



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



In the matter of )  
)  
) ISCR Case No. 09-06509  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Francisco Mendez, Esquire, Department Counsel

For Applicant: Michael Bowman, Personal Representative

September 23, 2010

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for financial considerations and personal conduct. Accordingly, her request for a security clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (Standard Form 86), signed on July 25, 2006, to request a security clearance required as part of her employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and

Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

On February 25, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).<sup>2</sup> Applicant submitted a notarized Answer to the SOR dated March 18, 2010, in which she denied three allegations (1.d., 1.f., and 1.o.) under Guideline F, and admitted the remaining 12 allegations. She also requested a hearing before an administrative judge. On May 20, 2010, the Government amended the Statement of Reasons to add Guideline E, Personal Conduct. Under that guideline, the Government included three allegations. On June 8, 2010, Applicant answered the amendment by admitting to allegation 2.a., and denying allegations 2.b. and 2.c. (Tr. 8)

Department Counsel was prepared to proceed on June 3, 2010, and the case was assigned to me on June 21, 2010. DOHA issued a Notice of Hearing on June 25, 2010, and I convened the hearing as scheduled on July 15, 2010. During the hearing, I admitted 13 government exhibits (GE), identified as GE 1 through 13. Applicant testified and presented the testimony of three additional witnesses. I severed the documents Applicant had submitted as part of her Answer and admitted them as Applicant's Exhibits (AE) A through E. Applicant offered four documents at the hearing, which I admitted as Applicant's Exhibits (AE) F through I. I held the record open to allow Applicant to submit additional evidence. She timely submitted two documents, admitted as AE J and K. DOHA received the transcript (Tr.) on July 23, 2010.

### **Findings of Fact**

Applicant's admissions in response to the SOR are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant, who is 33 years old, graduated high school in 1995 and completed training as a home health aide and a medical assistant. She is single and has a 13-year-old daughter. She does not receive formal child support, but her daughter's father provides intermittent assistance. She was unemployed from June 2003 to August 2004, and again from June 2005 to June 2006. In July 2006, she accepted employment with Company A, a federal contractor. She completed her first security clearance application and was granted a confidential security clearance in 2006. Applicant was terminated from Company A in February 2008. She was unemployed for five months, worked in a

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>2</sup> Adjudication of this case is controlled by the Adjudicative Guidelines (AG), which were implemented by the Department of Defense on September 1, 2006. The AG supersede the guidelines listed in Enclosure 2 to the Directive.

retail position for two months, and obtained her current employment with a defense contractor in December 2008. She completed her second security clearance application at that time. (GE 1, 4, 13; Tr. 34-37, 79, 88-89)

Applicant was employed as a mail scanner with Company A. She testified that she had an argument with one of her coworkers in January 2008. When she explained what happened to her team leader, the leader reported the disagreement to management. Applicant's supervisor met with Applicant and the coworker; they settled the disagreement. Both Applicant and the coworker testified at the hearing that there were no ill feelings between them. The coworker testified that they did have an argument, and Applicant was yelling at her, but Applicant did not have a box cutter. Applicant's coworker also submitted a statement that Applicant was never a threat to her. Applicant testified that the events "had been inflated." She was allowed to take the rest of the day off. Later, her supervisor called her and said that she would be contacted by a company representative. (AE F; Tr. 79-87, 115-124)

The altercation had been recorded on videotape. According to a letter from the Human Resources (HR) director to Applicant, dated February 13, 2008, the videotape showed Applicant "in a visibly agitated, emotional state and [you] were flailing and pointing a box cutter in one of your hands in front of another [company] employee." It also stated that Applicant had admitted in her written statement and in a telephone conversation with the HR director, that she was angry with another employee and that she "did have a box cutter in her possession." The letter stated that she had been suspended without pay on February 8, 2008, while the company investigated the incident. Company A terminated Applicant's employment, effective February 13, 2008. When officials of the contracting company that had hired Company A to support its federal contract viewed the videotape, they prohibited Applicant from working on their contract. The federal agency involved revoked Applicant's credentials, and she could no longer enter the government building where she had worked. (GE 13)

In December 2008, Applicant completed her second security clearance application. Question 22 asked if she had ever been "(1) Fired from a job; (2) Quit a job after being told you'd been fired; (3) Left a job by mutual agreement following allegations of misconduct; (4) Left a job by mutual agreement following allegations of unsatisfactory performance; (6) Left a job for other reasons under unfavorable circumstances." She answered "No." Applicant testified that she remembers speaking with the HR director before her termination, but does not recall being told she was terminated. She remembers her supervisor telling her that she was suspended. She testified,

So when she notified me, she said that my services were no longer needed. We will grant you your unemployment. You will be able to keep your clearance with us. And we will give you unemployment. My determination of her giving me unemployment I felt that I was -- they didn't terminate me. That's why I chose that answer on my, on the F-86, because again, like I said, and if they felt that I was a threat to this person

they wouldn't agree to give me any unemployment. They would have just denied me. (Tr. 82)

She answered Question 22 negatively because she believed that she could not receive unemployment compensation if she had been fired, and because she did receive it, she believed she was suspended, not terminated. She also testified that she did not understand the questions on the security clearance application, and answering negatively was simply a mistake. She stated that the 2008 security clearance application was the first one she completed, and she did not have assistance in completing it. She sought legal advice approximately one month before the hearing, and the attorney explained the questions on the application. She now understands how she should have answered the question. (Answer; GE 4; Tr. 28, 31, 79-87, 96-97)

Applicant has 15 debts, listed in the SOR, that total approximately \$28,700. They appear in her credit reports of August 2006, April 2009, and January and February 2010. She has not attended financial counseling. She keeps a "mental budget" but not a written one. She does not have a savings or checking account. She provided her pay statements for July 2010, which show a gross monthly income of approximately \$3,000, and net income of \$2,378. The expenses she listed total \$2,010, leaving a monthly net remainder of \$368. Applicant believes that her financial difficulties stem from her periods of unemployment, and caring for her self, her daughter, and her mother, before her mother passed away in 2007. She discussed ten debts with a security investigator during her security investigation in 2007, and told him she had a payment plan through a debt resolution company. Based on her credit report, the company set up a plan of \$285 per month, starting in March 2007. She did not make payments because they were more than she could afford. (GE 2, 3, 5, 9, 10; AE J, K; Tr. 75-79, 97)

When Applicant completed her 2008 security clearance application, she answered "No" to the financial questions, which asked if she had been more than six months delinquent on any debt in the previous seven years, or if she was currently delinquent on any debts. She testified that she did not realize the extent of her delinquencies, because she had not seen her credit report, she was concerned about her mother's health, and she did not understand the questions. (GE 4; Tr. 62-64)

The SOR lists the following debts.

**Utility debt: Allegation 1.c. (\$249) – UNPAID.** Gas bill, delinquent since 2008. Applicant stated in her Answer that she had arranged a payment plan with the creditor that would result in the full debt being paid by April 9, 2010. She testified that she has not paid it. (Answer; Tr. 50-52)

**Medical debt: Allegation 1.d. (\$138) – UNPAID.** Delinquent since October 2007. Applicant testified that she did not have sufficient information to contact the creditor to resolve this debt. The three government credit reports list the debt as being in collection status, with only the word "medical" and no creditor name, address or telephone number. (GE 2, 5, 9, 10; Tr. 52-53)

**Government debt: Allegation 1.f. (\$581)** – UNPAID. Delinquent since 2005. Applicant testified that she did not contact the creditor because she had only initials of the creditor, and did not have enough information. It is listed in the 2010 credit reports as a government debt. The credit report she received from Department Counsel in May, two months before the hearing, listed the creditor's mailing address. (GE 5, 9, 10; Tr. 57-59)

**Timeshare property: Allegation 1.k. (\$23,624)** – UNPAID. Delinquent since 2007. Applicant signed a contract to purchase a vacation property timeshare in 2007. She knew there would be monthly payments, but thought the payments would not begin for six months. She does not remember if she realized the full price of the timeshare at the time. She now realizes she should not have bought it. When she contacted the creditor recently, she was told it had been foreclosed. She suspects the amount still outstanding is the amount in allegation 1.k., but she is not certain. (GE 5; Tr. 66-70)

**Insufficient funds: Allegation 1.l. (\$85)** – PAID. Delinquent since January 2003. Applicant wrote a check to a grocery store but did not have sufficient funds to cover the amount. She provided documentation showing that in March 2010, she paid \$95.85 and resolved this debt. (GE 5; AE C; Tr. 71)

**CREDIT CARDS:**

**Allegation 1.e. (\$703):** PAYING. Delinquent since March 2009. In January 2010, the creditor for allegation 1.e. reduced the amount of Applicant's balance from \$703 to \$250 and transferred the balance to a new credit card, which she cannot use until the balance is paid. She has been paying the minimum monthly payment of \$26. She expects it will take 20 payments to pay the balance. (GE 5; AE D; Tr. 53-56)

**Allegation 1.i. (\$630):** UNPAID. The creditor at allegation 1.i. offered Applicant a settlement of \$93, if she paid the entire amount immediately. She stated in her Answer that she had a payment plan to pay the \$93 on March 26, 2010. However, she testified at the hearing that she did not have the money to pay the \$93. (Answer; Tr. 60-62)

**Allegation 1.n. (\$133):** RESOLVED. Delinquent since April 2009. Applicant provided a letter from the collection agency showing that it has closed the account, and it would inform the credit bureaus to delete the account from Applicant's credit reports. (GE 5; AE E; Tr. 73-74)

**COMMUNICATIONS:**

**Allegation 1.a. (\$526):** UNPAID. Cell phone debt, delinquent since 2004. In her Answer, Applicant stated she received a settlement offer of \$400, and would pay the debt with two payments of \$200 each on April 9, 2010 and May 7, 2010. At the hearing, she had not made the \$200 payments because she had daily living

expenses to pay. She said the creditor would not accept a payment plan for \$25 per month. She discussed this debt with the investigator during her 2007 security interview. Applicant testified she did not list this debt on her 2008 security clearance application because she did not realize it was more than 180 days delinquent and did not understand the question on the application. (Answer; GE 3; Tr. 38-50)

**Allegation 1.b. (\$527):** PAID. Cell phone debt, delinquent since 2005. The record shows Applicant received a settlement offer reducing the balance to \$265, and that she paid \$265 in April 2010. (GE 11; Tr. 50)

**Allegation 1.g. (\$580):** PAID. Cell phone. Applicant provided documentation from the collection agency showing that in March 2010, she established a payment plan of three payments of \$135.27. On April 26, 2010, she made the final payment and resolved this cell phone debt. (GE 12; AE A; Tr. 59-60)

**Allegation 1.h. (\$83):** PAID. Cell phone. Applicant provided documentation from the collection agency dated March 2010 indicating that this cell phone account was settled and had a zero balance. (AE B, I; Tr. 60)

**Allegation 1.j. (\$176):** PAID. Cell phone. Applicant provided documentation from the collection agency dated March 2010 indicating that this cell phone account was paid. She testified that allegation 1.o. is a duplicate of the cell phone debt in allegation 1.j. because they have the same account number. (AE B, I; Tr. 64-65, 75)

**Allegation 1.m. (\$485):** UNPAID. Cable service, delinquent since January 2009. Applicant stated in her Answer that she made a payment plan of \$75 every two weeks starting April 9, 2010. However, she did not make any payments because the monthly payment was more than she could afford. She agreed to the plan, knowing that she could not afford it, because she did not want the balance to continue to increase. She testified she intended to try to pay whatever she could. (GE 5; Tr. 72-73)

Applicant provided numerous character references that describe her as respectful, responsible, dependable, professional, and an asset to her company. She is courteous and can be counted on to help wherever needed. Her supervisor noted that Applicant has "unparalleled leadership skills" and has received high praise from customers for her service skills. In 2009, she received an award for outstanding customer service, and was recognized as Employee of the Year by her current employer. (AE G, H)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,

and consideration of the pertinent criteria and adjudication policy in the AG.<sup>3</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>4</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>5</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the judgment, reliability and trustworthiness to protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.<sup>6</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended is at risk of having to engage in

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<sup>3</sup> Directive 6.3

<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The relevant disqualifying conditions are AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). The SOR alleges more than \$28,700 in debts, which started to become delinquent in 2003. Half of Applicant's debts remain unpaid. Most of those that are paid were resolved recently, after Applicant received the SOR. Applicant has a history of failure to meet financial obligations. AG ¶¶ 19(a) and (c) apply.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

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

Although Applicant's debts started accruing in 2003, they are not in the distant past, as many remain unpaid. As of the date of the SOR, she had 15 delinquencies. Her debts are both frequent and recent. Her failure to work on resolving her debts before she was motivated by the SOR raises questions as to her reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) applies in part because events occurred that affected Applicant's finances, and which she could not control or foresee. Applicant was unemployed for about one year between 2003 and 2004, for a year from 2005 to 2006, and for about ten months in 2008. She has been employed since December 2008, but before she received the SOR, she had done little to deal with her debts. Applicant has not acted responsibly to resolve her delinquent debt load.

Applicant was on notice that delinquent debts were a security concern after she completed her security clearance application in July 2006. She was reminded that debts were a security concern when she met with an investigator in 2007. At the time, she talked with a debt resolution company, but failed to follow through on the plan. She did not actually pay any debts until early in 2010. Applicant receives some mitigation in that



she did pay several debts this year. However, her financial situation is not under control. She has taken no action in regard to her largest debt of \$23,624. Moreover, her lack of action over the past four years, despite her awareness that her debts were at issue, does not support a finding of a good-faith effort. AG ¶ 20(d) applies only in part.

In all, the partial mitigation available to Applicant under AG ¶¶ 20(b) and 20(d) are insufficient to outweigh her financial irresponsibility and her failure to follow through on resolving her debts, despite promises, over the past four years.

## **Personal Conduct**

AG ¶ 15 expresses the security concern about personal conduct:

(a) 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleges that Applicant was terminated from her job, and that she deliberately failed to disclose her job termination and her financial delinquencies. The allegations implicate the following disqualifying condition under 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; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: ...(2) disruptive, violent, or other inappropriate behavior in the workplace.

Applicant engaged in inappropriate conduct at her workplace. The record provides conflicting evidence as to Applicant's behavior at her job in January 2008. She admitted that she had an altercation with a coworker, and that she possessed a box-cutter. But both she and the coworker state that she did not threaten the coworker with the box-cutter. Ultimately, the company found sufficient evidence to terminate her based on her behavior. Applicant did not disclose this termination, despite being told in both a

telephone conversation and in writing that she was terminated. She also did not disclose her past-due debts on either her 2006 or her 2008 security clearance application. The 2008 application was completed after she had discussed these debts with an investigator. AG ¶ 16 (a) and (d) apply.

Even if Applicant's testimony that she did not understand the financial questions were credible in 2006, it is not credible as to the 2008 application. When she completed the application in 2008, she was familiar with it because she had completed one in 2006. She had also discussed her debts with an investigator during her 2007 security interview. Yet she did not disclose her debts in 2008; she submitted a "clean" application, giving the government no indication that finances were an issue to be investigated further. Moreover, when she submitted her Answer to the SOR, she again provided false information to the government by stating that she had payments plans in place for several debts, when she knew that she would not be able to follow through on these plans. Applicant also falsified her application by failing to disclose her termination in 2008. She had been told by HR both by telephone and in writing that she had been terminated. It is not credible that she was not aware of her status.

As to mitigation, the following mitigating conditions are relevant under AG ¶17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is no evidence that Applicant informed any authorized government official that she wished to correct the answers on her applications. AG ¶17(a) cannot be applied. AG ¶17(c) is also inapplicable. Applicant's conduct cannot be considered minor because she failed to be forthright with the government not once, but on numerous questions in the 2006 and 2008 applications, and in her Answer to the SOR. Her conduct casts doubt on her current trustworthiness.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. Under the appropriate guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has accumulated substantial debts over the past seven years. She has made some effort over the past few months and has paid some of the debts. Her efforts occurred, however, after she received the SOR, and are an eleventh-hour attempt to respond to the security clearance process. She has no plan to resolve her largest debt of more than \$20,000. Applicant has not been candid with the government about her delinquencies, or about her termination from a job for inappropriate behavior.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has not satisfied the doubts currently raised about her suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guidelines.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	Against Applicant
Subparagraphs 1.d – 1.e.	For Applicant
Subparagraph 1.f.	Against Applicant
Subparagraphs 1.g. – 1.h.	For Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	Against Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	Against Applicant
Subparagraphs 1.n. – 1.o.	For Applicant

Paragraph 2, Guideline E:                    AGAINST APPLICANT

Subparagraphs 2.a. – 2.c.                Against Applicant

**Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to allow applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge