



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-08093
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
 For Applicant: \_\_\_\_\_, Personal Representative

October 14, 2010

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On July 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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).

Applicant answered the SOR on July 27, 2010, and requested a hearing before an administrative judge. The case was assigned to me on August 23, 2010. DOHA issued a notice of hearing on August 23, 2010, and the hearing was convened as scheduled on September 15, 2010. The Government offered Exhibits (GE) 1 through 4,

which were received without objection. Applicant testified and submitted Exhibits (AE) A through W, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents that were marked AE X through Z and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on September 22, 2010.

### Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. She is applying for her first security clearance. She has a bachelor's degree. She married in 2005 and divorced in 2010. She has a two-year-old child.<sup>1</sup>

Applicant worked her way through college and incurred a number of credit card debts. After graduation, she retained a consumer credit company to address her debts. She worked with the company for several years, but it does not appear that she resolved all her issues. Her husband had periods of unemployment. She was a stay-at-home mother after her child was born in 2008. Applicant and her husband separated temporarily on a few occasions and separated permanently in March 2009. She was able to do some substitute teaching, but mostly she was unemployed until she was hired by her current employer in August 2009. A number of debts became delinquent.<sup>2</sup>

Applicant and her husband had health insurance through his employer when their child was born. There was miscommunication between the hospital and the insurance company, and medical debts related to the childbirth went to collection. Applicant credibly testified that she has been in communication with both the hospital and the insurance company. The hospital has withdrawn the debts from the collection company and is working with the insurance company to address the debts. Applicant stated that she will pay any amount not covered by insurance.<sup>3</sup>

The SOR alleges 15 delinquent debts, as established through credit reports and Applicant's admissions. The delinquent debts raising security concerns in Applicant's case are addressed in the diagram below.

<b>SOR</b>	<b>AMOUNT</b>	<b>STATUS</b>	<b>EVIDENCE</b>
1.a Collection company/department store	\$929	Settled for \$289 June 2010.	Tr. at 34-35; AE A, O.
1.b. Collection company/credit card	\$837	Settled for \$502 February 2010.	Tr. at 35-36; AE B, P.

<sup>1</sup> Tr. at 26-27, 50, 52; GE 1.

<sup>2</sup> Tr. at 26-28, 49-52, 59-60; GE 1, 4.

<sup>3</sup> Tr. at 29-33, 54-59; GE 4; AE Q.

1.c. Collection company/ department store	\$305	Settled for \$206 February 2010.	Tr. at 36; AE C, P.
1.d. Collection company/ department store	\$3,058	Settled for \$1,588 September 2010.	Tr. at 36-37; AE P.
1.e. Medical debt	\$10,850	Working with insurance company.	Tr. at 29-33, 37; AE Q.
1.f. Medical debt	\$493	Working with insurance company.	Tr. at 29-33, 37; AE Q.
1.g. Collection company/vacuum cleaner	\$295	Disputed as paid. Still on credit report. Will pay if legitimate debt.	Tr. at 37-40; AE N, R.
1.h. Credit card	\$2,467	Settled for \$616 June 2010.	Tr. at 40-41; AE D.
1.i. Bank	\$468	Settled for \$317 February 2010.	Tr. at 41; AE S.
1.j. Department store	\$747	Settled for \$689 September 2010.	Tr. at 37, 42; AE P, T.
1.k. Bank	\$646	Plans to pay.	Tr. at 42.
1.l. Bank	\$651	Settled for \$350 February 2010.	Tr. at 43; AE U.
1.m. Utility company	\$693	Paid June 2010.	Tr. at 43; AE E.
1.n. Collection company/ satellite television	\$1,073	Returned equipment and paid final bill of \$308 June 2010.	Tr. at 44; AE F.
1.o. Collection company/ telephone services	\$305	Paid June 2010.	Tr. at 44; AE G.

In summary, Applicant paid or settled eleven debts; she disputed one account; she is working with her insurance company to pay two medical debts; and she has plans to pay one account but has not yet made any payments.

Applicant has not received financial counseling, but her family has been advising her on her finances. She lives with her sister in a house owned by her parents. She has a stable job with a solid company. She paid or settled several delinquent debts that were not alleged in the SOR. She has a settlement offer from a creditor for another debt that is not alleged in the SOR. She is saving the money to pay that settlement. She is not accruing new delinquent debts. She is able to pay her debts each month and put some away for savings. Her father will assist her in an emergency, but he wanted her to

address her finances in order to accept personal responsibility for her actions. Her testimony that she intends to pay her delinquent accounts was credible.<sup>4</sup>

Applicant earned several achievement awards for her exceptional performance. She submitted letters from two supervisors attesting to her outstanding job performance, work ethic, dedication, professionalism, loyalty, and trustworthiness.<sup>5</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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 the 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

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<sup>4</sup> Tr. at 45-48, 52-53, 60-68; GE 4; AE H, M, W.

<sup>5</sup> AE V.

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

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.

Applicant's financial problems started while she was in college. She attempted to resolve them through a consumer credit company, but was unable to remedy all her problems. She married in 2005. Her husband had periods of unemployment. She did not work after the birth of her child. After she and her husband separated, she remained unemployed, except for stints of substitute teaching, until she was hired by her current employer in March 2009. Applicant's and her husband's employment issues and their separation could qualify as conditions that were outside her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant started addressing her delinquent debts before the SOR was issued. Of the fifteen debts alleged in the SOR, Applicant paid or settled eleven debts; she disputed one account; she is working with her insurance company to pay two medical debts; and she has plans to pay one account but has not yet made any payments. She credibly testified that she plans to continue paying her debts. She has not received formal financial counseling, but her family is advising her on her finances. In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board discussed an applicant's burden of proof under these mitigating factors:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and [has] taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his [or her] outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may

provide for the payment of such debts one at a time. *See, e.g.*, ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

I find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay or otherwise resolve her debts. I further find clear indications that her financial problems are being resolved and are under control. AG ¶¶ 20(b), 20(c), and 20(d) are applicable. Applicant does not rate full mitigation under AG ¶ 20(a) because she still has several debts to address.

Applicant disputed owing the \$295 debt alleged in SOR ¶ 1.g. She credibly testified that she believed she paid the debt. She stated that she will pay the debt if it is determined to be legitimate. The debt is listed on the most recent credit report in evidence. She has not provided documented proof to substantiate the basis of the dispute, but she has provided evidence of her actions to resolve the issue. AG ¶ 20(e) is partially applicable to that debt.

### **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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence. I also found Applicant to be honest and candid about her finances. I believe she is sincere about getting her finances in order. As indicated above, an applicant is not required to establish that she has paid every debt listed in the SOR. All that is required is that an applicant

demonstrate that she has established a plan to resolve her financial problems and taken significant actions to implement that plan. I find that Applicant has established a plan to resolve her financial problems and has taken significant action to implement that plan. Her finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Financial Considerations security concerns.

### **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

Subparagraphs 1.a-1.o: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge