



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-00032
	)	
Applicant for Security Clearance	)	

**Appearances**

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

November 30, 2011

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant has six charged-off, placed-for-collection, or delinquent accounts totaling approximately \$49,000. In December 2010, she entered into a repayment agreement whereby she pays \$1,232 monthly to her creditors. Applicant has rebutted or mitigated the security concerns under financial considerations. Clearance is granted.

**Statement of the Case**

Applicant contests the Defense Department's (DoD) intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

Statement of Reasons (SOR) on November 11, 2010, detailing security concerns under Guideline F, financial considerations.

In an undated response, Applicant answered the SOR and requested a hearing. This case was initially assigned to a different judge. On June 17, 2011, DOHA issued a Notice of Hearing for the hearing to be held on July 13, 2011. However, Applicant had difficulty returning from her overseas location to attend the hearing due to actions by her employer. On August 1, 2011, I was assigned the case. On August 19, 2011, DOHA issued a Notice of Hearing rescheduling the hearing held on August 30, 2011.

Efforts were made to hold the hearing by video teleconference (VTC), which would have allowed her to remain in country for the hearing. However, VTC was unavailable at her overseas duty location. When the hearing could not be held by VTC, she immediately arranged to travel to the United States, at a cost to her of \$1,500, to attend the hearing.

At the hearing, the Government offered exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified on her own behalf and submitted exhibits A through J, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. On August 31, 2011, additional material was submitted. On October 31, 2011, Department Counsel had no objection to the material, which was admitted into the record as Ex. K through Ex. M. On September 8, 2011, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, she admitted all of the factual allegations in the SOR and her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 32-year-old logistics analyst who has worked for a defense contractor since October 2009, and seeks to obtain a security clearance.

In 1997, Applicant joined the U.S. Army. Applicant married in March 2002 and divorced in May 2007. (Tr. 33) She served with the Army until January 2006, when she was medically discharged as an E-5 due to asthma attacks. (Tr. 33, 77) From February 2003 through March 2004, Applicant was deployed to Kuwait with the U.S. Army. (Ex. 1) While in the Army, she received the Army Commendation Medal, the Army Achievement Medal twice, three certificates of achievement, and two certificates of appreciation. (Ex. L)

Applicant served in Iraq for 18 months in the Army starting in 2003. (Tr. 75) She returned to Iraq as a civilian in January 2006. Applicant's best friend, a U.S. Army veteran, who served with Applicant twice in Iraq characterizes her as loyal, trustworthy, and as being in a much better position now to address financial problems. (Tr. 70, 72)

In 2007, Applicant bought a home for \$200,000. (Ex. E, Tr. 56) The home required kitchen and bath remodeling. (Ex. 2, Tr. 40) Applicant incurred a \$9,272 on a charge account (SOR 1.d) for remodeling material. At the time she purchased her home, she also incurred a \$10,141 debt (SOR 1.f) for the purchase of appliances for the home. (Ex. 2) She is timely on her mortgage payments. (Ex. E, Tr. 56)

In addition to the debts related to Applicant's home, she owed \$13,016 on loan and owed the same creditor \$11,701 on a credit card account (SOR 1.e). She owed \$14,324 to a different credit card company (SOR 1.g). (Ex. 2) Applicant is also making \$68 monthly payment on a debt not listed in the SOR. (Ex. G, Tr. 53) Her car, a 2002 Honda, is paid for. Her credit report indicates that her financial difficulties began in late 2008. (Ex. B, Tr. 64) She currently receives no calls or letters from any creditors not listed in the SOR. (Tr. 66-67)

From December 2005 through August 2008, she was working in Iraq for a civilian contractor. (Tr. 36) In August 2008, she was called home when her mother died unexpectedly. She had to pay the funeral expenses, and transferring her mother from one state to another then return to the former state to take care of her mother's goods and end her mother's lease. (Tr. 37) Her employer terminated her when she misplaced her passport preventing her from returning to the job immediately. (Ex. F, Tr. 41) The passport was misplaced while traveling back and forth relating to her mother's death and the handling of her mother's estate. She paid a \$600 fee to expedite the replacement of her passport. However, her company was unwilling to wait and terminated her. She was out of work until she secured a low-paying job with a protective service. The job paid so poorly she was not able to pay her bills. (Tr. 46)

From January 2009 to July 2009, Applicant was working overseas as a force protection officer for a civilian contractor. While there, her fiancée moved into her home in the states. Approximately a year after her mother's death, the job was not paying very well and Applicant decided to return to the states to attend school. However, she obtained a better-paying job with a new contractor and decided to return to the states and surprise her fiancée with the good news. She was the one surprised when she found her fiancée in bed with another person. (Ex. 2) An acrimonious separation then ensured during which her fiancée emptied her bank account and took everything from the home including the washer and dryer, the bedroom set, TV, clothing, and even the luggage Applicant had brought with her on her return from Kuwait. Applicant is still paying for some of the items her fiancée wrongfully took. (Tr. 2)

In October 2009, Applicant secured a job with her current contractor and returned overseas. (Ex. 2) Her current pay is \$43,000 per year, excluding extra amount paid due to her overseas location. (Ex. 2) As of June 2010, she listed her monthly gross salary as \$6,000 per month. (Ex. 2) Her monthly expenses were approximately \$1,000, her debt payment was \$2,425, and her monthly net remainder (income less expenses and debt payment) was approximately \$2,100. (Ex. 2)

In January 2011, Applicant was transferred to a different job with her same employer. This job paid \$53,000 per year. (Ex. C) She indicated that she receives additional compensation for being overseas which increases her yearly salary to approximately \$90,000. (Tr. 47)

In December 2010, Applicant sought the services of a debt relief company. (Ex. A, Tr. 53, 61) She has established a debt management plan to address her outstanding obligations. (Ex. H, J, K, M) Each month \$1,232 is automatically deducted from her account. (Tr. 51, 52, 62) Since December 2010, she has paid the debt relief service more than \$12,000. (Ex. K) She paid: December 2010 \$1,365, January 2011 \$1,080, February 2011 \$1,080, March 2011 \$1,080, April 2011 \$1,080, May 2011 \$1,080, June 2011 \$1,415, July 2011 \$2,890, and August 2011, \$1,232. The service then pays four of her creditors including the accounts listed in SOR 1.d, 1.e, 1.f, and 1.g. (Tr. 52)

A summary of Applicant's charged-off accounts, placed-for-collection accounts, and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	Medical account.	\$1,838	Paid. The debt was being collected by a law firm. (Ex. A)
b	Collection agency collecting on a cable TV account.	\$398	Paid. (Ex. A)
c	Medical account	\$971	Applicant disputes this debt. (Tr. 51)
d	Home renovation account was more than 120 days past due. Total balance is \$10,000. (Ex. J, Tr. 54)	\$10,000	Debt is being paid. (Ex. A, J, K, M) Applicant made a \$245 payment August 2011. (Ex. H) Balance as of August 2011 was \$9,449. (Ex. I)
e	MasterCard account charged off.	\$12,000	Debt is being paid. (Ex. A, J, K, M, Tr. 58)
f	Appliance account charged off.	\$10,000	Debt is being paid. (Ex. A, J, K, M, Tr. 58) Account was for appliances purchased at the time she bought her home. (Tr. 59)
g	Credit card account charged off. (Tr. 59)	\$14,000	Debt is being paid. (Ex. A, J, K, M, Tr. 59)
	Total debt listed in SOR	\$49,207	

## 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 starting in late 2008. Applicant had six past-due, charged-off, or delinquent accounts totaling approximately \$49,000. 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.

Applicant maintained good credit until a combination of factors in 2008 led to her inability to pay her debts in a timely manner. Her mother's death, her job termination, her unemployment for a number of months, and her ex-fiancée actions all contributed to her financial problems. She has entered into a repayment plan addressing her delinquent debts. Each month \$1,232 is automatically debited from her account, sent to a credit service, which in turn makes payment on her debts

Applicant's financial problems are recent, but did happen under conditions which are unlikely to recur. Applicant may become unemployed in the future, but the death or her mother will not recur. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced the death of her mother, periods of unemployment, and wrongful actions by her ex-fiancée all of which were beyond her control and contributed to her financial problems. She has acted responsibly under the circumstances in establishing a repayment plan with her creditors. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has established a repayment plan and has been making payments in accord with the plan since December 2010. There are clear indications her financial problems are being resolved.

An applicant is not required to establish that she has paid off each and every debt listed in the SOR. All that is required is for her to demonstrate she has established a plan to resolve her delinquent debt and has taken significant action to implement that plan. The concept of "meaningful track record" includes evidence of actual debt reduction through payment of debts. I must reasonably consider the entirety of Applicant's financial situation and her actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. 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. Her plan addresses all of the SOR debts.

Applicant disputes the sole remaining \$971 medical debt. She has implemented a plan to address \$48,000 of the SOR debt. I believe she will also address this

remaining debt should her dispute be unsuccessful. This remaining debt is of insufficient size to 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. Applicant has been assigned to overseas duty on numerous occasions while on active duty with the U.S. Army and as a civilian in support of the Army. Clearly her actions are more than mere promises to pay. She is making progress on the payment of her debt. For approximately one year, Applicant has been making payment on the SOR debts. The money is automatically deducted monthly from her account. I believe she will continue this arrangement until the debts are paid. The sole remaining medical debt, which she disputes, is not large enough to be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid or are being paid – which they are – it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

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.g: 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