



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-01255
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nichole Noel, Esq., Department Counsel  
For Applicant: *Pro se*

November 26, 2010

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On August 3, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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.

Applicant answered the SOR on August 30, 2010, and requested a hearing before an administrative judge. The case was assigned to me on October 1, 2010. DOHA issued a Notice of Hearing on October 7, 2010. I convened the hearing as scheduled on November 3, 2010. The Government offered Exhibits (GE) 1 through 4. Applicant did not object and they were admitted. Applicant testified on her own behalf

and offered Exhibits (AE) A through K, which were admitted without objections. DOHA received the hearing transcript (Tr.) on November 9, 2010.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 36 years old. She graduated from college in 1997 and works as a network engineer for a federal contractor. She married in 2004, and has two children ages five and sixteen months old.<sup>1</sup>

In 2003, Applicant and her fiancé, who is now her husband, purchased a small business. They sold the business in November 2004. They used credit cards to pay some of their business expenses. When they sold the business, they broke even financially.<sup>2</sup>

In June 2004, Applicant and her husband purchased another small business. They sold this business in August 2005. She believed they made about \$5,000 profit from the sale. They used credit cards to pay some of their business expenses.<sup>3</sup>

In January 2005, Applicant and her husband bought another small business. They closed the business in August 2005. They used credit cards to pay for some of the business expenses.<sup>4</sup>

Along with using credit cards to finance their businesses, Applicant and her husband had some cash reserves they used to pay for items. Each business they started had expenses they did not anticipate. During this time, Applicant and her husband were also making purchases with their credit cards for personal expenses. They made payments on the credit cards and were not delinquent, but did not pay the balances after each business closed. At one point, Applicant estimated that their credit card balances were approximately \$90,000, with \$45,000 attributed to their businesses. She stated they reduced their credit card debt, at one point to between \$50,000 and \$60,000.<sup>5</sup>

Applicant estimated that her and her husband's joint income from 2004 through 2007 was between \$150,000 and \$200,000 annually. In 2004, they purchased a house. In May 2006, they purchased a vacation condominium for \$235,000. They had two

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<sup>1</sup> Tr. 28, 89.

<sup>2</sup> Tr. 30-32, 38-39.

<sup>3</sup> Tr. 39-40.

<sup>4</sup> Tr. 40-42.

<sup>5</sup> Tr. 28, 42-43.

mortgages on the condo. It was for their personal use and was not rental property. The mortgage payments on the condo were approximately \$1,000 to \$1,300 monthly.<sup>6</sup>

In 2007, Applicant's husband's job was relocated and they moved. They sold their home in November/December 2007, and they purchased a house at their new location for \$450,000. Their mortgage payments were \$3,000 a month. Around the same time they purchased a bar/restaurant business. Applicant withdrew \$163,000, from her 401(k) pension plan to make the purchase. From that amount, they used \$125,000 to purchase the business and they used \$22,000 for a down payment on their house. The Internal Revenue Service (IRS) withheld 10% as a withdrawal penalty. Applicant stated she was aware they would have to pay tax on the withdrawal amount, but she thought it was going to be at about a 10% rate. At the same time, Applicant still had about \$90,000 of credit card debt.<sup>7</sup>

Applicant and her husband failed to file their 2007 federal income tax return because they knew they did not have the funds to pay the taxes. In 2009, they received a letter from the IRS advising them of their tax debt. They filed both their 2007 and 2008 returns in 2009. Their 2008 return was filed on time. Their 2008 tax refund of \$22,000 was applied to their 2007 tax debt. Applicant stated the initial tax due was \$49,000. They requested abatement due to hardship, and the penalties were reduced. The offset refund and abatement lowered the amount owed. They set up an installment payment agreement and began making payments in January 2010. They are required to pay \$85 a month. They have been paying \$100 a month. Their current balance owed is approximately \$5,500.<sup>8</sup>

In February/March 2008, Applicant's husband lost his job. Applicant was earning about \$95,000 at that time. Her husband developed a medical problem that prohibited him from driving and restricted his ability to find a job. He has applied for Social Security disability and is waiting for a determination. Applicant and her husband began experiencing financial problems and were unable to pay some of their bills. They did not have sufficient savings.<sup>9</sup>

In August 2009, Applicant and her husband applied for a loan modification for the mortgage on their residence. They did not make payments on the loan for three to four months while waiting for a determination. They used the amount of money that would have gone to pay the mortgage to pay other bills. Their loan was modified and their payment is now \$2,300.<sup>10</sup>

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<sup>6</sup> Tr. 21, 43-50.

<sup>7</sup> Tr. 57-62, 75.

<sup>8</sup> Tr. 62-69. I have not considered Applicant's failure to file her 2008 federal income tax return for disqualifying purposes. However, I will consider these matters when analyzing the whole person.

<sup>9</sup> Tr. 22-27, 73-75; AE K.

<sup>10</sup> Tr. 76-78.

In the summer of 2008, Applicant stopped paying the credit card bills because she could not afford to maintain their monthly household expenses and pay the credit cards. Applicant has not had any financial counseling.<sup>11</sup>

The delinquent debts and judgment alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, and 1.f, are credit card debts totaling approximately \$132,713. These debts are unpaid and unresolved.<sup>12</sup>

The debt in SOR ¶ 1.b is a judgment (\$2,489). The debt was for carpet Applicant purchased in December 2007. She has been making monthly payments of \$100 and the balance due is approximately \$1,511.<sup>13</sup>

The debt in SOR ¶ 1.g (\$675) is for the balance owed on a leased vehicle when it was returned. Applicant stated she was unaware of the debt and paid \$100 last month, towards the balance.<sup>14</sup>

The debt in SOR ¶ 1.h is the amount owed on the second mortgage on their condo. Applicant attempted to rent the condominium when they began experiencing financial problems, but the rental income was not sufficient when balanced with the additional rental expenses. They refinanced the condominium's mortgage in the spring of 2008, so they could have a better interest rate. They were able to take \$10,000 in equity from the condominium when they refinanced. They used the money to pay bills. They could not maintain the mortgage payments and the property foreclosed in February 2010. Applicant did not believe there was a deficiency on the first mortgage, but they owe \$50,982 for the second mortgage. This debt is unpaid and unresolved.<sup>15</sup>

Applicant stated she intends to repay and resolve her delinquent debts by paying the smallest debt first and then the larger ones. She intends to use their 2010 tax refund to pay the delinquent debts. In July 2011, she will be eligible to take a loan from her 410(k). She estimated it would be about \$8,000 to \$9,000. She intends to use the money to pay her debts. She is also anticipating a bonus from her employer which is usually disbursed in January. She will use that money to pay her debts. In addition, her husband is awaiting a decision on his Social Security disability claim, which will have an impact on their finances. The business they currently own is not profitable, but is breaking even. They have had to use some of their money to keep it running. Her

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<sup>11</sup> Tr. 78, 89.

<sup>12</sup> Tr. 81-89.

<sup>13</sup> Tr. 25, 81-83; AE E.

<sup>14</sup> Tr. 85-87.

<sup>15</sup> Tr. 45-57.

husband takes a salary from the business, but Applicant did not know how much. They may consider selling it if does not become profitable in the next year.<sup>16</sup>

Applicant provided performance appraisals showing she is an excellent worker. She provided character letters attesting to her valuable performance and contribution to her company. She is considered a responsible and confident person. She has always displayed integrity and is considered highly dependable and knowledgeable in her field. I have considered all of the documents Applicant provided.<sup>17</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 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, 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. 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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

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<sup>16</sup> Tr. 24-27, 69-72; AE K

<sup>17</sup> AE A, B, C, D.

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 Executive Order 10865 provides that 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. I have considered all of the disqualifying conditions under AG ¶ 19 and the following are potentially applicable:

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

Applicant has approximately \$186,000 in delinquent debts that are unpaid or unresolved. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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 were involved in several business ventures. They financed their businesses with credit cards. They also incurred personal expenses on their credit cards. Applicant later financed a business from money she withdrew from her 401(k) account and incurred a tax debt. They have been making payments to the IRS to satisfy their tax debts. Applicant's husband developed a medical condition and has been unable to work. Applicant has made some small payments to two creditors, but the others are unpaid and unresolved. I find that AG ¶ 20(a) is not established because Applicant's delinquent debts are numerous, ongoing, and not the result of circumstances making them unlikely to recur.

The loss of income due to Applicant's husband medical condition impacted their finances and was beyond her control. AG ¶ 20(b) partially applies. To be fully applicable Applicant must have acted responsibly under the circumstances. She did not. Applicant should have been aware of the tax implications when she withdrew a large amount of money from her retirement savings. Although she could not have anticipated her husband's medical condition, they were overextended and had a large amount of debt. They were not fiscally responsible. They started three businesses and each time failed to anticipate all of the expenses involved. They did not pay their business expenses from one business before starting another. They jointly earned a substantial income, but they were spending a lot. They bought a vacation home and a new home before they had paid their credit card debts. Applicant has not sought financial counseling. Her plan is to use her tax refund for 2010 to pay some of her delinquent debts. She has made nominal payments to two creditors. I find that there are not clear indications the problem is being resolved and that she has not made good-faith efforts to resolve the debts. Therefore, I find AG ¶¶ 20(c) and 20(d) do not 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 the 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. Applicant has a good work record and is considered a valuable and important employee. She is dependable and knowledgeable in her field. Applicant and her husband have approximately \$186,000 of delinquent debt. They financed businesses using credit cards and also incurred personal expenses using them. They financed their latest business venture with a withdrawal from Applicant's pension plan thereby incurring a tax debt. Although their finances were impacted when Applicant's husband developed a medical condition and was unable to work, they have a history of questionable fiscal responsibility and failed to exercise solid business planning. Applicant's plan is to use their 2010 tax refund to pay some of the debt, but considering the exorbitant total amount owed, it will only have a nominal affect. She also plans to take a loan from her pension plan in 2011, which also will have a nominal affect. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

### **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.i:	Against Applicant



## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge