



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



In the matter of: )  
)  
) ISCR Case No. 10-02616  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

February 28, 2011

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

The evidence did not establish Personal Conduct security concerns, but Applicant failed to mitigate Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 12, 2010, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2010. DOHA issued a notice of hearing on December 30, 2010, and the hearing was

convened as scheduled on January 31, 2011. DOHA received the hearing transcript (Tr.) on February 15, 2011.

## **Procedural and Evidentiary Rulings**

### **Evidence**

The Government offered Exhibits (GE) 1 through 13, which were admitted without objection. Department Counsel's witness list is marked Hearing Exhibit (HE) I. Applicant testified and submitted Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents that were marked AE B and C and admitted without objection. Department Counsel's memorandum is marked HE II.

### **Motion to Amend SOR**

Department Counsel moved to amend the SOR by withdrawing SOR ¶ 1.h. Applicant did not object to the amendment, and it was granted.

## **Findings of Fact**

Applicant is a 45-year-old employee of a defense contractor. She worked for a different defense contractor from 1995 to 2002. In 2002, the contract that Applicant worked on was awarded to another company. All the employees on the contract, including Applicant, transferred to the company that was awarded the contract, Applicant's current employer. She seeks to retain a security clearance she has held for at least 20 years. She is a technical school graduate. She has been married since 2008. She has a 16-year-old child and three adult stepchildren.<sup>1</sup>

Applicant has had financial problems for a number of years. She attributed her initial financial difficulties to her child's father not paying child support for their child. She filed Chapter 7 bankruptcy in 2002, and her debts were discharged in 2003. The bankruptcy petition listed under Schedule D – Creditors Holding Secured Claims, a \$10,337 car loan for a 1999 car and \$57,000 owed on a mortgage. There were no claims listed under Schedule E – Creditors Holding Unsecured Priority Claims. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed eight credit card debts totaling \$42,350.<sup>2</sup>

Applicant's finances stabilized for a period after the bankruptcy, and then she started having financial problems again. Her parents became ill. Her mother passed away in 2006, and her father passed away in 2007. Applicant stated she paid her parents' bills before they passed away. She also indicated that she paid most of their funeral expenses. Applicant was also off work for about three and a half months with an injury in 2009. Because of paperwork mistakes by her doctor, her disability payments

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<sup>1</sup> Tr. at 36-42; GE 1.

<sup>2</sup> Tr. at 32, 44; Applicant's response to SOR; GE 2-4, 6, 11-13.

were delayed for more than seven weeks. She was unable to pay all her bills and a number of debts became delinquent.<sup>3</sup>

The SOR alleges Applicant's 2002 bankruptcy and six delinquent debts totaling about \$21,662. Applicant admitted owing the debts alleged in SOR ¶¶ 1.a (credit card debt of \$5,755), 1.b (credit card debt of \$1,288), and 1.e (\$11,448 deficiency owed on car loan after car repossessed). Applicant stated the loan was for a sports utility vehicle (SUV) that was voluntarily repossessed in 2009. She denied owing the debts alleged in SOR ¶¶ 1.c (\$21), 1.d (\$1,868), and 1.f (\$1,282). Except as specifically stated below, the allegations were established through credit reports and Applicant's admissions.<sup>4</sup>

Applicant submitted documented proof that the \$1,282 debt to a cellular telephone services company alleged in SOR ¶ 1.f was paid during or before August 2010.<sup>5</sup>

Applicant stated the \$21 debt to a tire store alleged in SOR ¶ 1.c was paid. The credit reports indicate the debt is in a collection status and the original amount of the debt was \$300, which indicates at least \$279 was paid to the creditor.<sup>6</sup>

Applicant denied owing the \$1,868 debt to a bank that was alleged in SOR ¶ 1.d. She stated the debt was discharged in her 2003 bankruptcy. The bankruptcy petition does not list this bank as one of the debts under any of the schedules. The credit reports list the debt as an individual account that was opened in 2006 and had a date of last activity in 2008. Applicant did not submit any documentation that she disputed the debt.<sup>7</sup>

Applicant contracted with a law firm in August 2010 to assist her in resolving her debts. She enrolled four debts, totaling about \$20,514, in the law firm's debt settlement program (DSP). The four debts included the three debts Applicant admitted owing as alleged in SOR ¶¶ 1.a, 1.b, and 1.e, as well as the debt in SOR ¶ 1.d that Applicant denied owing. The monthly payment to the law firm is \$451. The estimated duration of the DSP is 32 months. Applicant did not submit the contract with the law firm, which would have provided information about fees charged by the law firm. She did not submit proof that she made the monthly payments to the law firm, and she did not submit anything from the law firm indicating any of the creditors in the DSP had been paid. She testified that she "recently moved, and most of [her] paperwork is in a jumble."<sup>8</sup>

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<sup>3</sup> Tr. at 28-33, 39, 42-43, 75-77; GE 2-4, 6.

<sup>4</sup> Tr. at 51-52; Applicant's response to SOR; GE 2-7.

<sup>5</sup> Tr. at 33, 52; AE A.

<sup>6</sup> Tr. at 34, 49-50; GE 2, 3.

<sup>7</sup> Tr. at 34-35, 50, 69-70; GE 2, 3, 11.

<sup>8</sup> Tr. at 28, 45-49, 67; GE 5; AE B.

Applicant stated that her contract with the law firm did not include financial counseling. She has not received any other financial counseling. She stated that her finances are in better shape. She stated that she intends to pay her debts through the DSP and that she has the financial resources to do so.<sup>9</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86), and certified it as true on September 11, 2009. The introduction to Section 26 stated:

For the following, answer for the last 7 years, unless otherwise specified in the question. Disclose all financial obligations, including those for which you are a cosigner or guarantor.<sup>10</sup>

Applicant answered “Yes” to Section 26a of the SF 86, which asked “Have you filed a petition under any chapter of the bankruptcy code? If ‘Yes,’ indicate Chapter 7, 11, or 13.” In the section for providing details of positive responses, she indicated that it was a Chapter 7 bankruptcy, she provided her bankruptcy attorney’s name and address, she wrote that the amount of the debt involved was \$109,787.94, and the debts were discharged on January 14, 2003.<sup>11</sup> Applicant answered “No” to all other financial questions on the SF 86, including:

- b. Have you had any property voluntarily or involuntarily repossessed or foreclosed?
- f. Have you defaulted on any type of loan?
- g. Have you had bills or debts turned over to a collection agency?
- h. Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?
- m. Have been over 180 days delinquent on any debt(s)? and
- n. Are you currently over 90 days delinquent on any debt(s)?<sup>12</sup>

Applicant denied that she intentionally falsified the SF 86. She stated that she completed the SF 86 at home when she was off work on disability. She stated her computer got a virus. It “froze up; and [she] could go no further with it. So [she] had to call [her] company, and they helped [her] finish it up.” Applicant testified that her assistant facility security officer (FSO) finished the SF 86 by asking her the questions over the phone and then typing the information onto the electronic version of the SF 86,

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<sup>9</sup> Tr. at 59-75, 87; GE 5.

<sup>10</sup> GE 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

the Electronic Questionnaires for Investigations Processing (e-QIP), on the computer. She stated that she remembered the FSO asking her the pertinent financial questions and that she responded that the answers should be “Yes.” She stated that she read the bankruptcy information to the FSO, who typed it onto the computer. Applicant stated that she was asked to sign the SF 86 after she returned to work. She stated that she did not read the SF 86 to verify its accuracy before she signed it.<sup>13</sup>

Applicant submitted a statement from her assistant FSO dated February 10, 2010. The assistant FSO wrote:

[Applicant] contacted me on 10 February 2010, and advised me that she was having problems with her home computer while she was updating her eQIP. I assisted her over the phone with completing her information in eQIP.<sup>14</sup>

The SOR alleges that Applicant intentionally falsified the answer to Section 26g above, because she did not reveal that the \$1,282 debt to a cellular telephone services company alleged in SOR ¶ 1.f had been “turned over to a collection agency.” There is no evidence that this debt was submitted to a collection agency. The 2009 credit report lists the debt under the cellular telephone services company. The 2010 credit report does not list the debt at all. The receipt showing that the debt was paid was issued by the cellular telephone services company, not a collection agency. There is insufficient evidence for a determination that Applicant falsified this question on the SF 86.<sup>15</sup>

The SOR also alleges that Applicant intentionally falsified the answer to Section 26h above, because she did not reveal the information in SOR ¶ 1.f, which alleged a debt of \$11,448 on the deficiency owed on a car loan after the car was repossessed. Section 26h asked if Applicant “had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed.” It is unclear when the car was repossessed, but it apparently occurred after the SF 86 was submitted. The credit report of October 3, 2009, which was after the SF 86 was submitted, listed the loan as past due \$2,037. There is no indication that the loan was “suspended, charged off, or cancelled” at the time the SF 86 was submitted. There is insufficient evidence for a determination that Applicant falsified this question on the SF 86.<sup>16</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

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<sup>13</sup> Tr. at 53-59, 77-81; GE 1; AE C.

<sup>14</sup> AE C.

<sup>15</sup> GE 2, 3; AE A.

<sup>16</sup> GE 2, 3. Applicant’s answers to other questions on the SF 86 were not alleged in the SOR and will not be used for disqualification purposes. They will be used in assessing Applicant’s credibility.

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 safeguard 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 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:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

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 has had financial problems for a number of years. She attributed the problems that led to her filing bankruptcy in 2002 to her child's father not paying child support for their child. Applicant stated she paid her parents' bills before they passed away in 2006 and 2007, as well as the bulk of their funeral expenses. Applicant was also off work for about three and a half months with an injury in 2009, and her disability

payments were delayed for more than seven weeks. Those events qualify as conditions that were outside her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant paid the \$1,282 debt to a cellular telephone services company during or before August 2010. I also find that she paid the \$21 debt to a tire store. Applicant contracted with a law firm in August 2010 to assist in resolving her debts. The monthly payment to the law firm is \$451. She did not submit proof that she has actually made the payments. Applicant denied owing the debt in SOR ¶ 1.d. She did not submit documented proof to substantiate the basis of the dispute. In fact, the debt is included in her DSP. I find that Applicant made a good-faith effort to pay the \$1,282 and \$21 debts as alleged in SOR ¶¶ 1.c and 1.f. I also find that the payments for those debts are insufficient for a finding that she acted responsibly and made a good-faith effort to pay or otherwise resolve her other debts. Applicant has not received financial counseling. Her financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(e) are not applicable. AG ¶¶ 20(b) and 20(d) are partially applicable. In sum, I conclude that financial concerns remain despite the presence of some mitigation.

### **Guideline E, Personal Conduct**

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

There is insufficient evidence that Applicant intentionally falsified the specific questions on the SF 86 that were alleged in the SOR. Personal Conduct security concerns are concluded for Applicant.

### **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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's stable employment record and her long history of holding a security clearance without any apparent incident. However, her finances continue to be in disarray after a bankruptcy cleared \$42,350 of credit card debt in 2003. She has not established a track record of financially responsible behavior sufficient to warrant a security clearance

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Personal Conduct concerns have not been established and 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Withdrawn

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a-2.b: For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge