



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



In the matter of: )  
)  
) ISCR Case No. 10-03598  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

04/20/2012

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant is financially overextended, and her evidence is not sufficient for me to conclude that she is in control of her financial situation, or that she has a viable plan to resolve her substantial debt. Her financial problems continue to raise doubts about her judgment and her ability to comply with the law and regulations. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 8, 2010. On December 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (Financial Considerations).<sup>1</sup> Applicant answered the SOR on January 4, 2012, and

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<sup>1</sup> DOHA acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

requested a hearing before an administrative judge. The case was assigned to me on February 21, 2012.

DOHA issued a notice of hearing on March 9, 2012, convening a hearing for March 20, 2012. At the hearing, the Government offered exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified and submitted exhibits (AE) A through L, which were admitted without objection. AE L was submitted post-hearing. DOHA received the hearing transcript (Tr.) on March 27, 2012.

### **Procedural Issue**

On February 22, 2012, Applicant requested her hearing be scheduled for March 20, 2012. The notice of hearing was issued on March 9, 2012, convening a hearing on March 20, 2012. At the hearing, Applicant affirmatively waived her right to 15 days advance notice of her hearing.

### **Findings of Fact**

Applicant admitted the SOR factual allegations. In her answer to the SOR, she initially denied SOR ¶¶ 1.b and 1.i. However, she admitted both allegations at her hearing. Applicant's admissions are incorporated into the findings of fact. After a thorough review of all the evidence, and having observed Applicant's demeanor and considered her testimony, I make the following additional findings of fact.

Applicant is a 45-year-old project manager working for a government contractor. She was awarded a bachelor's degree in business management in May 2005. She is currently working on a master's degree in business administration. Applicant has never been married and she has no children.

Between March 1990 and March 1995, Applicant served on active duty as an enlisted marine in the U.S. Marine Corps. She then served in the Marine Corps Inactive Reserve from March 1995 until July 1998. Her service during both terms was characterized as honorable. Applicant possessed a secret security clearance during most of her service, which was terminated upon her discharge. She was granted an interim secret clearance in February 2003, which she has held without any security incidents or concerns. She needs a clearance to retain her project manager job. There is no evidence to show that Applicant has compromised or caused others to compromise classified information.

After her active duty discharge, Applicant was unemployed for several months. She was hired part-time in early 1995, and later she was moved into a full-time position. She was laid off in January 2002, and she worked part-time for six months in 2002. In July 2002, she was hired full-time by a government contractor, and she has been consistently employed since. Applicant started working for her current employer, a government contractor, in September 2009. Applicant claimed that between 2005 and 2007, she earned approximately \$55,000 a year; in 2008, she earned \$65,000; in 2009,

she earned \$69,000, in 2010-2011, she earned around \$85,000; and in February 2012, she started earning approximately \$101,000.

Applicant filed for Chapter 13 bankruptcy protection in January 1997, and her dischargeable debts were released in February 2002. She was forced to file for bankruptcy protection because she was unemployed or underemployed for some time after her service discharge.

Concerning SOR ¶ 1.b, Applicant testified that she purchased a townhome in 1994, for around \$100,000. In 2007, she purchased a second home for \$475,000. She intended to sell the townhome as soon as possible or to rent it, but because of the bad housing market conditions, she was unable to do either. She paid both home mortgages for about one year using her credit cards. She could not afford to pay both mortgages, her day-to-day living expenses, and her debts. She used her credit cards to pay for her day-to-day living expenses. The townhome was foreclosed in January 2010. Applicant's mortgage creditor stated that, as of March 23, 2012, she owes no money on the townhome's mortgage loan. She believes the foreclosure satisfied her mortgage debt.

Applicant acquired the delinquent credit card debt, in part, because she used her credit cards to pay for her day-to-day living expenses. She missed some payments and that increased the credit cards' interest, and she could not make her payments. She claimed that she had difficulty making the payments because she was involved in a car accident and underwent a medical procedure.

Applicant settled (for less than the total owed) and paid the debt alleged in SOR ¶ 1.c in January 4, 2012. (AE A) She established a payment plan for the debt alleged in SOR ¶ 1.d in August 2010. She has made 12 intermittent payments, for a total of \$1,355. The debt alleged in SOR ¶ 1.e is duplicated in SOR ¶ 1.g. Thus, SOR ¶ 1.g is resolved in Applicant's favor. Applicant established a payment plan for this debt in early 2010. Since then, she made 17 intermittent payments for a total of \$1,200. (AE L) Applicant established payment arrangements for the debts alleged in SOR ¶ 1.f and SOR ¶ 1.h in December 2010. For SOR ¶ 1.f, she made 29 intermittent payments for a total of \$3,298. For SOR ¶ 1.h, she made 17 intermittent payments for a total of \$875. (AE L)

SOR ¶ 1.i alleges a credit card debt in collection, owing approximately \$12,000. Applicant has been making sporadic payments on this debt since November 2008. She made 40 payments for a total of \$5,770. Applicant's one-page account statement,<sup>2</sup> provided in response to DOHA's October 2011 interrogatory, revealed that she issued four checks without sufficient funds to cover each of the four \$125 payments. According to the statement, the last payment received by the creditor was in September 23, 2011. Applicant claimed that she had post-dated the checks and the creditor processed the checks, against her instructions, before the check date.

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<sup>2</sup> The page indicates to be "page 2 of 4;" however, pages 1, 3, and 4 were not submitted in Applicant's response to DOHA's interrogatories.

In her post-hearing submission (AE L), Applicant provided pages 2, 3, and 4 of the same statement submitted in her response to DOHA interrogatories. It reflects that the last payment she made on this account was on September 23, 2011. Applicant submitted no documentary evidence of payments made since September 2011.

Applicant altered pages 2, 3, and 4 of her statement by deleting, without explanation, the entries indicating that she issued checks without sufficient funds. In addition to deleting the four nonsufficient fund entries on page 2, she concealed five other entries in pages 3 and 4, presumably concerning additional non-sufficient fund entries. Moreover, Applicant altered the statement by deleting (from the right top section of the pages) information concerning the last payment made, account balance, interests accrued, and other charges.<sup>3</sup>

Applicant submitted numerous reference statements from friends, her past Marine Corps' supervisors, and current civilian supervisors. She is considered to be a productive and dedicated professional. Her references lauded Applicant's maturity, trustworthiness, and integrity. In their opinion, her character is beyond reproach. They recommended that she be granted a security clearance without reservations.

Applicant believes that since she is no longer financially responsible for the foreclosed townhome, she now has the financial means to pay her current mortgage, her day-to-day living expenses, and her delinquent financial obligations. In her post-hearing submission, she included a working budget that provides for the payment of all of her debts and her day-to-day living expenses. According to the budget, Applicant's average monthly income is approximately \$8,300; her monthly expenses total \$2,120; and she is paying approximately \$3,310 to her creditors, including those alleged in the SOR. She has a monthly net remainder of \$255. She presented no documentary evidence to support her current income claim.

A review of Applicant's budget shows that she owes approximately \$133,416 of consumer credit card debt; \$72,034 in student loans; \$62,000 for a second mortgage, and \$474,188 for her current home mortgage. She is making minimum monthly payments on her credit cards. Her payments average only about one percent of the total

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<sup>3</sup> The SOR did not allege that Applicant altered documents before submitting them for my consideration. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR behavior accordingly.

debt owed. As of her hearing date, Applicant had not received any financial counseling. Post-hearing, she submitted a certificate showing that she attended financial counseling after the hearing.

## **Policies**

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their 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. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

Applicant filed for bankruptcy protection in 1997, and she was released of her dischargeable debts in 2002. Between 2002 and 2012, Applicant acquired the six debts alleged in the SOR, totaling over \$39,000. Additionally, she issued at least four checks that were returned due to insufficient funds. She also defaulted on a mortgage that was foreclosed in 2010, albeit she apparently has no further financial responsibility for that mortgage. AG ¶ 19(a): "inability or unwillingness to satisfy debts" AG ¶ 19(c): "a history of not meeting financial obligations," and AG ¶ 19(e): "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant cash flow, high debt-to-income ratio, and/or other financial analysis," apply.

AG ¶ 20 provides five conditions that could mitigate the financial considerations security concerns:

- (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's behavior was frequent as demonstrated by the number of debts, the aggregate total of the debt, and the period they were delinquent. Her financial problems are ongoing and she has a substantial outstanding debt, albeit some of the debts are in a current status. AG ¶ 20(a) is not applicable.

I considered Applicant's difficulty finding a job after her discharge from the service, her periods of underemployment and unemployment, the real estate market downturn, and her inability to rent or sell her townhome as circumstances beyond her control that contributed to her inability to pay her debts. Notwithstanding, these circumstances do not fully mitigate the financial considerations concerns. Considering Applicant's 2007 to 2008 income of about \$55,000-\$65,000, she financially overextended herself by purchasing two real estate properties, acquiring numerous student loans, and substantial credit card debt.

Applicant avers that she demonstrated financial responsibility by using her credit to pay her delinquent mortgage and her day-to-day living expenses for as long as she could. She also contacted some creditors and established payment plans for SOR ¶ 1.i in November 2008; for SOR ¶¶ 1.d, 1.e, 1.f, and 1.h in 2010; and she paid the debt alleged in SOR ¶ 1.c in January 2012. In sum, Applicant has taken steps to bring under control some of her delinquent financial obligations. Additionally, she submitted documentary evidence showing that she received financial counseling after her hearing. Financial considerations mitigating conditions AG ¶¶ 20 (b), (c), and (d) apply in part, but do not fully mitigate the financial considerations security concerns. The remaining mitigating conditions are not pertinent to the facts of this case.

Considering the evidence as a whole, serious questions remain about Applicant's ability to live within her means, satisfy her debts, and meet her financial obligations. In her latest personal financial statement (AE L), Applicant disclosed 13 consumer credit accounts owing over \$133,000; 15 student loans owing over \$72,000; and two mortgage loans owing \$536,000. She is being charged high interest rate charges on her credit cards, and she is only making minimum monthly payments on most of her credit card debts and student loans.

Applicant testified that she started earning \$101,000 a year in February 2012. She submitted no documentary evidence to support her claim. Her last payroll statement, dated September 2011, shows she was earning approximately \$75,500 a year, including a \$5,000 bonus. Applicant's debt statements show an inconsistent payment schedule, where she would skip scheduled monthly payments, or make payments for less than the amount she agreed. Additionally, Applicant issued at least four checks without having sufficient funds to cover them.

In sum, I find that Applicant is financially overextended and she is at risk of having to engage in illegal acts to generate funds. Her evidence does not support the conclusion that her financial problems are being resolved or are under control. In light of Applicant's unexplained alteration of documents submitted for my consideration, her promises to pay her financial obligations and to resolve her financial problems in the

near future are not credible.<sup>4</sup> Her overall behavior indicates poor self-control, lack of judgment, and an unwillingness to follow rules and regulations.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c)) I considered Applicant's good service record in the Marine Corps, her performance working for government contractors, and her favorable reference statements.

Notwithstanding, Applicant is financially overextended and her evidence is not sufficient for me to conclude that she is in control of her financial situation, or that she has a viable plan to resolve her financial problems. In light of her age, education, military experience, and her years holding a security clearance, her financial problems continue to raise doubts about Applicant's judgment and about her ability to comply with the law and regulations.

### **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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1h:   | For Applicant     |
| Subparagraph 1.i:         | Against Applicant |

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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JUAN J. RIVERA  
Administrative Judge

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<sup>4</sup> See footnote 3, *infra*.