



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



In the matter of: )  
)  
) ISCR Case No. 09-07153  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray Blank, Esq., Department Counsel  
For Applicant: Ernst M. Martzen, Esq.

06/10/2013

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant had nine collection accounts and one charged-off account which totaled approximately \$26,000. Half of the unresolved debt resulted from a repossessed automobile. She has paid or resolved approximately \$8,000 of the debt and disputed approximately \$19,000 of the debt. She has resolved the financial considerations security concerns. Clearance is granted.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on September 5, 2012, the DoD issued an SOR detailing security concerns. DoD adjudicators could not

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On September 28, 2012, Applicant answered the SOR and requested a hearing. On January 9, 2013, I was assigned the case. On February 5, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on February 25, 2013. I admitted Government's Exhibits (Ex) 1 through 15 and Applicant's Exhibit A with attachments 1 through 25, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional material (Ex. B through D<sup>2</sup>) was submitted and admitted into the record without objection. On March 7, 2013, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, she denied the majority of the SOR debts because they did not appear on her September 28, 2012, credit bureau report (CBR). She admitted her vehicle was voluntarily returned to the creditor (SOR 1.b). I incorporate Applicant's admission as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 50-year-old program manager who has worked for a defense contractor since June 1998. She first received a secret clearance in 1998. (Tr. 29) Applicant has \$92,000 in her retirement savings account. (Ex. B) Co-workers and supervisors state Applicant is responsible, dependable, trustworthy, reliable, quality-focused, a team player, and a "go-getter." (Ex. A-15, 16, 19, 20, and A26) She goes to great length to accomplish given tasks. She has received numerous awards for outstanding performance, exceptional performance, and achievement. (Ex. C) A coworker, a retired Air Force colonel with 27 ½ years service, spoke on Applicant's behalf stating she was very capable and rates her in the top half of the people he has supervised. (Tr. 131)

Applicant was married for ten years and had three boys. (Tr. 26) Her sons are now 30, 26, and 24 years of age. (Tr. 40) Two of her sons currently serve in the military. (Ex. A-19) Although the court ordered her ex-husband to pay child support when that marriage ended in May 1995, he did not do so. (Tr. 40) Several times she sought assistance from the state Attorney General to obtain child support. However, her ex-husband worked construction and three or four months after the Attorney General was able to enforce the decree, her ex-husband would be laid off from work and the child support would end. (Tr. 41) She never received child support with any regular consistency. (Tr. 41)

Applicant's second marriage lasted a year-and-a-half, ending in June 2001. She and her husband opened an automotive body repair shop. (Tr.37) A year after marrying, her husband had a quadruple bypass operation that caused depression. (Tr 37, 151) The marriage ended because of the depression. Her ex-husband was to be responsible

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<sup>2</sup> The last material (Ex. D) was received on April 3, 2013.

for his debts, but failed to pay those debts. (Ex. A-26, Tr. 36) The divorce decree did not specifically list which debts each party was required to pay. (Tr. 37) The credit card debt (SOR 1.f, \$6,373) was a credit card used by the repair shop and the telephone bill (SOR 1.t, \$1,818) was also for the repair shop. Applicant asserted, but provided no documentation, that she paid the settlement offer on the credit card obligation. (Tr. 58, 86) Following her divorce, she married again for approximately two years. That marriage ended in October 2005. (Tr. 104)

Applicant had cervical cancer and a complete hysterectomy. She also had rotator cuff surgery. (Tr. 46) Following Applicant's hysterectomy surgery, she was released from the hospital and immediately started having congestive heart failure requiring additional treatment. She asserted she had been released from the hospital too soon following her surgery. She incurred medical bills including an emergency room bill, which the hospital said it would remove from her account. (Tr. 65) Applicant's earlier CBRs list 14 medical accounts, which were not alleged to be delinquent, charged-off, or in collection, but merely unpaid. Applicant challenged the accounts, and they no longer appear on her most recent CBR. (Tr. 66, 103)

In Applicant's second marriage, they purchased a new truck for her husband and paid it off in two years. They then purchased a 2000 Pontiac Grand Prix intending to pay it off within two years. The amount borrowed was \$27,000 with \$503 monthly payments. (Tr. 108) However, the marriage ended and she was left with the \$500 monthly payments, which she was unable to continue making. In 2006, she voluntarily returned the vehicle. Approximately \$8,000 was realized from the resale of the vehicle and a debt of \$13,575 (SOR 1.b) remained. (Ex. A-2) Applicant believes that only \$4,000 is owed on the vehicle after it was sold. (Tr. 108) She attempted to work with a debt relief firm to resolve this debt, but the creditor refused to adjust the debt. (Ex. A-20, Tr. 49, 50) Following the hearing, she again contacted the creditor attempting to resolve this obligation. (Ex. D-1, D-2) Applicant believes she owes \$4,000 and is willing to pay that amount. (Tr. 51) She also stated she would pay the full amount if the creditor confirmed the amount was correct. (Tr. 118)

Applicant remarried and began paying off past debts. (Tr. 26, 43) In October 2011, her husband broke his back. (Tr.42) He had a vertebra shattered and his sciatic nerve crushed. (Tr. 43) He has had two back surgeries and will have another in the next couple of months. (Tr. 42) He also suffers from emphysema, depression, and an anxiety disorder, agoraphobia.<sup>3</sup> (Tr. 42) Her husband's income went from \$77,000 annually to \$30,000 annually from workman's compensation. (Tr. 44) The workman's compensation claim was approved ten days before the hearing, and the first payment was not yet received at the time of the hearing.

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<sup>3</sup> Agoraphobia is an anxiety disorder characterized by anxiety in situations where the sufferer perceives the environment as being difficult to escape or get help.

Applicant's 2005 Dodge pick-up truck is paid for. (Tr. 45) She obtained a credit card with a \$300 limit and obtained a small credit union loan to help rebuild her credit. Her credit rating has gone from the 400's to near 700. (Tr. 46)

Some of the accounts are duplications. SOR 1.m (\$218), SOR 1.p (\$218), and SOR 1.v (\$218) are the same obligation. SOR 1.e and SOR 1.s are the same cable bill. Applicant disputes seven accounts: SOR 1.b (\$13,575, vehicle repossession), SOR 1.e (\$358, cable bill), SOR 1.g (\$134, CD/DVD club), SOR 1.i (\$2,054, rent), SOR 1.k (\$1,065, emergency room service), SOR 1.t, (\$1,818 ex-husband's cell phone account), and SOR 1.w (\$164, 20-year-old account). Applicant has received two earlier SORs. She asserts that the debts listed on those SORs, which are not on her current SOR, have been paid.

A summary of Applicant's charged-off and collection accounts and the status of each follows:

	Creditor	Amount	Current Status
a	Unpaid medical account.	\$104	Paid. Government concedes it has been paid. (Tr. 78)
b	Repossession of a 2000 Pontiac automobile collection account. (Tr. 107)	\$13,575	Disputed. Creditor is unwilling to adjust the debt. Applicant believes she owes \$4,000 on the debt and is willing to pay that amount. (Tr. 53)
c	Unpaid medical account.	\$80	Paid. (Ex. A-3)
d	Unpaid medical account.	\$109	Paid. (Ex. A-9, Tr. 54)
e	2005 cable provider collection account. (Tr. 112)	\$358	Disputed. Applicant returned the cable company's equipment, but was never credited with the return. (Tr. 55) She has disputed this debt. (Ex. A-13)
f	Charged-off account. Creditor offered to settle for \$1,000 on a balance of \$1,900. (Ex. A-4)	\$6,373	This credit card was used by the auto body shop. (Tr. 38) Applicant asserts she paid the settlement offer, but provided no documentation. (Tr. 58, 86)
g	Collection for a CD/DVD or video program.	\$143	Disputed. Applicant was never in a CD or video program. There have been numerous complaints about this music club for services never ordered or received. (Ex. A-5)
h	Unpaid medical account.	\$37	Resolved. (Ex. A-6, Tr. 62)

	Creditor	Amount	Current Status
i	Collection account for rent.	\$2,054	Disputed. Applicant had a six-month lease. (Tr.93) When the ownership of the apartments changed, the company went to one-year leases. (Tr. 62) The new company asserted she owed three months of rent. She challenged the debt and it no longer appears on her CBR. (Tr. 63)
j	Unpaid medical account.	\$63	Paid in December 2009. (Ex. 7)
11k	Unpaid medical account.	\$1,065	Disputed. This was emergency room treatment following her release from the hospital after her hysterectomy surgery. After disputing the bill, the hospital said they would remove from her account. (Tr. 65, 66)
12l	Unpaid medical account.	\$31	CBR has no contact information for this creditor. (Tr. 66)
13m	Unpaid medical account.	\$218	Paid in September 2009. (Ex. A-8, Tr. 68) Duplicated debt. This is the same obligation as SOR 1. p and SOR 1. v.)
14n	Unpaid medical account.	\$29	CBR has no contact information for this creditor. (Tr. 66)
15o	Bank collection account.	\$1,079	Resolved. (Tr. 70)
16p	Unpaid medical account.	\$218	Duplicate debt. Same debt as SOR 1.m and 1.v. Paid in September 2009. (Ex. A-8, Tr. 68)
17q	Unpaid medical account.	\$149	Paid. (Ex. A-12, Tr. 70)
18r	Unpaid medical account.	\$85	?

19s	Cable collection account.	\$61	Duplicate debt. Applicant asserts this and the cable bill listed at SOR 1.e are the same obligation. (Tr. 73)
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	Creditor	Amount	Current Status
20t	Telephone service collection account.	\$1,818	Disputed. Account is 16 years old and belongs to Applicant's ex-husband. (Tr. 73, 113) The divorce decree required her ex-husband to pay his debts, but did not specifically list each debt to be paid. She disputed the debt and it was removed from her CBR. (Ex. A. 14)
21u	Collection account.	\$394	CBR does not have valid contact information for this creditor. (Tr. 75)
22v	Unpaid medical account.	\$218	Duplicate debt. Same debt as SOR 1.m and 1.p. Paid in September 2009. (Ex. A-8, Tr. 68)
23w	Collection account .	\$164	Disputed. Item purchased 20 years ago and returned. (Tr. 77, 113) After returning the merchandize, she never received any debt notice from creditor.

### **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 must be considered 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(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.

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 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 of 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**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems. Applicant had one charged-off account and nine collection accounts, which totaled more than \$26,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by her failed marriages, her ex-husband's failed business, and her current husband's injuries. She never received the court-ordered child support awarded her in her first divorce. In her second marriage, her husband opened an automotive repair shop. Her second husband's quadruple bypass operation caused depression that ended the marriage. Her ex-husband failed to pay the marital debts he was responsible for, which included the \$1,818 (SOR 1.t) telephone bill for the repair shop and the \$6,373 credit card debt (SOR 1.f).



During Applicant's second marriage, they paid off her ex-husband's truck and started making payments on her car loan, intending to pay it off within two years. After the divorce, the car was voluntarily repossessed leaving a \$13,575 debt (SOR 1.b). Applicant asserts she owes some amount on this debt, but believes the amount to be \$4,000. If the entire amount is owed, she will pay it.

Following Applicant's most recent marriage, she started to address her past-due debts and was making progress on those debts until October 2011, when her husband broke his back. His income decreased from \$77,000 annually to \$30,000 annually from workman's compensation. The workman's compensation claim was approved just prior to the hearing and the first check had not yet been received.

Applicant had cervical cancer and a complete hysterectomy. She also had rotator cuff surgery. Applicant's earlier CBRs list 14 medical accounts, which she challenged and they no longer appear on her most recent CBR. Although listed as unpaid, these accounts were never alleged to have been delinquent, charged-off, or in collection.

Under AG ¶ 20(b), Applicant experienced both separation and divorce along with the financial burden associated with each, plus unexpected medical treatment. 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 applies. She had started to address her past due debts when her current husband broke his back. AG ¶ 20(b) applies.

Applicant has paid or resolved nine of the debts: SOR 1.a (\$104), SOR 1.c (\$80), SOR 1.d (\$109), SOR 1.f (\$6,373), SOR 1.h (\$37), SOR 1.j (\$63), SOR 1.o (\$1,079), SOR 1.q (\$149), and SOR 1.w (\$164). AG ¶ 20(d) applies to these nine debts.

Applicant disputes seven accounts. The vehicle repossession (SOR 1.b \$13,575) occurred following her divorce and has been previously discussed. She disputes ever being a member of a CD/DVD club (SOR 1.g \$134). She had a six-month lease and when the ownership of the apartment complex changed, the new owners claimed she owed three months' rent for early termination of the lease. She disputed this debt (SOR 1.i, \$2,054). She disputed owing her ex-husband's telephone account (SOR 1.w, \$1,818) for the repair shop. She disputes a 20-year-old debt (SOR 1.w, \$164) stating she returned the merchandise. She was charged for emergency room services when she had to return to the hospital following her surgery. She challenged the debt because the hospital had released her too soon resulting in her medical problems. After challenging this debt, it was removed from her CBR. She paid a number of these medical accounts and all 14 medical accounts have been removed from her CBR.

Even without supporting documentation, Applicant's disputes concerning the listed debts appear to be valid disputes. She agrees she owes something on the vehicle repossession and will pay the valid amount owed. She has not recently incurred any large debt. Except as previously listed, she is paying her debts. Her credit score is

improving. She is addressing her debts in a way that does not raise concerns about her current reliability, trustworthiness, or good judgment.

### **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 relevant 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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts were not incurred on luxuries; more than half the debts listed were for medical treatment. Approximately half of the total amount owed was due to a vehicle repossession. The vehicle was purchased when Applicant was married and there were two incomes to make the monthly payment. Her ability to repay the debt ended when her marriage ended. She agrees she owes something on this debt and merely disputes the amount. She will pay this debt. At the time of the car's purchase, it was not a frivolous purchase or a luxury.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her 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, Financial Considerations:                      FOR APPLICANT

Subparagraphs 1.a – 1.w:

For Applicant

**Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge