



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 10-01188
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel

For Applicant: *Pro se*

April 5, 2011

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on September 4, 2009. (Item 5.) On September 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 issued after September 1, 2006.

Applicant submitted an Answer to the SOR on September 28, 2010, and requested a decision be made without a hearing. Department Counsel submitted a File or Relevant Material (FORM) to the Applicant on October 14, 2010. Applicant received the FORM on October 22, 2010, and was given 30 days to submit any additional information. Applicant submitted additional information (Response). Department Counsel did not object to Applicant's information and it is admitted into evidence as Applicant's Exhibit A. The case was assigned to me on December 10, 2010. Based

upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 46 and divorced. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

### **Guideline F, Financial Considerations**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admitted subparagraph 1.e. That admission is deemed a finding of fact. She denied the remaining nine subparagraphs. (1.a. through 1.d. and 1.f. through 1.j.) She also submitted additional information to support her request for a security clearance.

1.a. Applicant denies that she is indebted to a medical creditor in the amount of \$95. She states in her Response, "Applicant does not recognize this charge and is skeptical as to its legitimacy. Applicant has been double billed in the past by medical facilities." The debt appears in the Government credit report of August 21, 2010, (Item 8) and in the November 17, 2010, credit report provided by Applicant in her Response. There is no evidence that Applicant formally disputed this debt with the credit bureaus or made other actions to determine the validity of this debt. It is unresolved.

1.b. Applicant denies that she is indebted to a medical creditor in the amount of \$50. She stated in her answers to a set of interrogatories propounded by the Government that she had previously paid this debt in full. (Item 7 at 6.) The debt appears in the Government credit report of August 21, 2010, with the annotation, "Consumer disputes this account information." (Item 8.) This debt does not appear in the most recent, November 17, 2010, credit report provided by Applicant. This debt has been disputed.

1.c. Applicant denies that she is indebted to a bank for a line of credit in the amount of \$26,152. She admits that she had this account with the bank, and that it is not paid. She states that the debt has been "charged off" and, therefore, forgiven. (See Item 7 at page 6.) The most recent credit reports show the account "charged off as bad debt." (Item 8; Response.) While collection efforts may have stopped, there is no evidence that the debt has been forgiven by the creditor and it remains a liability of the Applicant. She has not made any payments on this debt and there is no evidence that she will make payments on this debt. It is unresolved.

1.d. Applicant denies that she is indebted to a college for tuition in the amount of \$3,679. According to Applicant in an interview with an investigator from the Office of Personnel Management in October 2009, she made an arrangement with the college to pay \$10 a month on this delinquency, but was unable to maintain payments. (Item 6 at

9.) Applicant has made no recent payments on this debt, and there is no evidence that she is going to make payments on this debt. It is unresolved.

1.e. Applicant admits that she was indebted on a mortgage for a house that was foreclosed upon in 2009. According to Applicant, this occurred because of a two year gap between being laid off from a banking job in 2007 and finding employment in the defense industry in 2009. She used her retirement and funds from her 401(k) account to attempt to remain current on her mortgage. She was unable to do so and the house was foreclosed on and sold in August 2009. (Items 7 and 8; Response.) Based on the available records this debt was resolved by the foreclosure.

1.f. Applicant denies that she is indebted on a second mortgage in the amount of \$105,351 for the house she was foreclosed upon in 2009. According to Applicant, this occurred because of a two year gap between being laid off from a banking job in 2007 and finding employment in the defense industry in 2009. She used her retirement and funds from her 401(k) account to attempt to remain current on her mortgage. She was unable to do so and the house was foreclosed on and sold in August 2009. The credit report dated November 17, 2010, shows this mortgage as "Payment after charge off/collection." (Response.) Based on the available records this debt was resolved by the foreclosure.

1.g. Applicant denies that she is indebted to a creditor for a delinquent debt in the amount of \$817. (Item 7 at 28.) Applicant states in her response to interrogatories that she has paid this debt, but provided no evidence to support this statement. (Item 7 at 6.) This debt does not appear on the most recent credit report of the Applicant contained in the Response. Based on all of the available evidence, I find this debt is unresolved.

1.h. Applicant denies that she is indebted on a medical debt in the amount of \$725. The recent credit report contained in the Response shows this debt as a "Payment after charge off/collection." It has been resolved.

1.i. Applicant denies that she is indebted to a creditor for a delinquent debt in the amount of \$117. (Item 7 at 29-30.) Applicant states in her response to interrogatories that she has paid this debt, but provided no evidence to support this statement. (Item 7 at 6.) This debt does not appear on the most recent credit report of the Applicant contained in the Response. Based on all of the available evidence, I find this debt is unresolved.

1.j. Applicant denies that she is indebted to a creditor for a delinquent debt in the amount of \$739. (Item 9 at 3.) Applicant states in her response to interrogatories that she has paid this debt, but provided no evidence to support this statement. (Item 7 at 6.) This debt does not appear on the most recent credit report contained in the Response. Based on all of the available evidence, I find this debt is unresolved.

Applicant states that she was unable to pay her debts due to a job layoff and subsequent two year unemployment. The two credit reports submitted by the Applicant,

dated March 5, 2010, and November 17, 2010, show that Applicant's credit has improved slightly. (Item 7 at 10-31; Response.) The most recent credit report appears to show that she is paying her current debts in a timely manner. However, Applicant did not submit a budget, even though she stated she now has one, or any plan to show how she would resolve the remaining delinquencies.

Applicant states that she "is performing well at [her] current job, received a raise and a bonus within the first year of employment." (Response at 9.) However, she provided no other evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

### **Policies**

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. 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, 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 as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . 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.” 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 relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. The Applicant, by her own admission, or as shown by Government exhibits, had approximately \$137,725 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s

financial difficulties arose in about 2007 and continue to date. While she has paid, or resolved, a substantial amount of her debts, she still has approximately \$31,599 worth of debt that she has not yet resolved. This mitigating condition has some application to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn. . .), and the individual acted responsibly under the circumstances.” Applicant submits that her financial situation was brought about by her lay-off and two year job search, and that she currently is financially stable and acted responsibly. While this mitigating condition may appear to have facial applicability, it is undercut by her failure to show any evidence that the remaining debts have been forgiven or paid. It is especially disturbing that Applicant, who worked in the financial sector, views a charge off as equivalent to forgiveness of a debt, when they are in fact two vastly different things. Applicant has known for close to a year the specific debts that were of concern to the Government. Even with that knowledge, she failed to produce documentary evidence to support her statements concerning payments or forgiveness of debts. This mitigating condition is not applicable to this case.

Applicant has initiated a good-faith effort to pay off her creditors. However, there remain gaps in her payments. Accordingly, AG ¶ 20(d) “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” has minimal application in this case.

Applicant has shown that she has properly disputed several of the debts in the SOR. Accordingly, I find that AG ¶ 20(e) has some application since she 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.”

However, she remains over \$31,000.00 in debt. Given the fact that I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

### **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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is under financial strain, and has been for several years. Her debt situation is not yet under full control. Under AG ¶ 2(a)(3), the Applicant's conduct is recent. Based on the state of the record, particularly the failure to account for all of her past due debts, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a high likelihood of recurrence (AG ¶ 2(a)(9)).

This is a close case. Applicant showed evidence that she was laid-off and that this was the primary cause of her financial problems. She showed that she is on the path of financial stability. However, as stated above, there are unanswered questions about over \$31,000 in past due indebtedness. Unless and until Applicant is able to resolve those questions, she is not eligible for a security clearance.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from her financial situation at this time.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **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 THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b.:	For the Applicant
Subparagraph 1.c.:	Against the Applicant
Subparagraph 1.d.:	Against the Applicant
Subparagraph 1.e.:	For the Applicant
Subparagraph 1.f.:	For the Applicant
Subparagraph 1.g.:	Against the Applicant

Subparagraph 1.h.:  
Subparagraph 1.i.:  
Subparagraph 1.j.:

For the Applicant  
Against the Applicant  
For the 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.

WILFORD H. ROSS  
Administrative Judge