



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 10-00287
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

May 31, 2011

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On January 21, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On June 25, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 (AG) effective within the Department of Defense for SORs after September 1, 2006.

Applicant answered the SOR on July 26, 2010, which DOHA received on July 28, 2010. Department Counsel was prepared to proceed on August 31, 2010. The case was assigned to me on September 1, 2010. DOHA issued a notice of hearing on September 20, 2010, scheduling the hearing for October 15, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 8, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through L, which were received without objection, and she testified on her own behalf. I held the record open until October 29, 2010 to afford the Applicant additional time to submit relevant material. Applicant submitted AE M through UUU, which were received without objection. Also, post-hearing, Department Counsel submitted GE 9, which was received without objection. Department Counsel's Response to Applicant's Post-Hearing Submissions dated November 9, 2010 is marked as Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on October 25, 2010.

### **Findings of Fact**

Applicant denied SOR ¶¶ 1i, 1k, 1s, 1v, 1ff, and 1jj; and admitted the remaining SOR allegations. Her admissions are incorporated as findings of fact.

### **Background Information**

Applicant is a 47-year-old truck driver, who has been employed by a defense contractor since December 2008. She testified that she holds an interim secret security clearance, and that successfully vetting for a security clearance is a condition of her continued employment. (GE 1, Tr. 21-23.)

Applicant married in August 1986 and her husband passed away two months later in October 1986. She remarried in April 1992 and divorced her second husband in December 1994. Applicant does not have any dependents. (GE 1, Tr. 23-24.)

Applicant graduated from high school in May 1982. She attended several colleges or community colleges and has earned "approximately a hundred" college credit hours, and is about "15 units shy of a four-year-degree." She also completed several certificate programs and "went through" the police academy. Before getting into the trucking business, Applicant worked a variety of jobs to include EMT, paramedic, and police officer. (GE 1, Tr. 24-26.)

### **Financial Considerations**

Applicant's SOR alleges 40 debts totalling \$460,433. Seven of those 40 debts are for federal or state income tax arrearages. One SOR allegation cites a May 2002 arrest for writing checks with insufficient funds, and the remaining 33 debts are primarily unpaid credit cards or medical bills. (Tr. 12.)

Applicant had started her own trucking company in January 2001 and was doing well financially until she was confronted with several factors that were beyond her control. Those factors include: (1) in 2002, one of Applicant's employees stole company checks and used those checks to purchase items for his personal use and use of those checks was without Applicant's permission or knowledge. The amount of bad checks he wrote was "approximately \$40,000;" (2) Applicant stated that a former roommate intercepted a notice from the Internal Revenue Service (IRS) in 2006 advising her of a

pending audit appointment. As a result of not receiving the notice, she failed to appear at her audit appointment. According to the Applicant, her failure to appear was the beginning of her current tax problems. She also stated that her former roommate, who prepared state and federal returns for a national tax preparer, retaliated against her by intercepting her audit notice after she evicted him for failure to pay his rent. Her IRS debt is approximately \$300,614, and according to Applicant, this debt is for tax years 2004 and 2005; and (3) while trying to recover from the loss arising from the stolen checks and state and federal tax problems, her trucking business experienced a severe downturn from about 2006 to 2008 as a result of a failing economy. (AE E, Tr. 30-53, 65.)

In December 2008, Applicant completed training and orientation in hauling hazardous materials such as ammunition and explosives and began working for her current employer. (Tr. 37-38.) Applicant used her credit cards to pay for her driving expenses hoping that she would later earn enough income to recover those expenses. (Tr. 53.)

Applicant testified that 2003 to 2005 were “really good years” when her annual income was in the “150 to 200,000 range.” In 2006, she made “around a hundred thousand something.” In 2007, she made “under a hundred thousand.” In 2008, she made “approximately fifty thousand.” In 2009, she made “fifty-two thousand.” (Tr. 66-67.)

To address her tax problems, Applicant consulted a tax preparer and a tax attorney. At her hearing, she claimed that all of her tax returns have been filed. (Tr. 34-35, 49-50, 68.) Applicant has not sought financial counselling. (Tr. 64.)

Applicant testified that she paid or is paying debts listed in SOR ¶¶ 1j (collection account for \$6,838), 1k (collection account for \$74), 1l (collection account for \$802), 1m (collection account for \$341), 1n (duplicate of 1l), 1s (charged off account for \$274), 1v (charged account for \$130), 1w (charged off account for \$482), 1x (charged off account for \$679), 1ff (collection account for \$347), 1jj (collection account for \$36), 1ll (collection account for \$483), and 1nn (judgment for \$1,130). SOR ¶¶ 1l and 1n are duplicates. Of the accounts Applicant claimed that she had paid or was making payments on, documentation was only available for SOR ¶¶ 1i and 1nn, e.g., only 2 of the 40 debts alleged. (SOR Answer, GE 6, Tr. 54-64.) Following her 2002 arrest for writing checks with insufficient funds, she paid her fines, court costs, and made restitution. She stated she was arrested as a result of the actions of her dishonest employee, discussed *supra*. (Tr. 88-89.)

Applicant does not own her own home. She lives in a 30-year old trailer that is parked on her father’s dairy farm during the rare times she is not on the road. Applicant sold all of her furniture and used the proceeds to pay bills. She drives a 2005 Ford F-250 for which she is making \$530 monthly payments. She tries to live on \$100 per week and added that “truck stops are not cheap.” (Tr. 68-70.) As of her hearing date, Applicant had \$284 in her checking account and \$2.36 in her savings account. She has no source of income other than her trucking job and lives “pay check to pay check.” (Tr.

89-90.) Her intention regarding her debts is to “[k]eep plugging away at them until they are completed and paid.” (Tr. 90.)

All of the debts alleged have been established by the Government’s evidence. (GE 1-7.) Furthermore, Applicant was interviewed in April 2009 and June 2009 by an Office of Personnel Management (OPM) investigator and was made aware of the Government’s concerns regarding her indebtedness. In her February 2010 Response to DOHA Interrogatories, she stated that “I am still working at paying off my debt and will continue to until it is paid off.” She also indicated in the same response that “All of my tax returns have been filed with the exception of 2009 which will be filed prior to April 15<sup>th</sup>.” She emphasized that she is honest and hardworking. (GE 7.)

Applicant appeared at her hearing with little or no documentation to substantiate that she had paid, was engaged in a good-faith dispute with her creditors, or was attempting to resolve her debts. Her explanations regarding the status of the alleged debts were at times quite lengthy; however, with minor exceptions, her case failed due to lack of follow through or lack of documentation.

At the conclusion of the hearings, as noted *supra*, I held the record open to afford Applicant the opportunity to submit additional material. I instructed her to list each SOR allegation and provide documentation that corresponded to that particular allegation. (Tr. 73.) I explained to her the importance of following this procedure and that forwarding a large group of documents without explanation was not helpful. (Tr. 76.) Department Counsel also emphasized that Applicant follow the same post-hearing submission format that I outlined. (Tr. 92-93.)

Applicant’s numerous post-hearing documents were of little probative value inasmuch as they either did not pertain to SOR debts or they were submitted without an explanation linking them to specific debts. (AE M – UUU.) Despite her assurances that she had done so, she did not submit copies of her tax returns for tax years 2006, 2007, and 2008. Regarding Applicant’s federal tax debts alleged in SOR ¶¶ 1c, 1e, and 1f, Applicant provided documentation that she owes about \$208,209 to the IRS in overdue taxes for 2004 and about \$188,664 in overdue taxes for 2005. Applicant provided no documentation regarding her state tax debts alleged in SOR ¶¶ 1a, 1b, and 1d, except for a modification dated February 26, 2009 to an order to withhold tax. She did not provide any evidence that payments have been made in accordance with that order. Applicant did not provide any evidence of a payment plan regarding resolution of her extensive past due taxes. (GE 9, AE W, AE Z, HE I.)

Apart from the two debts (SOR ¶¶ 1i and 1nn) discussed *supra*, Applicant did not provide any specific documentation that any of the non-tax SOR debts have been paid or otherwise resolved. (AE AA – PPP.) She may well have done as she testified; however, absent documentation, I am unable to find in her favor regarding the debts she claimed she had paid or was paying down. Applicant’s bank account records and pay stubs corroborate her testimony that she is living pay check to pay check. (AE RRR.)

Applicant did submit evidence that she contacted a debt consolidation service and executed an agreement dated October 22, 2010, that lists various debts to be included in a payment plan. That payment plan indicates that \$505 will be withdrawn from her account each month beginning November 7, 2010. That amount is more than Applicant's current monthly balance of \$435. (AE SSS, AE UUU, AE RRR.) Moreover, the chart of debts to be included in the payment plan includes several of her SOR debts, but not all of them. The alleged SOR debts listed on the chart are SOR ¶¶ 1j, 1o, 1p, 1r, 1w, 1x, 1y, 1aa, 1bb, 1cc, 1dd, and 1ee. The remaining non-tax debts are unaccounted for.

### **Character Evidence**

Applicant submitted a number of reference letters from individuals to include supervisors, co-workers, a past employee, her income tax preparer, and long-time friends. The collective sense of these letters depicts Applicant as a person of good character, who is honest and trustworthy. Applicant also submitted a personal statement in which she speaks of her loyalty to the United States and states that she is doing the best that she can to resolve her debts. (AE A – J.) She also submitted proof of current credentials that reflects that she is fully qualified to operate as a truck driver in the United States and Canada. (AE L.)

### **Policies**

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline F, Financial Considerations

Under Guideline F, the concern is that an Applicant’s 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. (AG ¶ 18.)

Applicant accumulated 40 debts totaling \$460,433. The record contains supporting evidence that only two of those debts have been paid or resolved. She has made restitution and paid her fines and court costs following her 2002 arrest for writing insufficient checks. The remaining 38 debts have not been satisfactorily addressed or lack documentation in support of the fact that they have been satisfactorily addressed. Applicant’s history of indebtedness is well documented. 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's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. Therefore, her debt is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

Under AG ¶ 20(b), Applicant receives partial credit because her problems with a dishonest employee in 2002, her roommates' conduct in 2006, and the downturn in the economy beginning in 2006 were largely beyond her control. These events no doubt impacted her financial situation, directly and indirectly. However, to receive full credit under this mitigating condition, Applicant has to demonstrate that she acted responsibly under the circumstances. There is no evidence that Applicant remained in contact with her creditors or tried to make minimum payments during this time. I also note that Applicant has been employed full-time since December 2008 and was earning a six-figure income until 2007.<sup>1</sup>

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<sup>1</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

AG ¶ 20(c) is only partially applicable because Applicant did not seek financial counseling until after the hearing, and as noted, there is no clear indication that her financial situation is being resolved or is under control. Likewise, there is not sufficient evidence in the record to establish full mitigation under AG ¶ 20(d).<sup>2</sup> Despite being employed approximately two years preceding her hearing, Applicant offered little or no evidence that she had made or is making a good-faith effort to repay her creditors or otherwise resolve her debts. Given the significant amount of debt involved and minimum documentation that Applicant has provided, Applicant is unable to receive credit under this mitigating condition. Furthermore, Applicant's post-hearing debt consolidation plan does not comprehensively address her SOR debts. The plan only includes a portion of her SOR debts with a prospective monthly payment that appears to exceed what she is able to pay.<sup>3</sup>

Applicant's overall response to her indebtedness has been disappointing, despite knowing since at least her April 2009 OPM interview that her financial situation was a concern. This knowledge did not appear to trigger a sense of urgency in Applicant to document the status of the debts or prove any debts had been paid. Although Applicant disputes the validity of some of her debts, her lack of documentation again does not cut in her favor, precluding application of AG ¶ 20(e).

### **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

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<sup>2</sup> The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>3</sup> Promises to take actions in the future, however sincere, are not a substitute for a documented track record of remedial actions. The possibility that Applicant might achieve resolution of [her] outstanding debts at some future date does not constitute evidence of financial reform or rehabilitation in the present. ISCR Case No. 99-0012 at 2 (App. Bd. Dec. 1, 1999).



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.

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. AG ¶ 2(c).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. Applicant's financial indebtedness is ongoing. Her inability or failure to address her debts for the two years preceding her hearing is troubling, especially after her financial history was brought to her attention as early as her April 2009 OPM interview. Nor did she follow through on her assurances made in her February 2010 interrogatories that she would work on paying off her debt, nor did she follow through with the documentation discussed at her hearing. Had she done so, her financial situation may well have improved. My adverse ruling should not be construed as an affront to Applicant's patriotism or integrity, but rather an application of the law and regulations pertaining to the granting of a security clearance. Applicant may well achieve a state of financial stability in the future; however, based on the evidence presented, I have grave concerns about her financial situation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person concept, I conclude she has not mitigated security concerns pertaining to financial considerations.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has not fully mitigated or overcome the Government's case. For the reasons stated, I conclude she is not eligible for access to classified information.

#### **Formal Findings<sup>4</sup>**

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
Subparagraphs 1a – 1h:	Against Applicant
Subparagraph 1i:	For Applicant
Subparagraphs 1j – 1mm:	Against Applicant
Subparagraphs 1nn – 1oo:	For Applicant

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<sup>4</sup> SOR ¶ 1l is a duplicate of SOR ¶ 1n.

## **Decision**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is denied.

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ROBERT J. TUIDER  
Administrative Judge