



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



In the matter of: )  
)  
) ISCR Case No. 10-02238  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

February 14, 2011

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, Applicant failed to provide adequate information to mitigate security concerns under Guideline F. Eligibility for access to classified information is denied.

On November 3, 2009, Applicant submitted an Electronic Questionnaires for Investigation Processing (e-QIP) to obtain a security clearance for her employment with a defense contractor. (Item 5) On August 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the Department of Defense on September 1, 2006.

Applicant timely answered the SOR. She admitted the ten factual allegations noting that three of the debts concerned satellite television reception systems, and one

an emergency room medical visit. The total delinquent debt alleged in the SOR is \$23,243. Applicant elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on October 29, 2010. Applicant received a complete file of relevant material (FORM) on November 18, 2010, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. She did not provide any additional information in response to the FORM. The case was assigned to me on January 14, 2011.

### **Findings of Fact**

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 49 years old, and has worked for a defense contractor as a role-play shift leader since June 2005. Applicant listed the employment as part time because she is called to work when needed. Since she is now a shift leader, she now works almost full-time. She has continued employment since May 2001, previously having worked as a nurse in a hospital. Applicant has a 24-year-old daughter that lives on her own. Applicant was married in 2003 and divorced in 2005. Applicant was abused during the marriage and the divorce was contentious. She states she is now in a "spouse-like" relationship. She has never served in the military, and this is her first application for a security clearance. (Item 5) In response to interrogatories, Applicant listed her net monthly income as \$2,356, with net monthly expenses of \$1,720, leaving a net monthly remainder in discretionary funds of \$636. (Item 6 at 5) She does not indicate if any of the income or expense are attributed to the "spouse-like" relationship.

A credit report (Item 8, credit report, dated November 13, 2010) shows ten delinquent debts totaling approximately \$23,243. These delinquent accounts include collection accounts for satellite or cable television service (SOR 1.a, 1.e, 1.h), delinquent medical accounts (SOR 1.i, and 1.j), and loans and credit card accounts (SOR 1.b, 1.c, 1.d, 1.f, and 1.g).

In a January 21, 2010, interview with a security investigator, Applicant attributes her financial problems to her nasty divorce from her former husband. She was abused during the marriage and advised to immediately leave him. Once she left their residence, she never returned nor had any contact with her former husband. Her mail and bills went to her former residence and she was unaware of her debts. After her divorce, Applicant made no attempt to rectify the financial situation. Since the debts were accumulated during the marriage, Applicant believed her husband would pay the debts. When she finally realized her husband was not paying the debts, she made some attempts to resolve the debts. However, since she was not working full time she was unable to pay much of the debt. She denies knowledge of most of the debts because they may have been opened by her former husband during or after the marriage. She also needed funds to help her daughter with car and insurance expenses. She does acknowledge the medical debts at SOR 1.i and 1.j for which she made periodic

payments. She stopped receiving notices from the collection agencies so she thought the debts had been paid and resolved. She did not present any documentation to support her assertions or issues. (Item 7) In her undated response to the SOR, Applicant acknowledged all of the delinquent debts. She provided no information on payments or attempts to resolve the debts. (Item 4)

Applicant has failed to present documentation showing she has taken or intends to take any action to resolve or pay her delinquent debts. She has substantial discretionary funds on a monthly basis but provided no information on how those funds are, can, or will be utilized to resolve her delinquent debts.

### **Policy**

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 must be considered 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.

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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion for obtaining 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.

## **Analysis**

### **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, 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts listed in a credit report and admitted by Applicant raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). The number and nature of the debts, ten debts from credit cards, medical bills, and services establishes a history and unwillingness to pay debts.

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government.

I considered Financial Considerations Mitigating Condition (FC MC) 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); and FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separations) and the individual acted responsibly

under the circumstances). These mitigating conditions do not apply. Applicant asserts that she had an abusive marriage forcing her to move from her home. She did not receive her mail and had no knowledge of her debts since she was no longer in the residence to receive mail. Applicant did not present any information to establish her marital situation was the cause of her financial problems and the reason why she could not pay debts when she learned of them. In fact, once she learned of the debts, she made little to no effort to contact creditors and attempt to resolve the debts. Applicant claims that her debts were incurred by her husband without her knowledge both during and after their marriage, but she failed to provide documentation to support the assertion or any action she took to inform creditors that she was not responsible for the debts. She has discretionary funds each month to pay delinquent debts but has not indicated that she is making payments thereby acting responsibly to use these funds to resolve her past financial obligations. Without information from Applicant, it cannot be determined her financial problems are being resolved. With evidence of delinquent debt and no documentation to support reasonable management of her finances, it is obvious that her financial problems are not under control.

I considered FC MC ¶ 20(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). Applicant presented no information to indicate she received financial counseling. Even if she received counseling, there is no indication her financial problems are being resolved or under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan. Applicant failed to establish such a meaningful track record.

Applicant has not presented adequate evidence to show she is resolving her financial problems. She has sufficient income to meet her financial obligations and has years of steady employment. Applicant's lack of documented action to pay her debts is significant. She has not acted reasonably under the circumstances. Based on the delinquent debts presented by the Government in credit reports, which she acknowledges, Applicant has not acted responsibly towards her debts and finances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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. Applicant has not established a meaningful track record of paying her delinquent debts. She has not provided sufficient credible documentary information to show she acted reasonably and responsibly to address her delinquent debts and resolve her financial problems, or even that she has a credible plan to resolve and pay her delinquent debts. Applicant has not demonstrated responsible management of her finances. The lack of responsible management of financial obligations indicates she may not be concerned or responsible in regard to classified information. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation. Eligibility for access to classified information is denied.

### **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.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 national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge