



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 10-01826 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: David A. Hayes, Esq., Department Counsel  
For Applicant: Leslie M. Gordon, Esq.

February 16, 2011

**Decision**

LYNCH, Noreen A., Administrative Judge:

On September 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on December 14, 2010. A Notice of Hearing was issued on December 23, 2010, and the case was heard on January 28, 2011. Department Counsel offered eight exhibits, which were admitted without objection as Government Exhibits (GE) 1-8. Applicant testified and submitted exhibits AE A through AE BB at the hearing, which were admitted without objection. DOHA received the transcript (Tr.) on February 7, 2011. Based on a review of the pleadings, testimony, and exhibits, I find Applicant met her burden regarding the security concerns raised. Security clearance granted.

## Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. She graduated from high school in 1998 and obtained her undergraduate degree in 2003. Applicant is married and has one son. She received her master's degree in 2006. Applicant has held a security clearance since 2003. (Tr. 78) She has worked for her current employer since August 2003. (Tr. 20) During those seven years, Applicant has received several promotions and raises.

### Financial

Applicant received unsolicited credit card offers while she was in college. During college, she worked part time and earned a low hourly wage. Applicant accepted the credit card offers, and eventually she obtained six credit cards in her name. She used them frequently for meals, clothing, and trips. She acknowledged that she used the cards and spent beyond her means. She believed that she would pay the full balances on the credit cards after graduation from college. (Tr. 22)

Applicant continued to use the credit cards and reached the maximum allowable credit on each of the accounts. She would transfer one balance to another in an attempt to make the minimum payments. She made monthly payments, but eventually the accounts became delinquent as she lacked sufficient income to pay them. (Tr. 23)

In 2006, Applicant's car needed major repairs. She purchased a new one and started payments. At that point she could not maintain any credit card payments. She sought help from a credit solutions company. She paid a fee of \$2,200. However, they did not help her consolidate or organize her debts. Instead, they advised her to stop making any payments on any of the credit cards. (Tr. 24)

Applicant married in 2006. She was overwhelmed and knew she had to address the financial debts. At that time, she believed the total amount she owed was \$15,000. She decided to work on a solution without the help of the credit company. She wanted to settle as much of the delinquent debt as she could. She took out a loan against her 401(k). Although married, she was the primary support, as her husband encountered periods of unemployment. He also suffers from depression.

The SOR lists four delinquent accounts totaling \$25,000. The debts are now paid. Applicant was paying or resolving them before the SOR, as early as 2007. The debts are the result of six delinquent credit card balances. She closed the credit accounts in 2006 and did not incur any more delinquent debt. Applicant provided detailed receipts for all the collection accounts. (AE A-E) She also paid one debt that was not on the SOR. She submitted a credit report that shows the accounts noted in the SOR that were delinquent. Each has a zero balance. (AE G)

In May 2007, Applicant acknowledged her delinquent debts to the investigator from OPM. (GE 2) She explained her payment plans and projected time lines for full

payments on all her accounts. On her recent SF-86, she disclosed the five credit card collection accounts and her payment process. (GE 1)

Applicant's 2010 monthly net income was \$4,492. (AE F) It would appear that there is a net remainder of \$2,500 in disposable income. Applicant has a budget. She has savings and contributes to her 401(k) account. She has an emergency fund. She is current on all her daily expenses. Her car note is paid. She has not incurred any new credit card debt. She has paid her legal fees for the security hearing. (Tr. 59) She has approximately \$62,000 in her 401(k). She is also paying her student loans.

Applicant explained that she understands that she is responsible for her son and does not want to "borrow" against her future by using credit cards. She has one card but she pays the balance in full each month. She only buys what she needs. She was resolute that she would not jeopardize her current financial solvency by overusing credit cards. She acknowledges that she made mistakes in college with the credit cards. She now has financial goals for her family. (Tr. 60) She has matured since her college days. Applicant now has a credit check monitoring program in place to ensure that she follows her account and monitors her credit score.

Applicant has completed security training sessions during her seven years of employment with her company. She has never had a security incident. (AE S) She has received many promotions during her time with the company. (AE H) Her performance reviews are excellent. (AE I ) She has received several awards. (AE J)

Applicant submitted eight letters of recommendation from her employer, friends, and colleagues. (AE L through R) Each attests to her leadership, expertise, reliability, and superior skills. She is a program manger who supervises 20 employees and handles contracts valued at \$4 million.

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”<sup>1</sup> The burden of proof is something less than a preponderance of evidence.<sup>2</sup> The ultimate burden of persuasion is on the applicant.<sup>3</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>6</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

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

The security concern for Financial Considerations is set out in AG ¶ 18:

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<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant incurred delinquent debts in the amount of \$25,000. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant provided documentation to show that she has paid all her delinquent accounts. The accounts stemmed from college credit card debt. She has not incurred any delinquent credit card debt since 2005 or 2006. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. As noted, Applicant used her credit cards for items that were not always necessary. She continued to amass the credit card debt until 2006.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant provided evidence of her receipts and previous payment plans before the SOR. She has completely paid off her delinquent accounts. She also received financial counseling. She has a detailed budget and has a savings and emergency fund. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) 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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the "whole-person" factors. Applicant is 30 years old. She received many unsolicited credit cards while in college. She spent beyond her means. However, she realized that she needed to act responsibly and did so. She married in 2006 and she has a son. She is the primary wage earner in the family. She closed her credit accounts in 2006. She did not incur any new debts. Before the SOR, she had a payment plan. She has now paid all her collection accounts.

Applicant has received many promotions and raises with her employer. She has received glowing references and letters of appreciation. She is a mature young wife and mother. She was quite organized and candid at the hearing. She has held a security clearance since 2003 without any incidents.

### **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 through 1.d: | For Applicant |

## **Conclusion**

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

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NOREEN A. LYNCH.  
Administrative Judge