



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-01519
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

August 18, 2011

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On March 22, 2011, 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 on September 1, 2006.

Applicant answered the SOR on April 24, 2011, and requested a hearing before an administrative judge. The case was assigned to me on May 20, 2011. DOHA issued a Notice of Hearing on June 9, 2011. I convened the hearing as scheduled on June 23, 2011. The Government offered Exhibits (GE) 1 through 5. Applicant did not object and

they were admitted into evidence. The Government also offered a demonstrative exhibit that was marked as Hearing Exhibit I. Applicant testified on her own behalf and offered Exhibits (AE) A through I, which were admitted into evidence without objections. DOHA received the hearing transcript (Tr.) on June 30, 2011.

### **Findings of Fact**

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

Applicant is 44 years old. She married in 1989. Her husband is an officer in the Navy. They have two children together, and she has a stepson. Applicant has worked for her current employer, a federal contractor, since October 2008. She earned an associate's degree in 2005 and has one course to complete for her bachelor's degree. She enrolled in the class for July 2011.<sup>1</sup>

Applicant and her husband separated in about 2005. He received transfer orders to another state, and their son accompanied him to attend school. Her husband purchased a house in his own name at the new location. In January 2006, he asked his wife to move to the state with him, so they could work on their marriage. At the time, she had been employed by a different federal contractor since 2001. She was told by the contractor that they would transfer her job to the new state. She sold her house and made about \$90,000 to \$100,000 profit. She purchased a new house in her own name when she moved to the new state. She used \$37,000 as a down payment on the house. The house her husband purchased was too small for their family. He converted his house into a rental property and moved in with her. Her mortgage was about \$1,400 a month. From March 2006 to June 2007, her husband lived with her until he received new orders. He transferred and became a geographical bachelor. Applicant did not move with him. She paid her mortgage and bills with the profit she made from the sale of her residence. She also gave her son \$10,000 to attend college.<sup>2</sup>

During this time, Applicant anticipated her job would be transferred. It never happened. She worked from January 2006 to August 2007 for a mail-order cosmetic company. She estimated she earned between \$20,000 and \$25,000. She also worked as a substitute teacher for the 2007 to 2008 school year, and she estimated her cumulative income was about \$35,000. Applicant admitted she became depressed over her marital situation and was irresponsible with her spending habits, often spending frivolously. In about July 2007, she could no longer afford to pay her mortgage. In November 2007, the house was foreclosed. Applicant had two mortgages on the house. The remaining mortgage debt is alleged in SOR ¶ 1.f (\$49,570). When the house was foreclosed, Applicant moved into her husband's house which had been previously

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<sup>1</sup> Tr. 42-44.

<sup>2</sup> Tr. 43-62.

rented. She paid \$500 a month rent plus utilities. She stayed there for 10 months. Her daughter lived with her.<sup>3</sup>

Applicant was hired by her current employer in October 2008, and her initial salary was \$61,000. Her present salary is \$64,000. Applicant rents her residence, and her daughter lives with her. Her daughter recently completed school and has been working for about a month. She is responsible for paying the cable bill.<sup>4</sup>

Applicant acknowledged that she had many delinquent debts, and she was irresponsible in handling them. Early in 2010, before she received the SOR, she made a commitment to set an example for her children and act responsibly by resolving all of her debts. She made a list and started to make arrangements to pay her delinquent debts. She began by paying the smaller debts, and when one was satisfied she started paying the next. She estimated she had about 30 delinquent debts, and she has paid 27, including some listed on the SOR.<sup>5</sup>

The debt in SOR ¶ 1.a (\$1,920) is a tax lien from State A for tax year 2005. Applicant disputed the debt with State A because she did not live there during 2005. She moved to State A in January 2006. She did not file her state income tax returns in State B, where she lived in 2005, because she mistakenly filed her federal tax returns twice, thinking she filed her state income tax returns. She does not know why State A imposed a tax lien on her. Applicant admitted that she ignored the tax notices from State A because she did live there in 2005. She contacted the State A tax office in 2009 and was advised that she was required to file in the state where she was living during 2005. In April and October 2010, Applicant contacted two national tax preparer companies and was told because her failure to file her state income tax returns was more than five year old, it was too late to file. Later she contacted State B's tax office and was told she still could file, but she would not be eligible to receive a refund, if she was entitled, because of the delay. She did not immediately file her state income tax returns for State B because she did not have the money at the time to pay it, and she did not want to start the process until she could pay. She filed her 2005 State B income tax returns in May 2011 and owes \$1,943. She intends to negotiate a payment plan with State B after she receives correspondence from them. She is now in a better financial situation to repay this debt. She contacted State B again in June 2011 and was advised they received her tax return, and now she must wait for its processing to be completed. Once the process is completed she will request State A to release the lien.

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<sup>3</sup> Tr. 44, 46, 51-62, 73-74.

<sup>4</sup> Tr. 62-65, 88.

<sup>5</sup> Tr. 40-41, 74-81; GE 5.

The debt in SOR ¶ 1.b (\$174) was paid in May 2011. This was for a phone bill Applicant believed had been paid before she moved to her new residence. She provided proof of payment. The debt is resolved.<sup>6</sup>

The debt in SOR ¶ 1.c (\$712) is a cable bill. Applicant arranged a payment plan to pay \$100 a month by automatic withdrawal from her account. She mistakenly believed she had returned the equipment. She provided proof of the payment agreement. The debt is being resolved.<sup>7</sup>

The debt in SOR ¶ 1.d (\$771) is to a collection company for two bills, but they are not combined. Applicant began a payment plan in December 2010 or January 2011. She made the final payment for one of the debts within the account on December 26, 2010, and she settled the remainder of the account in May 2011. Applicant provided supporting documents and the debt is paid and is resolved.<sup>8</sup>

The debt in SOR ¶ 1.e (\$1,947) is a credit card debt. Applicant has been making payments on the debt since early 2010. She made the final payment in May 2011. She provided documented proof and the debt is resolved.<sup>9</sup>

The debt in SOR ¶ 1.f (\$49,570) is the amount owed on the remaining mortgage that was foreclosed. Applicant contacted the creditor, who initially did not want to discuss a payment plan. She contacted their recovery department a second time and explained her financial situation. They agreed to accept \$100 a month by automatic withdrawal that will go towards the principal of the loan. After Applicant has established a consistent payment record they told her they would offer her a lump-sum settlement amount. She indicated that the loan company wanted to clear the debt and would be willing to work with her. Applicant began making automatic payments in June 2011.<sup>10</sup>

The debt in SOR ¶ 1.g (\$448) was for service fees for a timeshare she owned with her husband. She believed her husband was paying the bill. She found out he was not. She made arrangements with the creditor and satisfied the debt. She provided documented proof and the debt is resolved.<sup>11</sup>

Applicant is committed to not making the same mistake mismanaging her money. She is living within her means. She remains married, and her husband does not provide

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<sup>6</sup> Tr. 29-31; AE B.

<sup>7</sup> Tr. 31-32, 72-73; AE C.

<sup>8</sup> Tr. 32, 73; AE D, E.

<sup>9</sup> Tr. 37-38; AE F.

<sup>10</sup> Tr. 38-40; AE G.

<sup>11</sup> Tr. 40; AE H.

marital support. She provided numerous letters that praise her character, integrity, ethics, patriotism, and dedication.<sup>12</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 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.

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<sup>12</sup> Tr. 82-83; AE I.

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;
- (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 ration, and/or other financial analysis.

Applicant accumulated numerous debts that became delinquent and were unpaid. She admitted she was spending beyond her means. I find there is sufficient evidence to raise the above 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;

(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 left her job to follow her husband to his new duty station. She had a tumultuous marriage, and due to the stresses associated with it she became depressed and made poor financial decisions. Before she received the SOR, she made a deliberate decision to rectify her financial problems. She methodically has been resolving all of her delinquent debts. She is living within her means and actively addressing all of her financial issues. I find that she has taken responsibility for her finances, and the circumstances that affected her finances are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. I find AG ¶ 23(a) applies. For a period, Applicant was unemployed waiting for her job to transfer, which never transpired. She was also underemployed for a period. These conditions were beyond her control. Although, she and her husband were separated, she had sufficient means at the time to pay her bills. Applicant had the profit from the sale of her house and admitted she was not acting responsibly by spending her money wisely during this time. I find AG ¶ 20(b) partially applies. Applicant resolved and paid many of her delinquent debts. She has payment plans for the remaining debts. I find she initiated a good-faith effort to repay her overdue creditors and has been aggressively resolving her debts. I find there are clear indications that the problem is being resolved, and her finances are under control. I find AG ¶¶ 20(c) and 20(d) apply. Applicant disputed she owed a tax debt to State A. She acknowledges she owes a tax debt to State B. She provided evidence to show she is resolving the debt. I find AG ¶ 20(e) applies.

### **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 others warrant additional comment.

Applicant went through a difficult period of her life when she had marital problems. She became depressed and did not handle her finances responsibly for a period. She made a conscious decision to change her ways and began eliminating her delinquent debts. She has methodically paid many of them, and she has payment plans for all but one of the remaining debts. She is addressing her tax debt and waiting for the process to be completed. She is financially able to repay the debt. Applicant has met her burden of persuasion. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated 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:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge