



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-04413
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Allison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

December 19, 2011

**Decision**

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CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern generated by her delinquent finances. Clearance is denied.

**Statement of the Case**

On July 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant 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) implemented by the Department of Defense (DoD) on December 1, 2006.

Applicant answered the SOR on July 14, 2011, denying paragraphs 1.a through 1.l, 1.n, and 1.p through 1.s. She admitted the remainder.

Applicant requested a determination based on the written record rather than a hearing. On October 11, 2011, Department Counsel prepared a File of Relevant Materials (FORM) setting forth the Government's case. Applicant received the FORM on October 26, 2011 and was given 30 days to file a response. On November 9, 2011, she submitted a six-page response. Department Counsel did not object to the inclusion of the response into the record, and on November 29, 2011, the case was assigned to me.

### **Findings of Fact**

Applicant is a 29-year-old single woman with three children, ages ten, nine, and seven. Applicant got married in 2002. She and her husband separated in May 2005, and divorced in 2007.

Applicant, a high school graduate, has been working as an administrative specialist and receptionist for a defense contractor since September 2009. (Item 6 at 16) Applicant is highly respected on the job. According to her supervisor, she "is a highly results oriented worker who strives for perfection," and demonstrates "sound judgment" in executing her tasks. (Item 7 at 117) According to a coworker, "the impact of [Applicant's] support ripples through the team." (Item 7 at 128)

In June 2004, Applicant lost her job, and was then unemployed for five months. Consequently, she began to fall behind on her finances. In November 2004, Applicant filed for Chapter 7 bankruptcy protection. In February 2005, the bankruptcy court discharged approximately \$25,000 of Applicant's debt. (Item 7 at 135)

The SOR alleges that Applicant accrued approximately \$36,900 of additional delinquent debt since the bankruptcy discharge. The SOR includes medical bills (subparagraphs 1.a-1.k, 1.n, 1.t, and 1.u), utilities (subparagraphs 1.l, 1.m, and 1.o), a judgment (SOR subparagraph 1.q), the deficiency from a repossessed car (SOR subparagraph 1.p), and one miscellaneous debt (subparagraph 1.s).

Applicant contacted the credit reporting bureaus to dispute the medical bills listed in subparagraphs 1.a through 1.k, totalling \$14,720, arguing that they were the responsibility of her insurance carrier. Subsequently, these debts were deleted from her credit reports. (Item 4 at 26)

Applicant contends that subparagraphs 1.n and 1.t are covered by her health insurance, and that 1.u is a duplicate of 1.t. She reported her dispute of subparagraph 1.n to the credit reporting agency. (Item 4 at 12) The resolution of this dispute is pending. Applicant provided no documentary evidence supporting her dispute of this debt. Similarly, Applicant provided no documentary evidence supporting her dispute of subparagraph 1.t or establishing that 1.t and 1.u, which have different account numbers, are the same debt.

As for the allegedly delinquent utilities, Applicant disputes subparagraph 1.l, but provided no evidence supporting her dispute. She admits subparagraphs 1.m and 1.o, but contends she will not have the disposable income to pay them until she finishes satisfying a \$6,000 debt owed to a bail bondsman stemming from an August 2010 arrest. (Item 11)

The debt listed in subparagraph 1.p is an auto loan for a car Applicant purchased in March 2005. She stopped making payments in August 2006, and it was repossessed in April 2008. (Item 4 at 15) The amount outstanding is approximately \$16,000. She is currently attempting to reach a settlement with the creditor, but acknowledges that her ability to satisfy this debt is limited by the debt she is satisfying that is owed to the bail bondsman. (Item 4 at 6)

The judgment, as listed in subparagraph 1.q, totals \$2,616. It stems from a lawsuit that Applicant's then father-in-law filed against her in January 2006 to recover the costs of her wedding to his son. (Item 10) Applicant contends she satisfied this judgment through a wage garnishment. She provided evidence that, in June 2008, she made \$500 in payments. (Item 7 at 5; Item 10) She provided no additional evidence of more payments, or proof that she has satisfied the judgment.

Applicant denies subparagraph 1.s, totalling \$577. She contends she has formally denied it with the creditor, but did not provide any documentary evidence.

In the spring of 2008, Applicant experienced a miscarriage. Shortly afterwards, she experienced related health problems that caused her to miss a lot of time on the job. Consequently, in May 2008, her employer fired her. (Item 6 at 19,31) By the time a temp agency hired her in August 2008, her financial situation was so poor that she was living in a homeless shelter. (Item 6 at 12)

In September 2010, Applicant enrolled in credit counseling. (Item 7 at 105-112) She withdrew from the credit counseling agency after it began having financial problems. (Response to FORM at 4)

Since May 2011, Applicant has been maintaining a budget. According to the budget, she has approximately \$800 of after-expense monthly income. (Item 7 at 135) The budget includes none of the SOR debts nor the \$400 monthly debt she is paying to the bail bondsman. (Item 4 at 6, 9)

### **Policies**

In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to 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. 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.”

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 as to obtaining a favorable security decision.

## **Analysis**

### **Guideline H, Financial Considerations**

Under this guideline, “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 (AG ¶ 18). Applicant’s financial struggles trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

The following 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 successfully disputed subparagraphs 1.a through 1.k. Therefore, AG ¶ 20(e) applies, and I resolve these subparagraphs in her favor.

Applicant provided no evidence supporting her dispute of subparagraphs 1.l, 1.t, and 1.u. AG ¶ 20(e) is inapplicable to these debts.

Marital problems, job instability, and health problems contributed to Applicant's financial struggles. She retained a credit counselor and has contacted the credit reporting agencies, informing them of several of her delinquencies. Conversely, she provided no evidence of seeking another credit counselor since firing the original one in May 2011, and she acknowledges that she cannot make any payments toward the satisfaction of the remaining SOR delinquencies until she finishes paying the debt owed to a bail bondsman. Consequently, I conclude that AG ¶¶ 20(b) and 20(d) apply, but none of the other mitigating conditions apply because of the amount of delinquent debt outstanding and Applicant's lack of any plan to resolve it.

### **Whole-Person Concept**

Under the whole-person concept, 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.

Applicant is an industrious employee who is well respected both by coworkers and superiors. Many of her financial problems were caused by domestic strife stemming from a separation and subsequent divorce, in addition to health problems, and employment instability. However, more than \$20,000 of delinquent debt remains unresolved and Applicant has no tangible plan to repay it. These issues, in addition to the recurrent nature of Applicant's financial problems render Applicant an unacceptable candidate for a security clearance.

### **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.k:	For Applicant
Subparagraphs 1.l - 1.v:	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 a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge