



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



In the matter of: )  
)  
) ISCR Case No. 09-08340  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borstrom, Esquire, Department Counsel  
For Applicant: Gerald Gilliard, Esquire

October 14, 2010

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

On March 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 22, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 6, 2010. DOHA issued a Notice of Hearing on June 19, 2010. I convened the hearing as scheduled on August 23, 2010. The Government offered Exhibits (GE) 1 through 9.

Applicant did not object and they were admitted. Applicant and two witnesses testified on her behalf. Exhibits (AE) A through P were offered and were admitted without objections. The record remained open until September 7, 2010, to allow both parties an opportunity to provide additional documents. Department Counsel offered GE 10. Applicant offered AE Q through X. There were no objections and the exhibits were admitted. Applicant requested the record continue to remain open to provide additional documents. The request was granted. Applicant's attorney provided exhibits AE Y through CC. I marked a letter from Applicant's attorney as AE DD. Department Counsel had no objections and they were admitted. The record closed on September 28, 2010.<sup>1</sup> DOHA received the hearing transcript (Tr.) on September 1, 2010.

### **Findings of Fact**

Applicant denied all of the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 33 years old. She graduated from high school in 1995. She took computer classes from 1996 to 1997, and attended college from August 2001 to December 2002, but did not earn a degree. She married in March 2001, and divorced in June 2003. Her son was born in June 2002, and she receives child support from the child's father. She married again in 2004 and was divorced in April 2005. There are no children from the marriage. She has worked for her current employer, a federal contractor, since January 2010. Before then, she worked for a different federal contractor.<sup>2</sup>

In December 2002, Applicant, her first husband, and her parents purchased a home (Home #1) together. In approximately 2003, when she filed for divorce, she and her parents refinanced the house so they could have the first husband's name removed from the mortgage. The agreement was for Applicant to pay half of the mortgage and her parents to pay the other half. The mortgage payment was approximately \$3,200 a month.<sup>3</sup>

In October 2007, Applicant's mother had a stroke and was unable to work. In December 2007, Applicant's father was laid off from his construction job. During this time, Applicant and her fiancé were in the process of purchasing a house (House #2) together. She believed that she and her parents would be able to sell House #1 and her father would not be unemployed for a long time. She planned on moving into House #2. Her name is on the deed of House #2, but not on the mortgage loan. The house cost \$550,000. The mortgage payment for House #2 is \$3,544. She contributes \$2,500 toward the mortgage and utilities. Her fiancé contributes \$1,500, and pays some

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<sup>1</sup> Hearing Exhibits I –VI are letters, requests, and responses from Department Counsel and Applicant's Counsel.

<sup>2</sup> Tr. 30-34, 62-68.

<sup>3</sup> Tr. 68-69.

utilities. She moved into House #2 in January 2008. Applicant stated her fiancé was unemployed from October 2009 to March 2010, and they got behind in paying some of their bills.<sup>4</sup>

Applicant's father was unemployed for more than a year. Her parents moved into House #2 with her fiancé and her son. House #1 was rented in March 2008, but the rent was less than the mortgage payments. Applicant paid the \$800 difference on the mortgage until the tenants moved out a year later. Applicant stopped paying the mortgage in February 2009. She attempted a "short sale" on House #1, but was unsuccessful. House #1 was foreclosed in December 2009.<sup>5</sup> This debt is listed in SOR ¶ 1.e as a past-due account for \$52,716. Evidence shows the property was sold for less than the mortgage.<sup>6</sup> Applicant does not know if she owes the deficiency. She stated she believes the debt on the mortgage is zero and the account is closed. She has attempted to find out from the creditor if she owes anything on the debt. She was advised the account is closed, but has not been advised if she owes the deficiency.<sup>7</sup> The debt is unresolved.<sup>8</sup>

The debt in SOR ¶ 1.a is a credit card debt that was 120 days or more past due in the approximate amount of \$429. Applicant stated she has caught up on her past-due payments and she is now current on the debt. Her credit bureau report (CBR) shows the debt is current and also reflects that in the past seven months she has been late paying the debt four times.<sup>9</sup>

The debt in SOR ¶ 1.b is a credit card debt that was 60 days or more past due in the approximate amount of \$278. Applicant stated she has caught up on her past-due payments and she is now current on the debt. Her CBR shows the debt is current and also reflects that in the past seven months she has been late paying the debt four times.<sup>10</sup>

The debt in SOR ¶ 1.c is a credit card account placed for collection in the amount of \$144. The debt was owed from 2008. Applicant paid the debt on March 22, 2010, and closed the account.<sup>11</sup>

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<sup>4</sup> Tr. 69-78, 118-126.

<sup>5</sup> AE K.

<sup>6</sup> GE 9, 10; AE W.

<sup>7</sup> AE M, R, S, T, U, V, W.

<sup>8</sup> Tr. 43-62, 78-87, 135-144; GE 6 at 3.

<sup>9</sup> Tr. 37, 105-106; Answer Exhibit C; AE O at page 8-9, AE BB.

<sup>10</sup> Tr. 37, 106-108; Answer Exhibit D; AE O at page 9-10.

<sup>11</sup> Tr. 37; Answer Exhibit E.

Applicant disputes the account in SOR ¶ 1.d for a charged-off amount of \$469. The account was for telephone services that she canceled when she moved to a new residence. She advised the telephone company to stop the service, but they did not. Instead, they continued to bill her at the residence. She repeatedly disputed the debt with the creditor, but to no avail. To resolve the debt, she accepted a settlement offer from the creditor for \$402.16. She made two payments in March 2010, to satisfy the settlement and resolve the debt.<sup>12</sup>

The debt in SOR ¶ 1.f is for an account that was 120 days or more past due in the approximate amount of \$4,327. The debt in SOR ¶ 1.g is for an account that was 120 days or more past due in the approximate amount of \$1,514. The debt in SOR ¶ 1.h is for an account that was 120 days or more past due in the approximate amount of \$430. The creditor is the same in all three accounts. No payments were made on these debts from July 2008 until September 2009. Applicant requested the accounts be consolidated, and she was given a six-month temporary hardship plan where she was permitted to make minimal payments. On May 3, 2010, the account summary showed Applicant owed a total of approximately \$19,950 on the consolidated debts. The creditor noted on May 19, 2010, that two payments were made on the consolidated accounts and they were in good standing. Applicant estimated she has paid \$600 on the consolidated debts. The creditor stated: "We accepted a minimal payment to bring all the above accounts current in your favor."<sup>13</sup> Applicant's reduced payments will end in October 2010. She believes she will be able to pay the required amount.<sup>14</sup>

When asked if she had other delinquent debts not listed on the SOR, Applicant provided the following information. Applicant owes a balance of approximately \$954 for student loans. She did not recall how many payments she had missed. Her CBR reflects that the last payment received was November 2009. The monthly amount owed is \$19. She is \$154 past due. Applicant stated she got behind on paying her student loan because she had to pay her lawyer. Applicant also stated she received a line of credit with Creditor X in approximately 2002. She permitted her sister to use the line of credit to purchase two computers, one for herself and one for Applicant's son. The amount of the debt is listed as \$2,559 and her credit limit is \$2,500. She stated she tries to make payments on the debt when money is available. The debt is past due. Applicant stated that another debt to a department store, that was listed as past due, is now paid.<sup>15</sup>

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<sup>12</sup> Tr. 38-39; Answer Exhibits F and G, AE X.

<sup>13</sup> Answer Exhibit I.

<sup>14</sup> Tr. 40-43, 87-105; AE H.

<sup>15</sup> Tr. 110-117; AE O. I have not considered any debts not alleged for disqualifying purposes, but have considered it when analyzing Applicant's financial status, ability to pay her debts, and when analyzing the "whole person."

Applicant's fiancé was unemployed from October 2009 to March 2010. He used money from his pension plan during this time period. Applicant used her 2008 tax refund of approximately \$15,000 to eliminate some high-interest credit card debts. She used her 2009 tax refund of approximately \$5,000 to \$6,000 to pay two credit cards.<sup>16</sup>

Applicant stated she is current on her other bills. She has approximately \$750 in her checking account and \$100 in savings. She has no other liquid assets. In 2008 and 2009, she earned approximately \$103,000 and \$105,000 respectively. In January 2010, she began a new job and she expects her annual income to increase to approximately \$130,000. She stated that she paid for her mother's medications because her father could not afford them.<sup>17</sup>

A friend testified on behalf of Applicant. She has known her since 2006 and has no reason to question her reliability, trustworthiness, or good judgment.<sup>18</sup>

Applicant's co-worker testified on her behalf. He has known her since 2007 and they have worked together in a support group. He is not aware of any financially irresponsible conduct by her. He noted that Applicant always followed the rules and procedures when working with classified networks.<sup>19</sup>

I have considered all of the documents provided by Applicant, including her post-hearing submissions. I have considered Applicant's post-hearing statement that her fiancé placed an earnest money deposit on a home in November 2007 and that she is not listed on the mortgage of House #2.

## **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 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, 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,

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<sup>16</sup> Tr. 127-128.

<sup>17</sup> Tr. 118-119, 129-130.

<sup>18</sup> Tr. 146-156.

<sup>19</sup> Tr. 157-160.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Applicant has a large delinquent debt that remains unresolved. She has other debts that were past due that she recently paid. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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 recently paid some of her delinquent debts and paid others that were past due. She is also making reduced payments on three debts that were consolidated, under a temporary hardship reduction granted by the creditor. Her largest debt listed on her credit report is for a deficiency on a foreclosed mortgage that is not yet resolved. Applicant purchased House #2 after she was aware that her father lost his job and her mother was unable to work. For a while she was able to stay current with the mortgage on House #1, but eventually she stopped paying it when she could not afford it. I find that Applicant's behavior is recent because she is still resolving the deficiency on the foreclosure of Home #1. She has paid or caught up payments on some of her

delinquent and past-due debts, but not all of them. Although her parents' circumstances were beyond her control, her financial decision to purchase a second house was within her control. Although she provided a statement that her name is not on the mortgage of House #2, she made and continues to make substantial payments towards the mortgage of House #2. She stopped making the payments on House #1 that she was contractually obligated to pay. I find she did not act responsibly under the circumstances. I find AG ¶¶ 20(a) and 20(b) do not apply. I have considered Applicant's total financial circumstances, her financial decisions, and her current ability to continue to pay her bills and debts. She has made significant steps in stabilizing her finances, but at this juncture, I am not convinced that the problem is under control. She was given a grace period due to hardship on three debts that will expire in October 2010. She has two other delinquent debts that are not alleged in the SOR, but impact her financial situation. Her student loan payment is only \$19 a month, yet she has not made payments on it in months. There is no evidence she received financial counseling. I find AG ¶ 20(c) does not apply. I find AG ¶ 20(d) partially applies because Applicant has paid some of her delinquent debts and some that were past-due are now current.

When Applicant's security clearance became a concern, she began to address the mortgage deficiency that was listed on her CBR. She has contacted the creditor to determine if she owes a deficiency. She has not received a response. However, the circumstances surrounding the foreclosure on her first home were due to poor financial decisions she made. She chose to continue with the purchase of House #2, knowing her parents would be unable to contribute to the mortgage. She defaulted on the House #1 mortgage, that she was contractually obligated to pay, after she decided to provide funds to her fiancé to purchase House #2. The debt is not paid and is unresolved. Applicant settled a debt for telephone services that she disputed. She provided documentation to support her dispute. I find AG ¶ 20(e) applies to this 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 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. 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.

Applicant experienced financial difficulty when she decided to purchase a second home. She relied on her parents to pay half of the mortgage on the first house. She made a decision to proceed with the purchase of the second home even though she was already aware that her father had lost his job and her mother was unable to work. Although she hoped to sell the house quickly and her father would resume employment, neither happened. The home was foreclosed, and there is still an issue about the deficiency owed on it. Some of Applicant's debts became delinquent and others were past due during this time. She has paid or resolved some, but she has other debts that affect her financial situation that have not been addressed. Applicant will begin making full payments to a creditor that permitted her to make reduced payments until October 2010. Her student loan remains delinquent.

I have considered Applicant's total financial situation. I have considered that she took action to resolve some of her delinquent debts, but has others that were not on the SOR that have not been addressed. She made a risky financial decision by providing funds to purchase a second home at a time when her parents were not able to contribute to the mortgage on her first home. At this juncture, it is too early to conclude Applicant's finances are stable and are not a security concern. Her financial situation remains precarious. 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 the guideline for 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, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Subparagraph 1.h:

For Applicant

**Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge