



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-06307  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffmann, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 30, 2010

**Decision**

LYNCH, Noreen A., Administrative Judge:

On October 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 revised adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

On November 2, 2009, Applicant answered the SOR and requested a hearing. DOHA received the request and assigned the case to me on December 17, 2009. On January 22, 2010, DOHA issued a Notice of Hearing, scheduling the hearing for February 25, 2010. The hearing was convened as scheduled. Department Counsel submitted four exhibits (GE) 1-4, without objection. Applicant presented exhibits (AE) A and B, without objection. She testified on her own behalf. At Applicant's request, I kept the record open until March 21, 2010. Applicant did not submit additional information.

The transcript (Tr.) was received on March 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 denied the factual allegations in ¶¶ 1.e, 1.i, 1.l, and 1.o of the SOR. She admitted the remaining allegations in the SOR, with explanations.

Applicant is a 56 year old who is sponsored for a security clearance by a defense contractor. She obtained her undergraduate degree in 1976. In May 1979, Applicant received her Juris Doctorate. She is licensed to practice law. She held an interim security clearance in 2004 (GE 1; Tr. 43).

Applicant married in 1993. She has two sons. Her husband is disabled. He has not been employed since 1999. Applicant is the sole source of income for the family (Tr. 30). Her husband has many medical and pharmaceutical bills. There have been times when she did not have health insurance (Tr. 23).

Applicant left her previous full-time job to start a business as a consultant in 2006 (Tr. 16). She had been asked by former employers to start a consulting firm. Applicant researched her prospects before leaving her permanent position (Tr. 27). The contracts did not materialize due to the economic situation, and Applicant did not have any real income from the newly developed business (Tr. 16).

Applicant has not had full-time employment since September 30, 2008. She has taken various temporary positions. She also was an independent contractor for home decor items in 2008-2009. She was an adjunct instructor for a college for one semester in 2009. The contract with the defense contractor that was scheduled to begin in March 2009 was delayed (Tr. 28). She received some unemployment benefits between the temporary positions until May 2009 (Tr. 117). She continues to search for permanent work.

Applicant promises to pay all her delinquent accounts when she is financially solvent. She realizes that the collection accounts or those that are charged-off are still her responsibility. She acknowledged that she always paid her bills when she was working full-time. She believes she is in a vicious cycle with unemployment and underemployment, and she stressed that is the reason for lack of progress in paying her delinquent debts. She paid her bills when she was gainfully employed with a steady salary and benefits. By her own admission, Applicant's financial difficulties began in 2006, when she left her full-time permanent employment.

She would like to make arrangements for a payment plan, but she does not have the income at the present time. When her creditors or collection agents call, Applicant answers the phone, and tells them her situation has not changed (Tr. 52). Applicant was

emphatic that she does not hide from creditors, and she does not deny that she has delinquent debts (Tr. 104). She was as accurate as she could possibly be in completing her security clearance application.

The SOR alleges 17 delinquent debts, including medical accounts, a tax lien, two unpaid judgments, and an automobile repossession. The approximate total for Applicant's debts is \$32,400 (GE 3). The credit reports establish Applicant's delinquent debts. The current status of Applicant's delinquent debts is described below.

The debt alleged in SOR ¶ 1.a for \$12,930 is unpaid. Applicant admits this debt, which is the result of a credit card collection (Tr. 50).

Applicant admits, and at the same time, disputes the medical collection bills (\$400 total) in SOR ¶¶ 1.b, 1.c, 1.d, and 1.o. Some of the accounts are her husband's and others are co-pays which she believes she does not have to pay (Tr. 64). They remain unpaid. She did not provide any information to clarify the dispute.

The debt alleged in SOR ¶ 1.e is a 2002 federal tax lien for \$5,977. Applicant's wages were garnished in November 2007 for the lien. Her entire pay was garnished except \$467 a week (Tr. 67). The garnishment stopped in June 2008, when her full-time employment ended. Her income tax refunds were also intercepted. She believes there was an error and does not owe the money. She contacted the IRS but was not able to resolve the issue (Tr. 72). She intends to hire a representative to work with the IRS (Tr. 73). She believes the actual amount of the lien is less than \$5,977 at this point in time. She did not provide any additional information to clarify the issue.

The debts alleged in SOR ¶ 1.f (\$1,155) and 1.g (1,765), are charged-off accounts. Applicant admits that they are not paid (Tr. 76).

The debt alleged in SOR ¶ 1.h (\$4,712) is the result of a 2007 vehicle repossession (Tr. 80). After five years of payments, she could not continue to make the payments due to her decreasing income.

The debt alleged in SOR ¶ 1. i (\$536). Applicant claims this is a duplicate account (SOR 1.k). She did not provide any information to substantiate her belief.

The debt alleged in SOR ¶ 1.j (\$1,449) is a collection account. This is unpaid.

The debt alleged in SOR ¶ 1.l (\$1,085) is an unpaid judgment. Applicant denies this judgment. She does not recognize it. She did not provide additional information about the judgment.

The debt alleged in SOR ¶ 1.m (\$283) is an unpaid judgment from 2005. Applicant believes this is the result of an electric bill that was not paid by someone who was living in her old house (Tr. 92).

The debt alleged in SOR ¶ 1.n (\$57) is a collection account. Applicant admits the debt but stressed that it was paid. She did not have documentation to support her claim.

The debt alleged in SOR ¶ 1.p (\$75) is the result of a book club contract. Applicant claims she returned the books. She believes she called them a while ago, but it is still in dispute (Tr. 98).

The debt alleged in SOR ¶ 1.q (\$1,645) is a collection account. Applicant admits this debt, and acknowledges that it is unpaid (Tr. 102).

Applicant's net monthly income is approximately \$2,821. This amount includes her husband's disability check (\$1,352), his pension (\$369), and \$700 for her young son. She earns \$400 a month playing the organ at church (Tr. 124). She has no car payment. Applicant participates in a food co-op because she does not have enough money for food each month. She is behind on her utility bills. (Tr. 134). Her husband does not always have sufficient money for his medical needs.

Applicant is active in her church and her community. She teaches Sunday school classes. She works with young people in the neighborhood. Applicant is a person of great faith. She is described as temperate in all activities. She shows self-restraint, steadfastness, and has a stable family situation. She is noted for her personal integrity (AE A).

Applicant works tirelessly for the benefit of others (AE B). She is a diligent worker, who has been faced with ordeals in the past few years. She is an asset to her company. She is reliable. She "always goes the extra mile" (AE B).

### **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 required 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 as to 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 *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(a), an inability or unwillingness to satisfy debts<sup>o</sup> is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations<sup>o</sup> may raise security concerns. By Applicant’s own admission, she accumulated delinquent debts on many accounts for several years. Her credit reports confirm the debts. She has an unpaid tax lien. The evidence is sufficient to raise these disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where 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. Applicant acknowledged that she has not been financially stable since 2006. She still has unresolved delinquent debts. She has not been able to pay on those debts for the last few years. She continues to search for permanent employment. She does not have the finances to start a payment plan. The issue is current and ongoing. This mitigating condition does not apply.

Under AG & 20(b), financial considerations security concerns 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. Before 2006, Applicant did not have financial difficulties. When she left her permanent employment to start a consulting business on her own in 2006, the contracts did not materialize as she had planned. This was beyond her control. The economic downturn was also beyond her control. Her husband is disabled and she is the sole income for the family. However, Applicant chose to leave her permanent position. She also has yet to resolve the tax lien from years ago. She does not have to be debt-free, but she must show a financial track record. 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. Applicant has not received formal financial counseling. She had her wages garnished for the tax lien, but it is still not resolved. She has not resolved her smaller debts. Her efforts are insufficient to carry her burden in this case. I conclude these mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows "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 disputed some accounts, a judgment, and the tax lien. However, she has not provided documentation for her assertions. I conclude this mitigating condition 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 and conclude they are insufficient to overcome the government's case. Applicant is a loyal, law-abiding citizen who has worked all her adult life. She is supporting her family due to her husband's disability. Applicant is educated and intelligent. She is active in her church and in her community. She does not ignore her creditors' phone calls. She did not have financial difficulties when she was working in a permanent position. In 2006, she started a consulting business and contracts did not materialize. She tried to provide for her family and continues to search for employment. She is respected by her community and her church.

Applicant has not sought financial counseling. She did not provide additional information concerning the tax lien and other accounts that she disputed. She still has unresolved debts.

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 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
Subparagraphs 1.a: through 1.q:	Against Applicant

## **Conclusion**

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

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NOREEN A. LYNCH  
Administrative Judge