



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



In the matter of:

	)	
	)	
	)	ISCR Case No. 10-00482
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: Roderic G. Steakley, Esquire

April 28, 2011

**Decision**

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CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**Statement of the Case**

On September 2, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) for a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued two interrogatories to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA could not make the preliminary affirmative finding required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated June 23, 2010, to Applicant detailing security concerns for financial considerations under Guideline F. These actions were 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 on September 1, 2006. Applicant acknowledged receipt of the SOR on July 12, 2010.

Applicant answered the SOR on August 23, 2010. She admitted six allegations, denied four allegations, and stated the remaining three allegations under Guideline F were in dispute. Department Counsel was prepared to proceed on October 21, 2010, and the case was assigned to me on December 1, 2010. DOHA issued a Notice of Hearing on December 28, 2010, scheduling a hearing for January 27, 2010. I convened the hearing as scheduled. The Government offered seven exhibits that I marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 7. Applicant and one witness testified on her behalf. Applicant offered four exhibits that I marked and admitted without objection as Applicant Exhibit (App. Ex.) A through D. I left the record open for Applicant to submit additional documents. Applicant timely submitted 11 documents which I marked and received as App. Ex. E through O. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 8, Memorandum, dated March 8, 2011) Applicant timely submitted two additional documents which I marked and admitted as App. Ex. P and Q. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 9, Memorandum, dated March 16, 2011). Applicant submitted six additional documents on April 19, 2011 which I marked and admitted into the record as App. Ex. T through W. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 10, Memorandum, dated April 19, 2011). Applicant submitted one additional document on April 21, 2011 which I marked and admitted into the record as App. Ex. X. Department Counsel had no objection to the admission of the document. (Gov. Ex. 11, Memorandum, dated April 21, 2011) DOHA received the transcript of the hearing (Tr.) on February 4, 2011.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 47-year-old college graduate in accounting who is the president of a software engineering company with defense contracts. After completing college, she worked at various accounting positions including working for the Internal Revenue Service. She married her husband in 1994, when he played in the United States for a professional sports team. They have three children who are still at home. After playing for professional sports teams in the United States for six years, Applicant's husband played on various professional sports teams outside the United States for approximately six years. Applicant accompanied her husband when he played outside the United States. In 1997, Applicant and her husband built a house in which they still reside in her husband's home state in the United States. Applicant and her husband have a present net monthly income of \$10,270.32 with monthly expense of \$7,162.26, leaving a monthly net remainder for debt reduction of \$3,180.06. (Tr. 77-79, 107-110; App. Ex. C, Budget, dated January 20, 2011)

Applicant's husband retired from professional sports in 2002, and they started to reside permanently in the house they built in 1997. They sought various business opportunities in the area, both to invest in or to manage. Their focus initially was on franchising of food service. After contacting national companies concerning food service franchises, Applicant and her husband could not get a franchise because they did not have experience in the food service industry. Applicant decided to purchase three food carts and open concessions at local shopping malls. One of the carts did well but the others did not. During this time, Applicant and her husband borrowed on the equity of their house or used credit to pursue business opportunities. Eventually, Applicant learned of a need for software engineering support as a subcontractor on government contracts, so she opened her present company and hired staff. Applicant's company received an initial contract to open the software engineering business in 2009. Since then, she has received another more lucrative contract which has enabled them to expand and be profitable. (Tr. 21-37, ; Gov. Ex. 1, e-QIP, dated September 2, 2009; Gov. Ex. 2, Answer to Interrogatory, dated March 26, 2010)

Applicant's husband testified that he played a professional sport for eight years in the United States and another six years overseas. He married his wife in 1994 when he was playing in the United States and she moved with him when he played overseas. They purchased a house in 1997 while he was playing overseas. They still own and live in the house but they have placed the house on the market for sale. While he was playing professional sports, he and his wife invested his salary but lost a large part of it after the economic downturn. After he finished his professional career, they returned to the United States and desired to start a fast food franchise business. They were unable to obtain a franchise because they lacked experience in the food service business. They tried other business opportunities but were unsuccessful. During this time, they used the equity in their house for living expenses. Finally, they were able to establish the software engineering business that they now own. He is the business development director of the company. (Tr. 133-147)

He has filed a workman's compensation claim for injury received during his professional sports playing time. He had a mandatory settlement hearing on his claim on March 5, 2011. His attorney advised that an anticipated settlement of approximately \$100,000 is anticipated. If a settlement is reached, he intends to use the funds to pay past due obligations. He also anticipated that they will be able to sell their house realizing a profit of approximately \$75,000. When he and his wife were having problems finding a good fit for his post professional career, they managed to pay all local, state, and federal taxes. They had an accountant who assisted them with their finances. Applicant's husband used the funds from his workman's compensation claim to also pay one debt to a department store that was in his name. (Tr. 147-160; App. Ex. X, Check, dated April 19, 2011)

Credit reports (Gov. Ex. 4, dated September 30, 2009; Gov. Ex. 5, dated January 20, 2010; Gov. Ex. 6, dated May 13, 2010), and Applicant's admissions Gov. Ex. 3, Answers to Interrogatory, dated March 26, 2010) show the following delinquent debts for Applicant: a debt in collection for a bank credit card for \$16,813 (SOR 1.a); medical

debts of \$143 (SOR 1.b), \$929 (SOR 1.c), \$160 (SOR 1.d), \$228 (SOR 1.e), \$4,993 (SOR 1.f), \$53 (SOR 1.g); a department store charged off account for \$3,533 (SOR 1.h and SOR 1.J); a credit card charged off account for \$4,442; a charged off account for \$8,423 (SOR 1.k); a charged off account for a car lease for \$968 (SOR 1.l); and a credit card charged off account for \$19,285 (SOR 1.m). The total indebtedness for the accounts listed in the credit reports is \$63,508. Applicant received financial counseling from a consumer credit company and was advised that she should consider filing bankruptcy. She decided not to file bankruptcy and to attempt to negotiate and settle the debts. (Tr. 41-42)

The bank credit card debt at SOR 1.a was used to purchase the three food carts used to open a food service business to gain experience. Applicant has an agreement with the creditor to pay \$100 monthly towards the debt. She has made at least two payments on this debt, but does not remember when the last payment was made. She also has an agreement to settle the debt for a one-time payment of \$12,000. Applicant intends to take advantage of this arrangement when she has sufficient funds to meet the terms of the settlement agreement in approximately April 2011. After the hearing, Applicant reached a settlement agreement with the creditor for a payment of \$7,500. The settlement payment was made on April 18, 2011. Applicant sent a check for payment of the settlement on April 19, 2011. (Tr. 37-39, 86-91; App. Ex. F, Letter, dated January 24, 2011; App. Ex. T, Letter, dated April 19, 2011; App. Ex. U, Letter, dated April 15, 2011; App. Ex X, Check, dated April 19, 2011)

Applicant has paid in full the medical debts at SOR 1.b. (Tr. 53-55, 91-94; App. Ex. B, Credit Report, dated January 20, 2011, At 2; App. Ex. G, Receipt, dated February 17, 2011) The medical debt at SOR 1.d was for emergency medical care and has been paid in full. (Tr. 63-65; App. Ex. K, Account History, dated February 17, 2011) The \$53 medical debt at SOR 1.g has been paid in full. (Tr. 65; App. Ex. L, Account Statement, dated February 17, 2011) Applicant has settled and paid in full the debt at SOR 1.i. (Tr. 67-69; App. Ex. B, Letter, dated January 24, 2011)

Applicant had surgery in February 2009 and accumulated medical bills listed at SOR 1.c for the physician, SOR 1.e for radiology, and SOR 1.f for the hospital. Applicant had health insurance with a national health insurance company at the time of the surgery that should have paid the medical bills. Applicant contacted the medical providers as well as the medical insurance company to resolve the debts. Since the medical providers and the insurance company have sent the debt to a collection agency, they do not have the information to resolve the debts. Applicant disputed these accounts. The dispute has not been resolved. (Tr. 55-62, 94-97, 128-130; App Ex. H, I, J, dated January 22, 2011)

The debts listed at SOR 1.h and 1.j is the same debt to the same creditor. Applicant has an agreement to pay the creditor \$50 on the account. After the hearing and receipt of the workman's compensation claim, Applicant paid the debt in full. (Tr. 65-67, 97-100; App. Ex. M, Letter, dated February 14, 2011; App. Ex. V, Letter and Check, dated April 18, 2011)

The debt at SOR 1.k was for dental work for Applicant's husband and son. Applicant has agreed to pay \$75 monthly on this debt. Applicant made her first payment on January 23, 2011. Applicant is negotiating a settlement for this debt and anticipates resolving and paying the debt by the end of April 2011. (Tr. 69-70, 100-101; App. Ex. N, Letter, dated January 24, 2011; App. Ex. T, Letter, dated April 19, 2011)

Applicant disputed the debt for a truck lease at SOR 1.l. Applicant contends the lease was completed and paid when Applicant purchased another truck from the same automobile company. The automobile company noted that the debt has been paid. (Tr. 70-72, 101-103; App. Ex. O, Letter, dated February 23, 2011)

The debt at SOR 1.m is for a credit card used by Applicant in her business. She has contacted the company and reached a settlement agreement for one payment of \$12,000 to settle the debt. Applicant, at the time of the hearing, was unable to make the one time payment. After the hearing and settlement of the workman's compensation claim, Applicant negotiated a settlement of the debt for \$5,200. The settlement has been paid by check on April 19, 2011. (Tr. 72-75, 103-105; App. Ex. T, letter, dated April 18, 2011; App. Ex. W, Letter, dated April 15, 2011; App. Ex. X, check, dated April 19, 2011)

Applicant planned to pay the debts still outstanding depending on the outcome of a workman's compensation claim by her husband and the use of the profits of the sale of their house. Applicant's husband filed a claim based on injuries he received while playing professional sports. (Tr. 51-52, App. Ex. D, Letter, dated January 26, 2011) Applicant's husband's workman's compensation claim was settled for \$103,000. (App. Ex. Q, Settlement documents, dated March 15, 2011) The final amount due Applicant's husband after attorney's fees is \$86,000. (App. Ex. P, Attorney's Letter, dated March 15, 2011) Applicant's husband received payment of his workman's compensation claim on April 8, 2011. After receipt of the workman's compensation payment, Applicant and her husband settled and paid the debts at SOR 1.a, 1.h, 1.k, and 1.m. (App. Ex. T, letter, dated April 19, 2011; App. Ex. V, Letter and check, dated April 18, 2011; App. Ex. X, checks, dated April 19, 2011)

Applicant and her husband placed their house for sale with the intent to use the profits for debt payment. The house did not immediately sell so they sought a mortgage modification which required them to remain in the house and take it off the market. The house is again for sale and it is anticipated that the sale of the house will generate approximately \$60,000 in cash. These funds can also be used to pay the remaining debts. In addition, Applicant and her husband reduced their household expenses to generate more funds to pay on their debts. (Tr. 39-51, 117-122; App. Ex. E, Letter, dated February 25, 2011)

### **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 in seeking 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Financial Considerations:**

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) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect 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 terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but she is required to manage her finances in such a way as to meet her financial obligations. The delinquent debts admitted by Applicant raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts); and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Applicant and her husband incurred delinquent debt after her husband ended his professional sports career and tried to find business opportunities. They incurred debt while they sought his post-professional career goals. These delinquent debts indicate a history of an inability, not an unwillingness, to satisfy debt.

I considered Financial Considerations Mitigating Condition (FC MC) 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) and FC MC AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions apply. Applicant incurred debt when she and her husband sought business opportunities after her husband finished a professional sports career. While they saved money during his playing days, they lost some in the economic downturn and had difficulty finding the right business opportunity. They incurred debt when they used the equity in their house and credit cards for living and business expense. Since they now have a good business that is making a profit and settled claims providing them additional funds, they have been able to settle and pay their debts thus acting responsibly under the circumstances. Their financial problems are unlikely to recur.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A "meaningful track record" of debt payment is evidence of actual debt reduction through payment of debts. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan. An applicant is not required to establish that she paid each and every debt listed. All that is

required is that Applicant demonstrates an established plan to resolve her financial problems and show she has taken significant actions to implement that plan.

Applicant provided sufficient information to establish that she paid 5 of the 13 delinquent debts before the hearing. After the hearing and receipt of funds from her husband's workman's compensation claim, Applicant provided sufficient information to establish she paid five more delinquent debts. She formally disputed the three remaining medical debts since she had medical insurance that should have paid the medical debts. Her husband also paid one debt that was in his name only. When Applicant had sufficient funds she took reasonable and responsible action to settle and pay her delinquent debts. Her reasonable and responsible actions paying her debts provides significant and credible information to establish a meaningful track record of debt payment and a good-faith effort to repay her creditors or resolve debt. Her past delinquent debts do not reflect adversely on her trustworthiness, honesty, and good judgment.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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's financial problems started when she and her husband were establishing themselves in business after her husband completed a professional sports career. When funds were available, she took reasonable and responsible action to pay her debts. Only three medical debts remain and they are being disputed by Applicant since they should have been paid by medical insurance. Applicant's action towards her debts shows she will be reasonable and responsible in safeguarding classified information. The proper management of her finances indicates she will be concerned, responsible, and careful regarding classified



