



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



In the matter of: )  
)  
) ISCR Case No. 10-01346  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

January 5, 2011  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

GOLDSTEIN, Jennifer I., Administrative Judge:

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

**Statement of the Case**

On July 8, 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 July 21, 2010, and requested a hearing before an administrative judge. The case was assigned to me on September 22, 2010. DOHA issued a notice of hearing on September 30, 2010, and the hearing was convened as scheduled on November 9, 2010. The Government offered Exhibit (GE) 1 through 7,

which were admitted without objection. The Applicant offered Exhibit (AE) A through G and testified on her own behalf. The record was held open for Applicant to submit additional information until November 23, 2010. Applicant submitted AE H through J, which were admitted without objection, post hearing. DOHA received the transcript of the hearing (Tr.) on November 19, 2010.

### **Findings of Fact**

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

Applicant is a 31-year-old employee of a defense contractor. She has worked for her employer since October 2009. She is not married. She has a 19-month-old daughter and lives with her father. She receives no child support from her child's father. (GE 1; Tr. 36, 67-68.)

Applicant is indebted to six creditors in the approximate total amount of \$174,746. She also has filed a Chapter 7 bankruptcy, discharged in July of 2003. She attributes her 2003 bankruptcy to being "young" and never having been taught how to use credit. Her more recent debts, listed in the SOR, she attributes to obligations she acquired along with her former fiancé, who manipulated her into making purchases for him using her credit, due to his poor credit. Applicant met her former fiancé in approximately 2003, at a karaoke bar. In approximately 2004, she began incurring expenses for him at his request, as set out below. Their relationship ended in 2006. She is unable to locate her former fiancé. Applicant does not attribute her delinquencies to a period of unemployment in September 2009, as she was already not paying her bills at that time. (AE G; Tr. 37-40, 49, 69-70.)

Allegation 1.a. alleges that Applicant filed for Chapter 7 bankruptcy in March 2003. In her 2003 Chapter 7 Summary of Schedules, she indicated she had total liabilities of \$29,400, with only \$15,035 in assets. Approximately \$14,900 of her liabilities, at that time, was for credit card debt. The remainder of her debt was for her vehicle, which she reaffirmed. In July 2003, her credit card debt was discharged. (GE 1; GE 3; GE 5; Tr. 45, 48-49.)

Allegation 1.b. alleges that Applicant is indebted for two computers she financed through a bank in the approximate amount of \$962. Applicant's former fiancé kept the computers when the two separated. Applicant claimed that she tried to pay on this debt, but that the account had been closed by the creditor. She has made no payments on this account since 2007. (GE 4; GE 5; GE 6; Tr. 42, 60-63.)

Allegation 1.c. alleges that Applicant is indebted for fitness equipment in the approximate amount of \$735. She purchased the equipment in approximately 2005, on credit, for her fiancé's use. Her fiancé kept the equipment after the two separated. She has not contacted this creditor to arrange repayment. (GE 3; GE 4; GE 5; Tr. 42, 60.)

Allegation 1.d. alleges that Applicant is indebted on a loan she took for the purchase of a Harley Davidson in the approximate amount of \$5,587. She purchased the Harley for her former fiancé. Applicant presented a contract between herself and her former fiancé that stated he would be liable to her for the payments on the vehicle. When he failed to make the payments, Applicant returned the vehicle to the lender and it was repossessed. She has not contacted this creditor to arrange repayment of this debt and has no intention of paying the remaining balance. (GE 3; GE 4; GE 5; GE 6; Tr. 40-42, 58.)

Allegation 1.e. alleges that Applicant is indebted for a truck she purchased in 2005, for approximate amount of \$7,900. She purchased the truck to haul her fiancé's Harley. She maintained the truck after the end of their relationship. However, during 2007, Applicant had a low wage earning position. She also had her hours at work reduced from 40-hours-per week to 32-hours-per week. As a result, she found that she could no longer afford her truck and the insurance payments on the vehicle. She voluntarily had the truck repossessed. She has not made any efforts to pay her remaining debt on this vehicle. (GE 4; GE 5; GE 6; Tr. 41, 58.)

Allegation 1.f. alleges that Applicant is indebted on her first mortgage of \$157,000. In 2003, Applicant purchased a condo, where she lived with her former fiancé, for approximately \$190,000. She financed the purchase with a first mortgage of approximately \$152,000 with a five-year adjustable-interest rate, and a second mortgage of approximately \$38,000. She put no money down. Applicant moved out of the condo is approximately 2006. She was able to evict her former fiancé from the condo approximately six months after she moved out, per a signed rental agreement. She was current on her mortgage payments until November 2008. From November 2008 through approximately July 2009, Applicant failed to make any payments on her first mortgage. In November 2009, Applicant secured a tenant to occupy the condo. She receives \$1,150 each month from the tenant. In approximately August 2009, she began making payments of \$580 per month on her first mortgage, although she reported that her monthly required payments should have been approximately \$1,160. She does not have an agreement with the creditor for a reduced payment amount, although she has requested a loan modification. She presented documentation showing that she made payments of \$580 to her mortgage holder in August through October of 2010. She claims to be current on her monthly payments of \$288 on her second mortgage. (GE 3; GE 4; GE 5; GE 6; AE A; AE D; AE H; AE I; AE J; Tr. 42, 49-55, 70-74.)

Allegation 1.g. alleges that Applicant is indebted on a Jeep Applicant purchased for her former fiancé in the approximate amount of \$2,562. She presented a contract with her fiancé in which he agreed he would be liable to Applicant for the payments on this vehicle. However, she acknowledged that she did sign the loan for the vehicle and was responsible for the payments. When her fiancée defaulted on the payments to her, she returned the vehicle to the creditor. Since the repossession, she has made no efforts to pay this debt. (GE 3; GE 5; GE 6; Tr. 39-41, 56-59.)

In addition to the debts alleged on the SOR, Applicant is also indebted to a gym for a membership that she defaulted on in the approximate amount of \$265. She offered

to settle for half of the amount owed, but the creditor did not accept her offer. She is currently delinquent on this account. (AE F; Tr. 64-65.)

In October 2009, Applicant contacted a debt resolution company to assist her with her delinquent accounts. She was advised that her best option to satisfy her debts would be to file Chapter 7 bankruptcy again. She is required to wait eight years after her first bankruptcy is discharged. She indicated that she will be eligible to file bankruptcy in March 2011. She testified that after seven years from the date of default, these items would be removed from her credit report. She had no intention to pay any of her debts listed in the SOR at the time of the hearing. She has had no other financial counseling. In 2008, her total income, as reported on her adjusted gross income for tax purposes was \$21,547. In 2009, her adjusted gross income was \$13,253. (GE 4; AE F; Tr. 47, 63-66.)

Applicant is well respected by her co-workers and supervisors. She presented seven reference letters from former co-workers and supervisors that all spoke highly of her trustworthiness and strong work ethic. Her performance in her current position “consistently exceeds expectations.” (AE B; AE C.)

### **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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio and/or other financial analysis.

Applicant has an extended history of financial indebtedness. Prior to 2003, she demonstrated poor financial practices, which caused her to use an excessive amount of credit and led to her filing a Chapter 7 bankruptcy in 2003. Since 2003, she has continued to obligate herself to debts that she could not afford. She made purchases for her fiancé that were beyond her means. She mistakenly relied upon her fiancé, who

already had poor credit, to pay the debts. She does not have the means nor the intent to satisfy her delinquent accounts.

Five 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;

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

(e) the individual 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.

Applicant failed to present documentation that she has satisfied any of her delinquent debts listed on the SOR. Her debt is current and on-going. Further, she gave little indication that her financial situation is likely to improve. Her inability to address these debts casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were caused by her trust in her fiancé and a subsequent period of underemployment. The period of underemployment qualifies as a condition that was outside of her control. However, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has not shown she made any attempt to responsibly address her remaining debts. She has not contacted creditors since the accounts became delinquent nor does she intend to do so. AG ¶ 20(b) is not applicable.

While Applicant consulted with a debt resolution company, she did not hire the company to assist her with her debts. Further, she has not received any financial education or counseling. She failed to establish that AG ¶ 20(c) applies.

Applicant has presented documentation that she made payments on her first mortgage, alleged in 1.f. However, these payments were not for the full monthly amount. Further, the payments on the first mortgage have only been occurring for approximately three months, after a year without any payments at all. There has been no showing that she has initiated a good-faith effort to repay any of her overdue creditors or otherwise resolve her debts. AG ¶ 20(d) is not applicable.

Finally, she failed to introduce documented proof to substantiate the basis of any disputes with her creditors or provide evidence of actions she has taken to resolve the issue with her creditors. AG ¶ 20(e) is not mitigating.

### **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.

Applicant's letters of support show she is a valued employee. However, she has been unable to make ends meet and satisfy her financial obligations. 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 and judgment.

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 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
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

## 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.

---

Jennifer I. Goldstein  
Administrative Judge