



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



In the matter of: )  
)  
) ISCR Case No. 10-00983  
)  
Applicant for Security Clearance )

**Appearances**

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

February 28, 2011

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On October 2, 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 2, 2010, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2010. DOHA issued a notice of hearing on December 30, 2010, and the hearing was convened as scheduled on January 31, 2011. The Government offered Exhibits (GE) 1

through 8, which were admitted without objection. Applicant testified, called a witness, and submitted Exhibits (AE) A through L. AE A through K were admitted without objection. AE L was admitted over Department Counsel's objection. DOHA received the hearing transcript (Tr.) on February 15, 2011.

## **Procedural Rulings**

### **Notice**

Applicant affirmatively waived her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing.

### **Findings of Fact**

Applicant is a 26-year-old employee of a defense contractor. She is applying for a security clearance for the first time. She has not attended school past high school. She is married and has two children, a four-year-old and a newborn.<sup>1</sup>

Applicant has had financial problems for most of her marriage. Her husband has a third-grade reading level and has a disease that makes it difficult to work a full-time job. He had long periods of unemployment. Her employment was also sporadic and they moved several times. She also admitted that she and her husband were "young and stupid, [and] got in over [their] head[s]."<sup>2</sup>

Applicant and her husband filed Chapter 7 bankruptcy in 2007, and their debts were discharged the same year. The bankruptcy petition listed under Schedule D – Creditors Holding Secured Claims, a \$26,061 car loan for a 2006 sports utility vehicle (SUV) and a \$21,041 car loan for a 2005 sedan. The bankruptcy petition stated the sedan had been repossessed and the SUV was to be surrendered. There was a \$9,000 claim by a government agency against Applicant's husband listed under Schedule E – Creditors Holding Unsecured Priority Claims. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed 24 debts totaling \$9,872. The petition listed the debts as belonging to Applicant, her husband, and community property.<sup>3</sup>

Applicant and her husband continued to have financial difficulties after the bankruptcy. Her husband remained out of work as a stay-at-home father until July 2010. Applicant was out of work when their youngest child was born. She was still on maternity leave on the date of the hearing. Her husband lost his job in January 2011

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<sup>1</sup> Tr. at 28-29, 32; GE 1, 3.

<sup>2</sup> Tr. at 27-30, 33-37, 66, 69; Applicant's response to SOR; GE 1, 3, 5, 6; AE B.

<sup>3</sup> Tr. at 58-59, 69; Applicant's response to SOR; GE 8. Debts that belong to Applicant's husband or were not specifically alleged in the SOR will not be used for disqualification purposes. They will be used in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

and is again unemployed. Applicant and her husband bought a car shortly after their debts were discharged in bankruptcy. That car was repossessed.<sup>4</sup>

The SOR alleges Applicant's bankruptcy, six delinquent debts totaling about \$12,364, and an unpaid judgment of \$2,428. The largest debt is \$10,689 for the deficiency owed on the car loan after their car was repossessed. The judgment was obtained against them by the attorney who filed their bankruptcy. Applicant admitted owing all the debts.<sup>5</sup>

Applicant has not paid any of the debts alleged in the SOR. The attorney who sued them agreed to settle the lawsuit for \$1,000 if the payment was received before February 15, 2011. Applicant testified that she would pay the money for the settlement. Because of Applicant's poor credit, her sister opened a credit card in her name for Applicant to use. Applicant was supposed to pay the account, but it became delinquent. A November 2010 statement showed a balance of \$4,180. Applicant paid \$100 on January 3, 2011. She testified that the credit card company was willing to settle the debt for \$1,500. She stated that she would pay that amount by February 15, 2011. Applicant placed her mother-in-law's cable television account in her name. Her mother-in-law did not pay the bill. SOR ¶ 1.d alleges that delinquent debt of \$102. Her mother-in-law agreed to pay the debt by February 15, 2011. Applicant has a delinquent loan of \$702 that is not alleged in the SOR. She agreed to pay the loan with a \$20 payment in January 2011, which was made, followed by two monthly payments of \$341.<sup>6</sup>

Applicant and her husband received financial counselling as a requirement of their bankruptcy. They continue to struggle to make ends meet. Her bank statement that she submitted to prove payments also included a \$33 overdraft charge. Applicant stated that she intends to pay her debts, partially with an expected tax refund of about \$4,000. She and her husband hope to correct their financial issues so that they can adopt additional children.<sup>7</sup>

## **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 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

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<sup>4</sup> Tr. at 27-30, 38-39, 52-56; GE 5.

<sup>5</sup> Tr. at 40-41; Applicant's response to SOR.

<sup>6</sup> Tr. at 42-51, 58; AE C-L.

<sup>7</sup> Tr. at 34, 60-63; AE C.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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:

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 concerns 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 a number of delinquent debts and was unable or unwilling to pay her obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

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

Applicant and her husband have had employment and financial issues for most of their marriage. It is difficult for him to obtain and hold a job because of his reading level and disease. She has also had periods of unemployment. These events qualify as conditions that were outside her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Not all of Applicant's financial problems were outside her control. She admitted that she and her husband were "young and stupid, [and] got in over [their] head[s]." Their bankruptcy petition listed a \$26,061 car loan for a 2006 SUV and a \$21,041 car loan for a 2005 sedan. Both cars were returned before or through the bankruptcy. They bought another car shortly after their debts were discharged. That car was also repossessed. Applicant damaged her sister's credit by not paying a credit card her sister obtained for Applicant to use. Applicant still owes all the debts alleged in the SOR. She has paid or is paying some debts that were not alleged in the SOR. The payments are insufficient for a finding that she acted responsibly and made a good-faith effort to pay or otherwise resolve her debts. Applicant received financial counseling as a requirement of her bankruptcy. However, her financial issues are recent and ongoing. I am unable to determine that

they are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. In sum, I conclude that financial concerns remain despite the presence of some mitigation.

### **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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the causes of Applicant's financial problems, including her and her husband's employment problems. I have also considered her statements that she intends to pay her debts and put her finances in order. Despite having their debts discharged in bankruptcy in 2007, Applicant and her husband continued to accumulate new delinquent debt. In time, she may be able to get her finances back on track; she is not there yet. At this time, her finances continue to reflect poorly on her judgment, responsibility, and reliability.

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

### **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

Subparagraphs 1.a-1.h:                   Against 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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Edward W. Loughran  
Administrative Judge