



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-00139
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn E. Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

May 19, 2011

**Decision**

WHITE, David M., Administrative Judge:

Applicant has substantial delinquent debt, including more than \$72,000 in unpaid Federal taxes. During the past year, she has hired a company to help resolve her tax debts, and has repaid or begun periodic payments toward several other debts. She made a good start toward addressing financial security concerns, but the efforts to date are insufficient to fully mitigate them. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on August 28, 2009. On September 9, 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 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on October 15, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 10, 2010, and the case was assigned to me on November 16, 2010. DOHA issued a Notice of Hearing on December 23, 2010, and I convened the hearing as scheduled on January 25, 2011. The Government offered exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered exhibits (AE) F through I, to supplement the documents submitted with her response to the SOR, which were marked as attachments (Att) A through E. All of these documents were admitted without objection, and Applicant testified on her own behalf. I granted Applicant's request to leave the record open until February 28, 2011, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on February 10, 2011. On February 22, 2011, Applicant submitted AE J through L, which were also admitted without objection, and the record was closed as scheduled. On April 6, 2011, Applicant submitted an email with updated information on her work status. Department Counsel forwarded it on April 13, 2011, and had no objection to consideration of the information. I reopened the record, admitted the email as AE M, and again closed the record.

### **Findings of Fact**

Applicant is a 55-year-old employee of a defense contractor, where she has worked as a truck driver since June 2009. She has no military service, and this is her first application for a security clearance. She is a high school graduate and attended a hotel management trade school for two years. She is married for the fifth time, and has one adult daughter.<sup>1</sup> In her response to the SOR, Applicant did not deny any of the factual allegations in SOR ¶¶ 1.a through 1.y, but explained that two of the alleged debts were paid after the date of the SOR, and she had made arrangements toward resolution of some others.<sup>2</sup> Applicant's admissions, including her statements in response to DOHA interrogatories,<sup>3</sup> are incorporated in the following findings.

Applicant worked in various low-paying jobs in the restaurant industry during and between her first four marriages. After each marriage, she wound up responsible for the joint debts, and received no help repaying them from former husbands. In her words, before her current marriage, she "seemed to draw the wrong kind of people . . . alcoholics, drug addicts, just don't want to work."<sup>4</sup>

Since 1999, Applicant has been working as an over-the-road long-haul truck driver. She and her current husband became partners in about 2004, started their independent owner/operator trucking business in 2005, and married in 2006. During the spring of 2008, their business failed due to a combination of high fuel prices and a

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<sup>1</sup>GE 1; Tr. 6, 32, 36, 39, 46.

<sup>2</sup>AR.

<sup>3</sup>GE 2.

<sup>4</sup>Tr. 32, 36-39.

slowdown in demand for their services. Their semi-truck was repossessed. She drove for another company until July 2008, and was then unemployed for almost a year until she obtained her current position. While operating their independent trucking business, Applicant's daughter was living in their home for a period of time due to problems with her husband. They made the daughter an employee of the company, and left her to deal with some of their business and personal finances while they were away on the road. A few of the smaller debts on the SOR resulted from the daughter's misuse of these privileges, and Applicant ultimately terminated that arrangement.<sup>5</sup>

The three debts alleged in SOR ¶¶ 1.a, 1.b, and 1.d involve delinquent state income tax liens filed in 2009, 2010 and, 2008, totaling \$6,535. Applicant's wages are being garnished to repay these debts. The debt in ¶ 1.d is fully repaid. The remaining balance on the other two debts totals \$910.<sup>6</sup>

The three debts alleged in SOR ¶¶ 1.c, 1.q, and 1.y involve delinquent Federal income taxes for 2006, 2007, and 2008, totaling \$72,125. These three debts constitute about 62% of the SOR-alleged debt. Applicant said that she thinks the accountant who prepared their taxes doubled their actual income from the trucking business on their returns for one or more of those years. She and her husband hired a tax and debt relief service company on April 30, 2010, to deal with the Internal Revenue Service (IRS) on their behalf. This company is charging them at least \$5,900 in fees to undertake a review of their returns, inform them of available resolution options, and represent them to the IRS in attempting to implement their desired resolution. The payments are \$369 twice a month for 8 months, beginning in May 2010. As of the date of the hearing, all of those payments had been made, although no progress on resolving the tax delinquencies was anticipated until April or May of 2011. Before hiring this company, Applicant made some payments toward these delinquencies, and their \$836 refund due after filing their 2009 Federal income tax return was seized and applied toward the debt. However, at the hearing she estimated the current total of these three debts at about \$75,000 with interest and penalties.<sup>7</sup>

The \$9,730 debt alleged in SOR ¶ 1.e involves a loan for repairs to their truck before its repossession. On October 14, 2010, Applicant entered into a repayment agreement with the collection agency to settle the then-due \$9,932 balance for \$7,945, payable in twice-monthly payments of \$350. Applicant testified that she had made each of the required payments except the first one, on October 30, 2010, which they agreed to add to the end of the payment schedule. If all future payments are made in a timely manner, then the balance of this settlement amount will be repaid in late November or early December 2011.<sup>8</sup>

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<sup>5</sup>GE 1; GE 2; Tr. 33, 39, 43, 88-92, 113.

<sup>6</sup>Att A; Att B; AE H; GE 2; GE 5; Tr. 45-46, 56-63.

<sup>7</sup>Att C; GE 2; GE 3; Tr. 64-75, 149-158.

<sup>8</sup>Att E; Tr. 75-82.

The \$896 debt alleged in SOR ¶ 1.m is owed to a collection agency for a delinquent credit card account. Applicant and the agency entered into a repayment agreement on November 6, 2010, under which she would make 12 monthly payments of \$60 each, beginning December 6, 2010, for a total settlement amount of \$720. Appellant testified that the agency had taken the first two payments, for December and January, from her prepaid credit card account.<sup>9</sup>

The \$3,130 debt alleged in SOR ¶ 1.o is a delinquent cell phone account. Applicant claimed that she made a settlement agreement with the collection agency to make five monthly payments of \$451, from May through September 2010, for a total settlement amount of \$2,253. At the hearing, she said that at some point in October or November she reduced the monthly payment amount to \$220 because the larger payments were no longer affordable. She did not know the remaining balance, but said she would provide updated information in her post-hearing submission of evidence. She did not provide that information, nor did she ever document having made any payments toward this debt.<sup>10</sup>

The \$9,501 debt alleged in SOR ¶ 1.p is for a vacation timeshare membership loan that Applicant and her husband entered into while in Las Vegas for their wedding in November 2006. Applicant said she was told that they could cancel the agreement at any time. When they realized that they could never use the timeshare vacation properties because of their work schedule, she called the company to cancel the agreement. Her September 2009 credit report shows the debt as delinquent with the SOR-alleged balance due. Her August 2010 credit report shows the loan as a foreclosure with a zero balance due.<sup>11</sup>

Applicant paid the \$480 debt alleged in SOR ¶ 1.u on September 17, 2010. She provided a letter from the collection agency, dated October 7, 2010, confirming that the debt was paid in full.<sup>12</sup> She also said in her post-hearing submission that she recently paid the \$14 delinquent medical debt alleged in SOR ¶ 1.l, but provided no documentation to corroborate that claim.<sup>13</sup>

Applicant has been in communication by telephone with many of her other creditors, and has resolved some other formerly delinquent debts that were not alleged on the SOR.<sup>14</sup> However, she has not paid or made other arrangements to resolve any of the remaining SOR-alleged delinquent debts set forth in SOR ¶¶ 1.f, 1.g, 1.h, 1.i, 1.j,

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<sup>9</sup>AE G; Tr. 97-99.

<sup>10</sup>GE 2 at 2, 32; Tr. 108-112.

<sup>11</sup>GE 5 at 2; GE 6 at 6; Tr. 112-114.

<sup>12</sup>Att D; Tr. 101-103, 127.

<sup>13</sup>AE J; Tr. 93-97.

<sup>14</sup>AE F; Tr. 80, 83.

1.k, 1.n, 1.r, 1.s, 1.t, 1.v, 1.w, and 1.x. These 13 debts total \$14,217, although three of them are less than \$100. She said that she wanted to take care of the debts on which she was being charged higher interest before addressing these debts.<sup>15</sup>

Applicant has not undergone financial counseling. Other than tracking her expenditures, she does not have a budget or other financial plan. She has no surplus, no savings, and owns only an old pickup truck and a 27-foot camper trailer in which she and her husband live when they are not on the road driving a company truck. She has no bank accounts or open credit cards, and uses a prepaid Visa card for electronic deposit of her wages and expenditures. She and her husband live very frugally, and do not gamble. Her husband holds a security clearance, but new security regulations require that both drivers on a team hold clearances to drive classified loads that pay more per mile.<sup>16</sup>

In her first post-hearing submission in February 2011, Applicant wrote to Department Counsel that she had not been able to pay any more bills except the \$14 debt alleged in SOR ¶ 1.i, discussed above. She said that her husband got hurt on the job and she was put on leave-of-absence because they only assign drivers in teams. She did not elaborate on the status of payments under the settlement agreements concerning the debts alleged in SOR ¶¶ 1.e, 1.i, and 1.o, or remaining fees due to her tax and debt relief service company. A plain reading of her statement, and her absence of any other financial resources, would most logically support a finding that those payments all ceased.<sup>17</sup>

In her second post-hearing submission in early April 2011, Applicant said that she would be returning to work after being on leave since January. Her husband had surgery for his injury, and the company was going to let her team with another driver until he returned to work. She stated that since her hearing she had paid a \$1,500 bill that she did not further identify. No SOR-listed debts are within \$200 of that amount. She also stated that she had placed all her large bills into a debt consolidation program with a local law firm, resulting in one payment per month to go toward all the debts on her credit report. She provided no documentation concerning this plan, the debts included therein, or the required payments.<sup>18</sup>

Two long-time friends and former coworkers wrote letters describing Applicant's conscientiousness, timeliness, dependability, and general good character. She is a very earnest, sincere, candid, and nice person, whose testimony was credible.<sup>19</sup>

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<sup>15</sup>GE 2 at 14, 16, 30; GE 5 at 2; GE 6 at 10; Tr. 43-46, 75-93, 99-108, 114-128.

<sup>16</sup>AE I; Tr. 49-53, 129-137, 160-161.

<sup>17</sup>AE J.

<sup>18</sup>AE M.

<sup>19</sup>AE K; AE L; Tr. 165.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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 evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) "inability or unwillingness to satisfy debts"; and ¶ 19(c) "a history of not meeting financial obligations." Applicant's history of delinquent debt stretches back many years and continues, in large part, at present. Some of her delinquent state taxes were repaid through garnishment, and she made arrangements to resolve a few of the other debts. However, at least \$87,252 of SOR-alleged debts remain unresolved, and she did not demonstrate an ability to address them in the foreseeable future. The burden accordingly shifts to Applicant to rebut, explain, extenuate, or mitigate these facts and the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

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

Applicant's delinquent debt has accrued over many years, but remains delinquent for the most part to date. She was unable to demonstrate that her inability to

pay her debts is unlikely to recur. To the contrary, she was placed on a leave of absence shortly after her hearing and was unable to pay her debts for at least three months. When she began her current job she started resolving her delinquent debts, but it is too early to reasonably conclude that her lengthy pattern of financial problems is unlikely to recur and does not cast doubt on her reliability. Applicant established the beginning of mitigation under AG ¶ 20(a), but several months of efforts to address the debts are insufficient to outweigh concerns arising from the long history that preceded them.

Some mitigation under AG ¶ 20(b) was also established. Applicant claimed that her large tax delinquencies were the result of an accountant's mistakenly overstating her income, but provided no documentation to corroborate that assertion. On balance, the evidence shows that this explanation is inaccurate.<sup>20</sup> She and her husband were unable to profitably operate their own trucking business, but she failed to show that this was due to circumstances beyond their control and she was hired almost immediately to drive for another company. She lives frugally, but has nevertheless accumulated substantial delinquent debt without the means to meet her financial obligations.

Applicant has not received financial counseling, but recently began to resolve some of her debts. She documented full payment of the debt alleged in SOR ¶ 1.u, and the debt alleged in SOR ¶ 1.p was resolved through foreclosure. The state tax debt alleged in SOR ¶ 1.d was satisfied through wage garnishment, which has also brought the balance due on the debts alleged in SOR ¶¶ 1.a and 1.b down to \$910. She also documented settlement agreements with her creditors for the debts alleged in SOR ¶¶ 1.e, 1.m, and 1.o, but the only evidence of payments thereunder is her testimony. She also said that she paid the \$14 debt alleged in SOR ¶ 1.l after the hearing. Thus, the beginning of mitigation was established under AG ¶¶ 20(c) and (d), but the track record of actual debt repayment is too short to provide substantial mitigation of the foregoing security concerns.

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, “[a]n applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has ‘taken significant actions to implement that plan.’”<sup>21</sup> This applicant has recently begun to resolve the debts that give rise to security concerns. Additional time and documented follow-through is required, however, in order to meet the Appeal Board’s standard of significant action to implement that plan.

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<sup>20</sup>See GE 3; Tr. 70-71.

<sup>21</sup>ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).



## 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 pertinent facts and circumstances surrounding this case. Applicant is a sincere, honest, and hard-working woman. She lives frugally and began addressing her substantial delinquent debts during 2010, after applying for a security clearance. Continued progress in those efforts, and the avoidance of new delinquencies, will strengthen her case in mitigation of financial security concerns.

However, Applicant currently has over \$90,000 in delinquent debts she accrued over many years, and did not demonstrate the financial means to resolve them in the near term. The debts arose from choices she voluntarily made, and her commendable efforts to address some of them are too recent to establish a permanent behavioral change. She is a mature and experienced individual, who is fully accountable for her situation. The potential for pressure, coercion, exploitation, or duress remains undiminished, and she did not yet demonstrate a sufficient pattern of financial responsibility to show that the financial concerns are unlikely to continue or recur.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. She failed to meet her burden to mitigate 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 ¶ 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:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant

## Conclusion

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

DAVID M. WHITE  
Administrative Judge