



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-06016
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: William T. O'Neill, Esq., Department Counsel  
For Applicant: *Pro se*

April 8, 2011

**Decision**

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LYNCH, Noreen A, Administrative Judge:

On December 3, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated January 27, 2011.<sup>1</sup> Applicant received the FORM on February 8, 2011, but did not submit any response. On April 1, 2011, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case assignment on April 4, 2011.

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<sup>1</sup>The Government submitted nine items in support of its case.

Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet her burden regarding the security concerns raised. Security clearance is denied.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations).

Applicant is a 43-year-old employee of a defense contractor seeking to obtain a security clearance. She graduated from high school and received a degree from a technical college in August 2007. Applicant is divorced. She has worked for her current employer since February 2010. (Item 5)

The SOR lists six delinquent accounts totaling \$33,000. Applicant admitted the debts and the credit reports confirm them. (Items 4, 8 and 9) She also acknowledged that she has student loans in deferment. She provided no documentary evidence showing that she has paid any accounts, but she intends to pay them. She submitted a “debt cancellation spread sheet” with her answer to the SOR. She acknowledges that the plan is entirely contingent on the approval of her security clearance. She admitted that she did not contact any creditors before now because she had no money. She offered to pay \$10 a month to pay on the smallest debts alleged in SOR ¶ 1.d-1.f.

Applicant attributed her debts to her mother’s serious illness which required Applicant to participate in her mother’s care beginning in May 2005. (Item 4) Applicant willingly left her full time employment in April 2008 to care for her mother. Applicant used her savings and credit to live. She attempted to obtain a real estate position but due to the economic market was unable to find a position. No significant information was provided that linked these events to the debts at issue. She also failed to provide information about her current finances. There is no evidence that she has pursued financial counseling, or described her overall financial situation.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>2</sup> The burden of proof is something less than a preponderance of evidence.<sup>3</sup> The ultimate burden of persuasion is on the applicant.<sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”<sup>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

## Analysis

### Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted the delinquent debts amounting to \$33,000. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

There are multiple debts at issue, amounting to \$33,000. As noted above, there is no tangible evidence that any of these debts have been resolved. Applicant wrote three letters suggesting a monthly \$10 payment to three creditors, but even those minimal efforts were in response to the SOR. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. As noted, Applicant states that her financial problems arose from her mother's serious illness which required her direct participation in her care in 2005. Applicant quit her full-time employment in 2008 to care for her mother at home. She could not find another job and was unemployed until very recently. Although she failed to document a clear nexus between those events, such unanticipated situations disrupt one's financial status. However, in the absence of details of other options than quitting her job or detailing how the expenses during unemployment related to her prior savings, there is no way to discern she acted responsibly during those periods. There is little evidence that she acted reasonably under the circumstances. She allowed the delinquent debts to remain unpaid. She had good intentions but did not make attempts to resolve her debt until after she received the SOR. She receives partial credit under this mitigating condition.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant submitted a debt plan that is contingent on her obtaining a security clearance for this position. She has not provided evidence of any payments, even the minimal \$10 payments that she suggested she could make on her three small debts. She did not present evidence that she received financial counseling which obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

### **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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 43 years old. She has an ill, elderly mother for whom she cares. Applicant was working and going to school in 2005 and apparently had no financial difficulties. She left her employment in 2008 to care for her mother in her home. She devoted herself to the care of her mother. She faced a challenging life event and made a tough decision. She tried to find employment in the real estate field but was unemployed for two years. She fully intends to pay her delinquent debts.

Applicant admitted to \$33,000 in delinquent debt. She submitted a consolidation plan that is contingent on obtaining a security clearance for this job. The evidence related to potential efforts to mitigate the government's concern is insufficient. There is no evidence to evaluate her current financial situation. There is no evidence of a current budget. While she did submit the consolidation plan, it is impossible to assess as part of any overall personal finance strategy without more information and evidence.

In the absence of documentary evidence submitted in response to this FORM to show that Applicant has been able to begin to resolve her financial difficulties through payment, or has obtained counseling with clear indication that the debts are being resolved or are under control, these concerns must be decided against her in evaluating her suitability to have access to classified information. The clearly consistent standard indicate that security clearance determinations should err, if they must, on the side of denials. Applicant failed to submit sufficient information or evidence to mitigate the security concerns raised in her case. Clearance 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.f:	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 a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge