>23</sup> Tr. 41.

<sup>24</sup> Tr. 40.

<sup>25</sup> Tr. 42.

<sup>26</sup> Tr. 44.

<sup>27</sup> *Id.*

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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”<sup>28</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>29</sup>

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 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>30</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>31</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) and Guideline E (Personal Conduct) are the most pertinent to this case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

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<sup>28</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>29</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

## Analysis

### Guideline F – Financial Considerations

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.”<sup>32</sup> The guideline sets out several potentially disqualifying conditions. Here, Applicant acquired eight debts raising security concerns. Some of them remained unaddressed until after Applicant received the October 2009 SOR. Such facts are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations). With such conditions raised, the burden shifts to Applicant to overcome the case against her and mitigate security concerns.

All the debts at issue became delinquent through simple oversight or an inability to pay bills due to erratic employment. All the debts at issue now have been addressed. Of those debts, Applicant was unaware of some of those debts until the SOR was issued. Those previously unknown debts were satisfied the same month the SOR was received. One account is in repayment, regular repayment having commenced last year. One other account, a telecommunications-related debt for \$759, is disputed for a bona fide reason. Applicant is dedicated to completing payment on the one debt and resolving the disputed credit report entry. Today, she is a full-time employee in a stable position. She is capable of meeting her remaining obligations. Consequently, FC MC 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) applies.

The majority of Applicant’s delinquent debts arose due to medical emergencies and related fees, as well as erratic income caused by periods of underemployment and unemployment. Such facts are sufficient to give rise to FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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).

Although Applicant has not received formal financial counseling, she has taken business courses, understands budgeting, and worked with a debt reduction program. While these efforts show she has some knowledge of personal finance, they are insufficient to raise FC MC 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).

Today, Applicant has satisfied all but two of the accounts at issue. Remaining is one account that is in repayment and one account she genuinely disputes for a valid

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<sup>32</sup> AG ¶ 18.

reason. While more effort is required to formally dispute the latter account entry with the credit reporting bureaus, such efforts are sufficient to raise FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

Applicant successfully satisfied the largest debt at issue, the debt cited at SOR allegation ¶ 1.f for \$10,000, as well as a similarly costly debt to a creditor not noted in the SOR. She is in regular repayment on an account that once had a delinquent balance of about \$3,000. She genuinely disputes one account of approximately \$750. The rest of the accounts at issue were addressed. Given these facts, as well as her adherence to a budget, heightened caution with regard to tracking her bills, and the fact that she is presently living within her means, financial considerations security concerns are mitigated.

### **Guideline E – Personal Conduct**

Security concerns arise from matters of personal conduct because “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.”<sup>33</sup> In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.<sup>34</sup> Here, personal conduct concerns were potentially raised when Applicant failed to identify all the delinquent debts ultimately cited in SOR allegations ¶¶ 1.a – 1.i on her 2009 SCA.<sup>35</sup> If such a failure was deliberate, such omissions would be sufficient to raise Personal Conduct Disqualifying Condition AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities). Consequently, the burden shifts to Applicant to mitigate the resultant security concerns.

Applicant credibly testified that she did not intentionally mislead or falsify when she denied having any currently delinquent debts or having had any debts delinquent over 180 days. Indeed, she showed that she fully detailed two major debts in the section following the question at issue (Section 26). In stating that her failure to note a third debt was most likely caused by confusion or accident, she demonstrated that she had amended or rewritten her SCA multiple times before it was ultimately deemed completed. Her explanation was highly plausible, especially since the one debt she noted that was not referenced in the SOR was about \$11,434, a sum much higher than the approximately \$10,000 debt she neglected to reference. Her explanation that she

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<sup>33</sup> AG ¶ 15.

<sup>34</sup> *Id.*

<sup>35</sup> SOR allegation ¶ 2.a. It is noted, however, that the debt cited at SOR allegation ¶ 1.e was referenced in the space provided for additional information regarding Section 26.



did not know the contents of her credit report and, therefore, did not list the remaining accounts at issue on the SCA was equally credible and plausible. This is especially true given the fact the majority of those debts were comparatively minor and immediately were paid as soon as she received the SOR. As for the debt cited at SOR allegation ¶ 1.h, the disputed telecommunications debt for a service she has never used, she still does not know the origin of the account entry. Absent a determination that her omission was intentional or fraudulent, the disqualifying condition cited must fail. However, if a disqualifying condition did apply, Personal Conduct Mitigating Condition AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) would apply. Given the facts regarding SOR allegation ¶ 1.h, AG ¶ 17(f) (the information was unsubstantiated or from a source of questionable reliability) also would be due strong consideration. Absent evidence of intentional falsity or omission, personal conduct security concerns are mitigated.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant 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, as well as the "whole-person" factors. Applicant is a credible, mature, and professional woman who endured a number of part-time and temporary positions over the years before finding a stable position. She has also been plagued by health issues that necessitated emergency treatment and on-going medical care. Because of her transient work record over the years, she maintained health insurance through her husband. Her carrier was apparently uncommunicative, and some debts were acquired without her knowledge.

The SOR was issued on October 2009. There is no evidence as to when Applicant actually received the SOR. There is evidence, however, that the debt cited at SOR allegation ¶ 1.i was paid before the SOR was issued and that the debts noted at SOR allegations ¶¶ 1.a – 1.d and 1.g were addressed between October 21, 2009, and October 26, 2009, days after she must have learned of their existence in the October 15, 2009, SOR. The debts referenced at SOR allegations ¶¶ 1.e – 1.f were being addressed within the four to five weeks after the SOR was issued, while she tried to dispute the account noted at SOR allegation ¶ 1.h. Consequently, it is clear that some progress on her debts preceded the issuance of the SOR and that her effort on the previously unknown debts was swift and successful. Today, only the account cited in SOR allegation ¶ 1.e remains in repayment, while the debt cited in SOR allegation ¶ 1.h for \$759 remains in dispute. She demonstrated that she has the financial capability and intent to continue with her repayment plan. She also has the resources to honor the disputed account if it is shown to be properly owed. Applicant's diligent efforts have mitigated financial considerations security concerns.

When Applicant completed her SCA in the spring of 2009, she fully disclosed approximately \$14,500 in delinquent debts, noting that one was in repayment and the other was in the process of having a repayment plan instituted. In providing this disclosure, she gave sufficient notice to investigators that financial issues existed. Through human error, she accidentally omitted a third debt. Ironically, when the missing debt and others were noted by investigators on her credit report and an SOR was issued in October 2009, the amount of debt cited was approximately \$14,526. Consequently, while one account name was missing, the amount at issue remained approximately the same. These facts are supported by the evidence and her explanation is highly plausible.

Applicant's experience with both this process and the factors that led to the issuance of the SOR have enlightened her with regard to the importance of good record-keeping and diligence. In light of the foregoing, Applicant mitigated both her financial and personal conduct issues. Clearance granted.

### **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:	FOR APPLICANT
Subparagraph 1.a - 1.i	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Clearance granted.

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ARTHUR E. MARSHALL, JR.  
Administrative Judge