



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 09-08325

**Appearances**

For Government: Daniel Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

February 28, 2011

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**Statement of the Case**

On August 4, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and DOHA recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (Ags) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on August 24, 2010. The case was assigned to me on September 27, 2010, and was scheduled on October 6, 2010, for hearing on October 29, 2010. A hearing was held on the scheduled date. At the hearing, the

Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (herself) and six exhibits (AEs A-F). The transcript (Tr.) was received on November 8, 2010.

### **Procedural Issues**

Before the close of the hearing, Applicant requested leave to supplement the record with bank statements reflecting bank savings for paying off her credit card debt and an updated personal financial statement. For good cause shown, Applicant was granted four days to supplement the record. Department Counsel was afforded three days to respond. Within the time permitted, Applicant submitted for consideration a personal financial statement, a bank letter verifying available funds, and payment verification from her employer of payroll funds withheld to satisfy her outstanding debt obligations. (Ex. GE I). Applicant's submissions were admitted as AEs G through I.

Applicant asked for consideration of another submission, this one beyond the time permitted to supplement the record. In a faxed February 5, 2011 submission, Applicant requests admission and consideration of correspondence from her student loan creditor (creditor 1.b) that confirms its (a) grant of successful rehabilitation status to Applicant and removal of the default and (b) its purchase of her student loan from its assigned collection agent. Department Counsel interposed no substantive objections to the submission. For good cause shown, Applicant's February 14, 2011 submission is accepted as AE J.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly incurred two delinquent debts: a credit card debt in the amount of \$5,854 and a student loan debt in the amount of \$41,114.

In her August 2010 response to the SOR, Applicant admitted both allegations. She claimed ongoing settlement negotiations with creditor 1.a and pending loan rehabilitation status with creditor 1.b.

### **Findings of Fact**

Applicant is a 45-year-old technical writer for a defense contractor, who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant married her first husband in June 1985. (GE 1) She has no children from this marriage. Records show that Applicant divorced her husband in February 1995 (GE 1; Tr. 39), and remarried in November 2008. She has no children either from her most recent marriage. (GE 1)

Between August 1992 and 1994, Applicant attended a local community college. She matriculated to an accredited university in 1995 and attended this university for two years before taking a leave of absence. She returned to school several years later on a

part-time-basis and earned a bachelor's degree in communications from this same university in 2010. (see GE ex. 1 and AE F; Tr. 40-41)

Over the course of a four-year period between 2006 and 2009, Applicant worked at various part time and seasonal jobs. She was unemployed between jobs (over four months combined) in 2006, 2008, and 2009. (GE 1; Tr. 40-41, 56-57) Since June 2009, she has worked in a part-time position with her current employer, and has received some encouraging suggestions of a possible full time government contracting position should the Air Force renew her employer's contract, and she obtain her clearance. (see GEs 1 and 3 and AE E; Tr. 41). However, she has no firm commitment from her employer as yet. (Tr. 41-42)

In September 1998, Applicant opened a credit card account with creditor 1.a. She used it primarily for gas and necessities, and accumulated no more than a \$2,000 balance (Tr. 42) She made intermittent payments on the account for a number of years. She also made several payments after it became delinquent in October 2008, and the account was transferred to various collection agencies. (GEs 2 and 3; Tr. 42-43) Applicant made contact with the creditor's collection agents on several occasions and asked for documented payment terms. (Tr. 43) She has never received any documentation other than the original payoff letter she received in 2008. (Tr. 43-44)

Applicant's credit reports reveal a charged-off debt of \$5,854 with creditor 1.a in June 2009. (GEs 2 and 4) She encountered repeated difficulties in making payment arrangements with this creditor's collection agencies, and she decided to save enough money to pay off this creditor in full. (Tr. 44) To date, Applicant has been able to set aside over \$2,500 towards the payment of her creditor 1.a debt. (Tr. 43-44) Her most recent bank statement reflects set-aside funds of \$2,549 in her joint checking account e. (AE H)

Applicant has been delinquent on her federally-insured student loan accounts (creditor 1.b) since March 2006. (GEs 2 and 4) While she has made payments on these accounts for the past eight months (missing only May 2010), she has experienced difficulties in eliciting a long-term payment arrangement from creditor 1.b. (Tr. 45) As of August 27, 2010, Applicant owed \$47,718 on her student loan account. (see AE A) Her furnished account balance as of October 5, 2010 is \$47,465, and reflects post-dated checks for depositing in the respective amounts of \$520 for the months of March 2010 through October 2010 (save for one month). (see AEs C and D; Tr. 45-49)

Applicant was told by her creditor 1.b collection representatives that upon receipt of 10 timely \$520 payments, the creditor may be able to place the account in rehabilitation status. (Tr. 48-51) Applicant's post-hearing submissions reflect ongoing monthly payments to creditor 1.b and restoration of her student loan account (creditor 1.b) to rehabilitation status. Based on its receipt of 10 regular monthly payments from Applicant, her original student loan creditor confirmed its repurchase of the loan from its collection agent, and removal of the loan from default status. (see AE J)

While Applicant has not arranged for any financial counseling, she understands her financial management responsibilities and is firmly resolved to discharging her only two delinquent debts while keeping all of her others accounts in current status. (Tr. 53-55)

Applicant is well-regarded by her CEO, recruiter, and colleagues. She documents numerous credits for her contributions to her employer's technical writing projects. (see AE C) Her character references describe her as very conscientious, reliable, and trustworthy. They credit her with demonstrated good character and excellent performance in the execution of her assigned responsibilities as a technical writer. (see AE C)

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, revoked, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

### **Financial Considerations**

*The Concern:* 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. 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. AG ¶ 18.

### **Burden of Proof**

Under the Directive, a decision to grant or continue an applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) It must prove by substantial evidence any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is a respected employee of a defense contractor who accumulated a number of delinquent debts during recurrent periods of unemployment and

underemployment. She has been earnest in her efforts to resolve her two delinquent debts with the limited income sources available to her.

Applicant's two debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial consideration guideline: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c) "a history of not meeting financial obligations." They have been in delinquent status for some time.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily impose important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on government employees and contractors involved in other lines of government business. *See Snapp v. United States*, 444 U.S. 507, 511 n.6 (1980). Failure of the applicant to make concerted efforts to pay or resolve her debts when able to do so raises security-significant concerns about the sufficiency of the applicant's demonstrated trust and judgment necessary to safeguard classified information.

Addressing her two listed debts, Applicant has encountered repeated difficulties in her attempts to make payment arrangements with creditor 1.a; she has elected to establish a savings account to accumulate enough money to pay off the creditor in full. She has made good-faith efforts to save enough to pay off creditor 1.a, and to bring her student loan account into rehabilitation status. So far, she is making good progress in resolving these two delinquent accounts (creditors 1.a and 1.b). In the supplemental submission she recently provided, she documents her student loan creditor's crediting her with loan rehabilitation and removal of the default. Her student loan account is now considered by her lender to be in current status.

Evaluating all of her repayment efforts contextually, and given the difficult unemployment and underemployment issues she has had to manage the past few years while completing her academic credits for her bachelor's degree, Applicant may be credited with serious, good-faith efforts to resolve her debts and regain control of her finances. She has made considerable progress to date in regaining control of her finances and shows good promise for fulfilling her remaining debt obligations.

Based on her evidentiary showing, Applicant's proofs are sufficient to establish significant extenuating circumstances associated with her debt accumulations. As a result, MC ¶ 20(b) of the financial considerations guideline, "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)," applies to Applicant's circumstances.

Applicant's repayment efforts entitle her to mitigation credit under MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as well. Applicant has demonstrated credible resolve in addressing her only two delinquent debts (creditors 1.a and 1.b). These mitigating conditions have application to Applicant's situation, considering her earnest repayment efforts.

In balance, Applicant has shown good faith in addressing her debts since joining her current employer in 2009. And, with good prospects for returning to full-time employment with her employer, she demonstrates that she is now firmly in control of her finances and can be expected to stay current with her debts.

Based on a whole-person assessment, Applicant surmounts the judgment questions raised by her accumulation of two major delinquent debts during recurrent periods of unemployment and underemployment. Her positive endorsements from her CEO, recruiter, and coworkers merit considerable praise and commendation. In balance, she has shown sufficient tangible effort in addressing her only listed delinquent debts to mitigate security concerns over these two debts and demonstrate restored control over her finances.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, her limited resources during her recurrent periods of unemployment and underemployment, and the concerted steps she has mounted to address both of her delinquent debts, safe predictive judgments can be made about her ability and intentions to repay her accrued debts and restore her finances to stable levels commensurate with her holding a security clearance. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a and 1.b.

### **Formal Findings**

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE F (FINANCIAL CONSIDERATIONS):      FOR APPLICANT

Subparagraphs 1.a through 1.b :                      For Applicant

### **Conclusions**

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

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Roger C. Wesley  
Administrative Judge





