



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-01641  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

May 31, 2011

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for Financial Considerations. Accordingly, her request for a security clearance is denied.

Applicant submitted an Electronic Questionnaire for Investigations Processing (SF 86) dated October 23, 2010. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

On December 3, 2010, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the

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<sup>1</sup> Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).<sup>2</sup>

In her Answer to the SOR, dated December 29, 2010, Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 14, 2011, and I received the case on February 24, 2011. DOHA issued a Notice of Hearing on March 1, 2011. I convened the hearing as scheduled on March 16, 2011.

I admitted five Government Exhibits, identified as GE 1 through 5. Applicant testified, and did not present witnesses. She did not offer exhibits or witnesses. I held the record open to allow Applicant to submit additional documentation. She timely submitted eight documents, which I admitted as AE A through H. The record closed on April 6, 2011.

### **Findings of Fact**

In her Answer, Applicant denied SOR allegations 1.a. and 1.j. and admitted the remaining eight allegations. Her admissions are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following findings of fact.

Applicant is a 31-year-old single woman, with a three-year-old child. She completed a bachelor's degree in information technology in March 2010.<sup>3</sup> She worked in technical support positions for private companies from 2000 to 2007. She was a full-time student and unemployed for four months at the end of 2007. From December 2007 to June 2008, she worked as a technical support analyst. Her daughter was born in March 2008. In June 2008, she left her job because the contract on which she worked was ending, and to care for her daughter. She began seeking employment after a few months. In November 2009, she found employment, and has been working full-time since then. (GE 1; Tr. 15, 18-29)

In February 2007, Applicant purchased a condominium for \$210,000. It was financed through two loans with Lender A, the first for \$168,000 and the second for \$42,000. Applicant made her mortgage payments on time. Lender A sold both loans to

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<sup>2</sup> Adjudication of this case is controlled by the adjudicative guidelines that were implemented by the Department of Defense on September 1, 2006. The adjudicative guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

<sup>3</sup> Applicant has more than \$40,000 in student loans that were deferred until about September 2010. She was unable to begin payments, and requested forbearance. They are not alleged in the SOR. (Tr. 20-21)

other lenders, the larger loan to Lender B<sup>4</sup> and the smaller to Lender C (allegation 1.e.). (GE 3, 4, 5; Tr. 29-32)

In 2007, Applicant became pregnant with her daughter. She lost some time at work while pregnant, and for a month after the birth in March 2008. Because she had a contract position, she was not paid when she did not work in 2007 and 2008. After she left her job in mid-2008, she had no income, and her payments started to become delinquent. She decided to sell the condo. She contacted the lenders, and obtained a loan modification, but continued to try to sell the property. ((GE 2, 3, 4, 5; Tr. 29-32)

Between 2008 and 2009, Applicant tried to arrange short sales. The realtor obtained two offers to purchase, and submitted each to Lenders B and C. The offers were rejected. Applicant also considered renting the condo; however, the realtor advised that the rent that it would generate in the soft rental market would not cover the monthly mortgage payment. While the home was on the market, Applicant decided to move in with her fiancé in another state. She did not pay rent in that location. She used savings and her 401(k) funds to support herself and to pay bills. In April 2009, she returned to her home state, where she currently lives with her mother. (GE 1; Tr. 32-34, 38-39)

In March 2009, Applicant's condo was foreclosed. She received a Form 1099-A from Lender B, the holder of the first mortgage. At the time of the foreclosure, she was informed by the first lender that it would not be contacting her further about the loan. She also believes the 1099-A indicates that the first loan was satisfied by the foreclosure. She thought the second loan was also satisfied, but that lender is still contacting her. Applicant testified, "In reference to the second loan for the mortgage, from my understanding it should have foreclosed but it seems to still be open as though they're still trying to come after me separately ..." Applicant is consulting an attorney to determine the status of the second loan. (GE 3; AE C; Tr. 16-17, 34-38)

In January 2010, Applicant met with a security investigator. She stated that she would either have her debts paid or have payment arrangements in place for all of them after February 2010, when she received her tax refund. In her interrogatory response, she updated the interview report, and stated that she did not pay her debts because the tax refund was less than she anticipated. At the hearing, she stated she "wasn't able to do as much with it as I thought." (GE 2; Tr. 74)

Applicant agrees that her debts are far beyond what she is able to resolve with her current income. She investigated credit counseling or debt consolidation firms, but did not want to pay their fees. She talked informally with friends, but received no formal counseling. She talked with attorneys a few days before the hearing about how to resolve her debts, and the amount it would cost to so do. She has been advised to

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<sup>4</sup> It appears from the documentation that Lender B may have sold the first mortgage loan, as it appears in the credit bureau reports under Lender D (allegation 1.g.). Applicant is unfamiliar with Lender D. (GE 3, 4)

consider a Chapter 7 bankruptcy rather than debt consolidation. One attorney provided her with a list of documents she will need to file a bankruptcy petition. She is also considering filing the petition on her own. She has not retained an attorney or completed any paperwork to initiate a bankruptcy petition. (AE F; Tr. 49-51, 65-66)

Applicant receives net income of approximately \$1,700 per month. She also receives about \$100 from her daughter's father for child care. She does not have a written budget. She contributes about \$450 per month to the support of her mother's household. She was given a 2006 car, and so does not have car payments, but spends about \$80 per month on gas. Her other monthly expenses include \$500 on her daughter's needs; \$840 on daycare; and \$175 for other expenses. She contributes to a retirement plan, but has had to make hardship withdrawals, and it now amounts to approximately \$200. She has a total of about \$350 in her checking and savings accounts. She does not have any open credit card accounts. (Tr. 39-49)

Applicant's delinquencies appear in credit reports dated November 2009, April 2010, and July 2010. (GE 3-5) As they are listed in the SOR, they total more than \$72,000.<sup>5</sup> The largest alleged debts relate to Applicant's mortgage loans. The non-mortgage debts in the SOR total \$10,317, and include telephone bills, utilities, cable bills, and two credit card accounts. The status of the SOR debts follows.

- **Medical: \$170, UNPAID** (allegation 1.a) – In 2009, Applicant incurred this debt for her daughter's doctor. She believed it was covered by insurance, but now realizes it was not. She testified she is "working to repay that" but has not made any payments toward it. (Tr. 51-53)
- **Cable: \$445, UNPAID** (allegation 1.b.) - Applicant did not pay the last cable bill when she moved from her condo in June 2008. She believes the debt should be between \$200 and \$300. She has not made any payments toward this debt. (GE 2; Tr. 53)
- **Credit card: \$1,285, UNPAID** (allegation 1.c.) Applicant opened this account in 2000 or 2001. She was making payments one point, but she is uncertain of the date. She believes she made her last payment in 2009 or 2010 with part of an income tax refund. She testified the balance is probably now about \$1,400 or \$1,500. (GE 2; Tr. 53-55)
- **Credit card: \$394, UNPAID** (allegation 1.d.) - Applicant opened this credit card account in 2007. Her last payment was in 2009. (GE 2, 5; Tr. 55-56)
- **Mortgages: \$41,753** (allegation 1.e.); **\$14,195** (allegation 1.g.) - Both allegations relate to Applicant's condo that was foreclosed in 2009. Allegation 1.g. is a past-

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<sup>5</sup> Allegation 1.f. (auto loan) is a duplicate of allegation 1.h. Therefore, I am including in the total only the amount cited at allegation 1.h., \$6,831, as shown in GE 5.

due amount on the first mortgage, as listed in Applicant's credit bureau reports. However, Applicant no longer owes payments on that loan. The lender has provided Applicant with a IRS Form 1099-A, which relates to foreclosure of secured properties. The lender has also informed Applicant that the matter is closed. Applicant did not, however, submit evidence showing that the second mortgage was satisfied through the foreclosure (allegation 1.e.). The record evidence is insufficient to determine whether or not she is liable for a deficiency on the second loan. She is seeking legal advice on its status. (GE 3, 4; AE C)

- **Auto loan: \$6,331, UNPAID** (allegation 1.f.) - Applicant bought this 2005 car in 2005. She was five to six months behind in December 2008, and paid \$1,500 to bring the loan current. Her last payment was in about February 2009. At her security interview in January 2010, she planned to set up a payment plan and have the account up-to-date by February 2010. Applicant voluntarily returned the car in 2010, because she was unable to keep up payments. She believes that the car was sold, and that she now owes \$2,415. She has not contacted the company that currently holds the debt because she would not be able to make payments. (GE 2; Tr. 56-59)
- **Allegation 1.h.** is a duplicate of allegation 1.f. See above.
- **Utility: \$376, DISPUTED** (allegation 1.i.) – The debt relates to a gas bill. Applicant disputed it with the credit reporting agencies, because she had paid all the gas bills related to her condo. It has been deleted from her most recent credit report. (AE B; Tr. 60-61)
- **Telephone: \$816, DISPUTED** (allegation 1.j.) – Applicant last had service from this cellular phone company in 2000. She believes this debt is an error. Her 2009 credit bureau report shows that she disputed the account with the credit reporting agencies. During her security interview, she said she would pay some but not all of the amount alleged, and would make payment arrangements by February 2010. It does not appear on Applicant's July 2010 credit bureau report, but Applicant provided no evidence showing the outcome of the credit agencies' investigation. (GE 5; Tr. 61)

### **Policies**

Security clearance decisions must be fair, impartial, commonsense determinations based on examination of all relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>6</sup> Decisions must also reflect consideration of “whole-person” factors listed in ¶ 2(a) of the guidelines.

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<sup>6</sup> Directive. 6.3.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest<sup>7</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>8</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>9</sup>

## Analysis

### Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; AG ¶ 2(b).

Applicant's debts started to become delinquent in 2008. Although the status of her second mortgage is unresolved, she owes more than \$10,000 in non-mortgage debt. The following disqualifying conditions under AG ¶19 apply:

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

The Financial Considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (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's debts are both numerous and recent, as they have continued from 2008 to the present. Her financial delinquencies resulted from unexpected events – a difficult pregnancy which caused her to have unpaid absences from work; unemployment for 17 months; and a soft housing market that made her property difficult to sell. Applicant could not predict these events, and they had a negative effect on her ability to pay her debts. She acted reasonably in relation to her mortgage obligation when she decided to sell her condo, but the mortgage crisis made that option unsuccessful. The house was foreclosed. However, she had other debts that amounted to approximately \$10,000, which started becoming delinquent in 2008. She did not act reasonably in relation to these debts. In the years since 2008, she did not make an effort to work out payment plans or otherwise resolve these debts. She can claim only partial credit under AG ¶ 20(b). In addition, although she spoke informally with friends about finances, she did not seek any formal financial help during the years that her debts mounted. Her financial situation is not under control, and AG ¶ 20(c) does not apply.

Since 2008, Applicant has not worked to pay her debts. She did make efforts to sell her home, and applied for a loan modification. Her mortgage problems stem in part from the lender's refusal to accept her buyers' offers. She did successfully dispute a utility bill, and provided a document showing it had been deleted from her credit bureau report. AG 20(e) applies as to that debt. However, she made no effort to work with creditors for the remaining significant non-mortgage debt. She accrued almost \$10,000 in these other delinquencies, and made no effort to contact creditors, establish payment plans, or otherwise resolve them. Her efforts in contacting attorneys have been intermittent and have not resulted in any concrete plan. Although she is considering bankruptcy, she again has not taken steps to put that plan in motion. Applicant's lack of effort in relation to her debts precludes full mitigation under AG 20(d).

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant was financially stable in 2007 and earlier, and was able to qualify for a home loan. Her fortunes changed when she lost pay due to pregnancy-related absences, and a lack of income when she decided to stay home to care for her daughter. She was then unable to find work, and was unemployed for about 18 months. She realized she could not handle the mortgage payments. She worked with the lenders and obtained a loan modification, and also tried to sell the condo. However, the property was foreclosed.

Applicant's period of unemployment affected her ability to pay her debts. However, she has been working full-time since 2008. Since at least 2009, when she



completed her security clearance application, she has been on notice that delinquencies are a security concern. Yet there is little evidence that she made any effort in regard to her non-mortgage debts. She has not contacted creditors, arranged payment plans, or otherwise dealt with her delinquencies, except to dispute two debts. She did not consult with an attorney until 2011. Finally, Applicant is considering filing a bankruptcy petition, but has done little to implement that plan. Under the Appeal Board's jurisprudence, an Applicant does not have to show that she paid every debt, or paid every debt in full; but she does have to show that she has a viable plan in place and has taken steps to implement that plan. Applicant's lack of attention to the status of her second mortgage, and lack of a plan to pay the other \$10,000 in non-mortgage delinquencies, fails to demonstrate reliability and good judgment.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns raised by the cited adjudicative guideline.

### **Formal Findings**

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a. – 1.f.	Against Applicant
Subparagraphs 1.g. – 1.i.	For Applicant
Subparagraph 1.j.	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge