



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-00411
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

August 30, 2010

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**Decision**

\_\_\_\_\_

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 12, 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 (EO) 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 for cases after September 1, 2006.

Applicant answered the SOR on May 5, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 16, 2010. DOHA issued a notice of hearing on June 30, 2010, scheduling the hearing for July 26, 2010. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through

7, which were admitted without objection. The Applicant offered Exhibits (AE) A through H, called one witness, and testified on her own behalf. The record was held open for Applicant to submit additional information until close of business August 9, 2010. Applicant submitted post-hearing exhibits I through U, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 11, 2010.

### **Findings of Fact**

Applicant is a 49-year-old employee of a defense contractor. She has been married for the past 22 years. She previously worked in the defense industry for 17 years, prior to relocating in support of her husband's career advancement. After her relocation, she was a stay-at-home mom until 2003, when she returned to work to support her family. She has three daughters, ages 16, 21, and 32. Her husband worked for a Federal agency. (GE 1; AE C; Tr. 34-37, 44-48, 53.)

Applicant's finances were tight because she was not working and her husband had started to suffer medical problems. In 2003, she and her husband filed Chapter 7 bankruptcy (SOR allegation 1.a.). In their bankruptcy filing, they listed total liabilities of \$93,158 and assets of \$104,390. Their debts were discharged on December 15, 2003. (AE J; Tr. 51.)

In December 2003, Applicant's husband became ill and was diagnosed with advanced liver disease. In the beginning of 2004, her husband medically retired from his position after 16-years service with the Government. He was earning approximately \$90,000 per year at the time he retired. His retirement income was significantly less. Applicant estimates that he gets approximately \$1,700 to \$2,000 per month in retirement pay. (Tr. 49-55.)

In 2006, Applicant purchased a home for \$650,000. At that time, she was working as a realtor and making a substantial income. She had both a first and second mortgage on the property. Applicant lived in the home for a little more than a year. In September of 2006, Applicant's husband became very ill. Applicant had to stop working to care for him. In January 2007, Applicant sent her husband to live with her parents and in March of 2007, she put the house up for sale. As alleged in subparagraph 1.b., eventually the house was sold, for less than the value of the two mortgages, although her second mortgage reflects on her credit report with a zero balance. (GE 2; AE K; Tr. 37, 56-62.)

Applicant's husband's condition continues to cause hospitalization. His hospital records show that in 2009, he was hospitalized in every month but one. In 2010, Applicant's husband was hospitalized on January 20; February 8-15; February 28-March 10; March 24-26; April 18-21; April 26, May 13-17; May 24-26; June 17-20; July 1; July 3; and July 7-22. Applicant's daughter testified that during her father's hospitalizations, her mother "gets out of work, comes home, takes care of my sister's needs, goes to the hospital and doesn't get home to [sic] probably after eight . . ." (AE U; Tr. 92.)

The SOR alleges nine delinquent debts as listed on credit reports obtained in 2009 through 2010. (GE 3; GE 4; GE 5; GE 6; GE 7.) They are as follows:

Allegation 1.c. alleges that Applicant is indebted on a collections account for the approximate amount of \$205. This was incurred as a result of medical treatment for Applicant's husband. As of August 2010, Applicant owed \$215.01 on this debt. At the close of the record, it remained unpaid. (AE L; Tr. 63-65.)

Allegation 1.d. alleges that Applicant is indebted on a medical account for the approximate amount of \$137. This was incurred as a result of medical treatment for Applicant's husband. Applicant has submitted this account to her medical insurance and requested their insurance pay the debt. (AE M; Tr. 65-66.)

Allegation 1.e. alleges that Applicant is indebted on a medical collections account for the approximate amount of \$698. This was incurred as a result of medical treatment for Applicant's husband. Applicant has submitted this account to her medical insurance and requested their insurance pay the debt. (AE M; Tr. 65-66.)

Allegation 1.f. alleges that Applicant is indebted on a collections account for the approximate amount of \$10,023. This debt was for a delinquent credit card. Applicant contends that the card was largely used to pay co-pays for her husband's medical treatments. In 2009, Applicant began making \$100 per month payments on this debt. She continued making payments until February 2010. Payments stopped in February 2010, because Applicant's husband was again hospitalized. She became emotionally overwhelmed and ceased payments. He has been in and out of the hospital since then. She indicated that she will start making payments on this debt again in August 2010. (GE 2; AE O; Tr. 66-72.)

Allegation 1.g. alleges that Applicant is indebted on a collections account for the approximate amount of \$1,023. This debt was for an unpaid family cell phone plan. Applicant began making payments on this debt in approximately May of 2009, in the amount of \$50 per month. She stopped payment in 2010, after her husband was hospitalized. She has not yet resumed payments. (GE 2; AE P; Tr. 72-74.)

Allegation 1.h. alleges that Applicant is indebted on a collections account for the approximate amount of \$2,968. This was a credit card debt that Applicant incurred in approximately 2003. Applicant began making payments on this debt in approximately May of 2009, in the amount of \$50 per month. She stopped payment in January 2010, although she had not satisfied the debt. She has not yet resumed payments. (AE Q; Tr. 75-76.)

Allegation 1.i. alleges that Applicant is indebted on a collections account for the approximate amount of \$410. Applicant provided copies of a money order made out to this creditor for the full amount of this debt. (GE 2; AE D; AE R; Tr. 28-30, 76-77.)

Allegation 1.j. alleges that Applicant is indebted on a medical collections account for the approximate amount of \$52. This was incurred as a result of medical treatment

for Applicant's husband. Applicant has submitted this account to her medical insurance and requested their insurance pay the debt. (AE M; AE S; Tr. 65-66.)

Allegation 1.k. alleges that Applicant is indebted on a medical collections account for the approximate amount of \$91. This was incurred as a result of medical treatment for Applicant's husband. Applicant provided copies of a money order made out to this creditor for the full amount of this debt. (AE T; Tr. 77.)

Applicant has had no security incidents while working for her employer. She is well respected by her supervisor who notes that "with her integrity, honesty, and loyalty, I would endorse entrusting her with sensitive information without doubt and without reservation." (AE A; AE B.)

### **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 and mitigating conditions, 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, administrative judges apply the guidelines 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 the 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 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.

Section 7 of EO 10865 provides that adverse 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, as follows:

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 concern under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts and has been unable to pay her obligations. Her financial problems have been ongoing since prior to her 2003 Chapter 7 bankruptcy. The evidence is sufficient to raise the above disqualifying conditions.

Three 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;  
and

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

Applicant's financial problems are recent and have been on-going for a number of years. She discharged her debt through Chapter 7 bankruptcy in 2003, only to incur additional indebtedness shortly thereafter. While the majority of her debts are medical bills for her husband, one is for a credit card and another is for a phone bill. Her husband's condition is on-going and further hospitalizations are likely to recur. Her debts largely remain unpaid, with the exception of the two small debts alleged in 1.i and 1.k., which were paid recently. Her financial delinquencies are attributable to her husband's health, in part, as he has been ill for at least eight years. Yet, they are also attributable to Applicant's choices. For instance, the house she sold at a loss just prior to foreclosure was a debt she took on after her husband had taken ill and had medically retired. In the past eight years, she has not been focused on recovering financially. She has made payments on some of her debts, but stopped in approximately February of 2010. While her husband was hospitalized at the time she stopped making payments to the creditors, she failed to distinguish why she was able to pay her creditors through the hospitalization in 2009, but not in 2010. She has failed to show that she has acted responsibly under the circumstances. None of the mitigating conditions apply.

### **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. I have incorporated my comments under Guidelines F, in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected by her supervisor. She previously worked successfully in the defense industry for 17 years. She is currently employed and has satisfied two of her smaller debts. Despite her accomplishments, she has failed to demonstrate a substantial effort to satisfy her financial delinquencies. While she has spent tremendous time and effort contending with her husband's medical condition over the past eight years, her choices, with respect to her debts do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. There are significant unresolved concerns about Applicant's finances.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concern.

### **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.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant

### **Conclusion**

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

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Jennifer I. Goldstein  
Administrative Judge