



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



In the matter of: )  
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----- ) ISCR Case No. 10-03712  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson Esquire, Department Counsel  
For Applicant: *Pro se*

September 27, 2011

**Decision**

HOWE, Philip S., Administrative Judge:

On December 15, 2009, Applicant submitted her electronic Security Clearance Application (e-QIP; SF 86). On January 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on February 9, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 28, 2011, and I received the case assignment on April 4, 2011. DOHA issued a Notice of Hearing on April 15, 2011, and I convened the hearing as scheduled on May 5, 2011. The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through H,

without objection. DOHA received the transcript of the hearing (Tr.) on May 18, 2011. I granted Applicant's request to keep the record open until June 2, 2011, to submit additional matters. On that date, she submitted Exhibits I to J, without objection, except for an objection to the notations on Exhibit I that several debts were "disputed and removed." The Government contends the debts were not paid, merely removed from the credit report. I upheld that objection and did not consider those notations on Exhibit I as indicating anything more than that Applicant filed objections with the credit reporting agencies. The record closed on June 2, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted 11 of 17 factual allegations in the SOR, with explanations. She denied six factual allegations in ¶¶ 1.b, 1.e, 1.i, 1.m, 1.o, and 1.p of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 43 years old. She is unmarried. Applicant works for a defense contractor. She had several periods of unemployment: from November 2003 to February 2004; then again in September 2004 when she was denied a security clearance while working for a defense contractor and was laid off until August 2005; Applicant was laid off in July 2006 until October 2006; she was laid off in January 2008 until obtaining employment in March 2009; in July 2009 she was unemployed until March 2010; Applicant had a part-time job from August 2010 to October 2010; in October 2010 Applicant was hired by the company for which she now works at \$13 per hour. Her net income weekly is \$413 now. During most of those periods of unemployment she received unemployment compensation. (Tr. 25-41; Exhibit 1)

Applicant pays \$605 in rent monthly, \$150 monthly for electricity, and she had recurring auto repair expenses that totaled \$1,645 in the past few months. Applicant has a savings account with \$10 in it. She does not have a checking account because she "bounced" checks in the past and no bank will let her open such an account. She uses money orders to pay her bills. Applicant does not have credit cards. Applicant received at least \$2,000 in tax refunds in each of the past three years, but that money was spent on auto repairs and paying her past-due rent. She currently was paying money to avoid eviction from her current apartment. She owes \$1,100 in back rent. In the past four years Applicant has received three eviction notices and was physically evicted for non-payment of rent. She was served with several more notices during the past few years but managed to find the money to pay back rent on those apartments. Applicant gambles every three or four months using \$300 to \$500 she saves. Her gambling losses in the past year were about \$2,500. Applicant has had two cars repossessed in the past decade. She obtains auto insurance through her parents. The last time she obtained any financial counseling was before her 2002 Chapter 7 bankruptcy, in which \$105,000 was discharged. The debts listed in her bankruptcy petition include medical bills, check cashing fees, bank loans, and telephone debts. Applicant had a federal tax debt of

\$2,500 in 1997. It is paid. She is current on all tax filing requirements. (Tr. 41-48, 67-82; Exhibits 1, 6)

Applicant obtained a college degree this year. She attended a private college. Her college debt is about \$80,000. Her earliest student loans date from 2002. She is not paying on that debt at the present time. In the past Applicant made six payments at various times to rehabilitate her loans so she could borrow more money, with which to obtain her college degree or her previous associate's degree. (Tr. 50, 51; Exhibits 2-7)

Applicant owes the 16 delinquent debts listed in the SOR. Those debts total \$17,784. Thirteen of the sixteen delinquent debts are under \$1,000 each and total \$3,703. The remaining three debts total \$14,081. The last financial consideration listed in the SOR is Applicant's 2002 Chapter 7 bankruptcy. (Tr. SOR; Exhibits 2-5, 7, A-I)

Applicant owes a collector \$51 each on two separate medical accounts (SOR Para. 1.a and 1.b). She denied the debt in Para. 1.b because she thinks it is a duplicate of the debt in Para. 1.a. They are separate accounts with separate account numbers. They have been delinquent since November 2010. These debts are not resolved. (Tr. 51, 52; Exhibits 2-7, I)

Applicant owes a dental bill for \$220 (SOR Para. 1.c). Applicant claims the debt was paid by her insurance and no longer appears on her credit report. This debt originated in December 2004 and was scheduled to drop from the credit report in November 2010. This debt is not resolved because Applicant did not submit any evidence of any payment. (Tr. 52; Exhibits 2-7, I)

Applicant owes \$418 for a television service dating from August 2010 (SOR Para. 1.d). She claims she will pay \$59.13 monthly starting in May 2011. Applicant did not submit any evidence of actual and regular payment. This debt is unresolved. (Tr. 53, 54; Exhibits 2-7, I)

Applicant owes \$135 on a medical account delinquent since August 2010 (SOR Para. 1.e). She denied this debt because she is not certain it is owed by her. The original creditor was also listed in Applicant's 2002 Chapter 7 bankruptcy. Applicant paid \$50 on this account in April 2011 and was supposed to pay \$50 monthly until the debt is resolved. Applicant did not submit any evidence she continued to make the payments. The debt is unresolved. (Tr. 54; Exhibits 2-7, F, I)

\$3,719 is the debt owed by Applicant for an apartment she vacated during the lease term (SOR Para. 1.f). The debt dates from November 2009. Applicant asked the landlord for a statement about the debt components. She has not received this accounting. Applicant has not paid any money on this debt. This debt is unresolved. (Tr. 56; Exhibits 2-7, A, I)

Applicant owes three medical debts in the amounts of \$250, \$543, and \$69 (SOR Para. 1.g, 1.h, and 1.i). These debts date from 2006 and 2008. She thought her

insurance paid these debts several years ago, but now wants to pay \$50 monthly starting in May 2011. The debts are unresolved. (Tr. 57, 58; Exhibits 2-7, C, I)

Applicant owes \$137 to a medical provider and has since March 2009 (SOR Para. 1.j). Applicant wants to pay \$45.53 starting in May 2011. She did not submit any documents showing she made any such payments. This debt is unresolved. (Tr. 59; Exhibits 2-7, D, I)

Applicant owes a credit union \$500 on a loan (SOR Para. 1.k). This debt dates from July 2007. It was a loan Applicant took out to reestablish her credit. The collector sought \$693.29 in August 2010. Applicant claims she has an agreement to pay \$100 monthly on the account. By January 2011 the debt increased to \$725.35. The collector's letter in January 2011 states Applicant has not made any payments on the debt. She did not submit any documents to show she paid any money on the debt since January 2011. This debt is unresolved. (Tr. 59, 60; Exhibits 2-7, B, I)

Applicant owes a medical debt of \$1,879 since April 2008 (SOR Para. 1.l). Applicant claims she disputed the debt and it was removed from her credit report. Applicant did not submit any documents to show the debt was paid. This debt is unresolved. (Tr. 60, 61; Exhibits 2-7, I)

Applicant owes a telephone bill in the amount of \$563 since October 2007 (SOR Para 1.m). Applicant disputes this debt but has no documents showing the dispute filing. She claims the debt is \$195.94 and the company offered to settle it for \$95. She did not pay the settlement because she disputed the debt. The credit report shows the debt is still owed. This debt is not resolved. (Tr. 61-63; Exhibits 2-7, I)

Applicant owes \$8,483 on a repossessed car since December 2005 (SOR Para. 1.n). Applicant has not resolved this debt. (Tr. 63, 64; Exhibits 2-7, H, I)

Applicant owes \$578 to a printing company since before she completed her e-QIP in December 2009 (SOR Para. 1.o). She denied this debt because she disputes the debt. This debt is unresolved. (Tr. 64, 65; Exhibits 1-7, I)

The final delinquent debt listed in the SOR is in Para. 1.p for \$188 owed on a medical debt. Applicant denied this debt and disputed it. She claims it was removed from her credit report. This debt is unresolved. (Tr. 66; Exhibits 2-7, I)

Applicant disputes any debt she cannot remember. She does not have copies of any dispute letters she filed with the credit reporting agencies. Applicant also owes family members money for personal loans she borrowed from them. (Tr. 65, 68, 69, 80)

Applicant could reduce her expenses by about \$10,000 annually by moving in with her parents or someone else to save on rent. She pays \$160 monthly to her church. Her gambling costs her about \$100 monthly. Applicant could reduce her utility costs by moving home or in with someone else. The money saved by these actions

could be used to pay 13 delinquent debts. Applicant's current position pays \$13 per hour and a new job might pay \$25 per hour. At \$13 hourly her annual income would be about \$20,000. She testified she had an interview the day after the hearing for a job that would pay \$60,000 annually. No result of that interview was disclosed. (Tr. 70-88)

Applicant submitted six character reference letters. All the authors describe Applicant as organized, competent, enthusiastic, sincere, loyal, trustworthy, and hard-working. (Exhibits K to O)

### **Policies**

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 are useful 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally

permissible extrapolation as to 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.” 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Three conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income, and/or other financial analysis.

Applicant accumulated \$17,784 in delinquent debt from 2004 to the present time that remains unpaid. Applicant has 16 delinquent debts listed in the SOR. She also owes about \$80,000 in student loans dating from 2002, on which she is not making any payments. Applicant has been evicted from three apartments because she failed to pay her rent.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be 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;

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant had five episodes of unemployment between November 2003 and October 2010. She received unemployment compensation during four of these five periods. Unemployment adversely affected Applicant's ability to pay her debts. However, she failed to provide proof that she acted responsibly while accumulating those debts, but instead demonstrated that she acted irresponsibly. She continued to incur student loans and spend money during these time periods which she could not repay. She also gambled \$300 to \$500 a couple of times each year, spending money that could have been used to pay her rent and debts. AG ¶ 20 (b) has partial application.

Applicant claims she disputes any debt she does not remember. She does not pay debts in a timely manner and as time passes Applicant conveniently claims she does not remember them. Applicant also does not have copies of any dispute letters she said she filed with the credit reporting agencies. AG ¶ 20 (e) does not apply because Applicant did not state a reasonable basis for any dispute nor provide any proof of dispute filings.

### **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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 facts and circumstances surrounding this case. Applicant has a pattern of debt accumulation and repeated failure to repay her debts. There is no evidence of any behavior changes directed toward developing a plan to resolve her debts and avoid such situations in the future.

Applicant has not repaid any of the delinquent debts listed in the SOR. She has a history of apartment evictions in her financial history. She has not paid several medical debts. She routinely disputes delinquent debts she does not recognize because she allowed them to age over several years. In the time from when she filed her e-QIP in December 2009, and also after the January 2011 date of the SOR, Applicant took no action to pay her smaller debts or develop a plan to resolve her debts.

It is very likely Applicant will continue this pattern of spending money and gambling several times during each year, resulting in financial losses when she should have used that money to pay her debts. She has not taken any action to save money by cutting her expenses by moving into her parent's home, obtaining a roommate, or other actions discussed at the hearing. Applicant also has a history of borrowing money from her family, friends, and church that she must then repay. She demonstrated she cannot manage money, both with the current list of debts, her student loan debts, and the 2002 Chapter 7 bankruptcy.

Applicant shows poor judgment and poor self control of her finances. Applicant has a great potential for pressure, coercion, exploitation, and duress that casts doubt on her trustworthiness and current reliability. Applicant may be a good worker and colleague, according to her character references, but her long-standing pattern of financial problems are a distraction that could lead to security concerns.

Overall, the record evidence leaves me with substantial questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from her financial considerations. I conclude the "whole-person" concept against Applicant.



