



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-07009  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

October 31, 2011

**Decision**

WHITE, David M., Administrative Judge:

Applicant accrued more than \$80,000 in delinquent debt over the past few years, while she was employed full time. Resulting security concerns were not mitigated. She made no showing of unusual circumstances giving rise to these debts, or of changes to prevent continued financial irresponsibility. She very recently filed for discharge of her debts in bankruptcy, and purchased an expensive new car with a loan that will consume much of her income. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on April 20, 2010.<sup>1</sup> On April 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended;

---

<sup>1</sup>Item 5.

<sup>2</sup>Item 1.

Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 22, 2011, and requested that her case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on June 6, 2011. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on June 23, 2010, and returned it to DOHA. She provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. On September 8, 2011, a legal assistant at the law firm of the attorney who filed a bankruptcy petition for Applicant on that date forwarded a copy of the petition (Applicant Exhibit (hereinafter AE) 1) as an email attachment to Department Counsel. This material was included in the case file as Applicant's response to the FORM at Department Counsel's request, and without objection from him. I received the case assignment on September 15, 2011.

### **Findings of Fact**

Applicant is a 38-year-old employee of a defense contractor, where she has worked as a senior manufacturing associate since March 2010. She has no prior military service, and has never held a security clearance. She has never married, and has no children.<sup>5</sup> In her response to the SOR, she admitted all of the delinquent debts alleged in the SOR.<sup>6</sup> Applicant's admissions, including her responses to DOHA interrogatories,<sup>7</sup> are incorporated in the following findings.

According to section 13A of her SF 86, Applicant worked for a different company from April 1996 until March 2007. However, in section 13C of the SF 86 she reported that she was laid off from that job in August 2006.<sup>8</sup> On May 13, 2010, she told an

---

<sup>3</sup>Item 4.

<sup>4</sup>The Government submitted nine Items in support of the SOR allegations.

<sup>5</sup>Item 5.

<sup>6</sup>Item 3.

<sup>7</sup>Items 6 and 7.

<sup>8</sup>Item 5.

interviewer from the Office of Personnel Management (OPM) that her financial problems began in 2008 when she was laid off by that employer, and for the past two years had been unemployed or employed at much lower wages than she had made previously. She verified the accuracy of this statement to the OPM investigator on November 8, 2010.<sup>9</sup> In her response to the SOR she said, "I was let go by [that employer] back in 2006 and from then on I knew I could not afford my bills because I was not making the same I did [there]."<sup>10</sup> There is no other information in the record from which to determine which of her statements in this regard is accurate, and she provided no information concerning her respective earnings in that job and her subsequent positions. Section 13A of her SF 86 reflects subsequent full time manufacturing employment with a different company from April 2007 to January 2010, from which she was also laid off. She was unemployed during the rest of January and February 2010, before starting her current employment.<sup>11</sup>

The 12 SOR-listed delinquent debts to which Applicant admitted total \$84,631. Their existence is confirmed by the two record credit reports (CBR), with the exception of the \$4,500 debt alleged in SOR ¶ 1.k. Her Equifax CBR, dated October 8, 2010, reflects a report from July 2009 that this debt was charged off, but shows no charged-off amount in the "High Credit" column, no amount past due, and has a "0" balance. The credit limit was \$4,500, but there is no indication that the account was at its limit when charged off.<sup>12</sup> The same account is shown in a December 2007 Equifax entry on Applicant's Full Data Report, dated May 6, 2010. This CBR shows that the account was paid as agreed, with a "0" balance, and was paid and closed at consumer's request.<sup>13</sup> However, Applicant admitted owing this \$4,500 debt in her responses to DOHA interrogatories and to the SOR.<sup>14</sup> This debt does not appear on the schedule of creditors holding unsecured nonpriority claims filed with her bankruptcy petition on September 8, 2011.<sup>15</sup> On balance, I find that this account was paid and closed in 2007.

Applicant's oldest delinquent debt is the \$494 account for telephone services that was placed for collection in July 2006 (SOR ¶ 1.f). Her three most recent delinquencies, totaling \$383, arose between October 2009 and April 2010 (SOR ¶¶ 1.a, 1.i, 1.l). The

---

<sup>9</sup>Item 6.

<sup>10</sup>Item 4.

<sup>11</sup>Item 5.

<sup>12</sup>Item 8 at 2.

<sup>13</sup>Item 9 at 3.

<sup>14</sup>Items 4 and 7.

<sup>15</sup>AE 1 at 17-22.

remaining debts, comprising the vast majority of her SOR-listed accounts, became delinquent between April 2008 and June 2009.<sup>16</sup>

Applicant purchased a home in January 1999 and lived there until June 2008, when she rented a place to live with her sister.<sup>17</sup> She refinanced her mortgage on the home during May 2005, in part to pay off a \$31,400 home equity line of credit she opened in October 2003, resulting in a new principal balance of \$112,000. She again refinanced this loan to withdraw additional equity during October 2007, with a new total due of \$148,800. By July 2009, her principal balance was down to \$145,354, but she was 30-days past due on her \$1,131 monthly payments.<sup>18</sup> On July 7, 2010, her mortgage lender completed foreclosure proceedings on the residence, and sold it to Fannie Mae for \$60,000.<sup>19</sup>

On November 8, 2010, in response to DOHA interrogatories, Applicant said that she was far behind in debt, was unable to pay what she owed, and would be filing for bankruptcy at the beginning of the year.<sup>20</sup> She responded to the SOR on April 22, 2011, saying that it was hard for her to accept that she had bad credit and would have to file for Chapter 7 at some time, but it had come time for her to do so. She provided a letter, dated April 21, 2011, stating that an attorney represented her concerning her financial matters and that she planned to file a Chapter 7 bankruptcy.<sup>21</sup>

Applicant filed a petition for bankruptcy under Chapter 7 on September 8, 2011. She previously paid \$2,000 for attorney's fees and filing fees in three payments comprising \$500 on April 21 and July 25, and \$1,000 on May 3, 2011. On August 2, 2011, she sold her paid-off vehicle to her brother-in-law for \$1,130. That same day, she purchased a used 2008 Hummer H3, worth \$23,000. She borrowed \$26,580 to make this purchase, leaving \$3,580 of the debt unsecured. In her bankruptcy filing, she claimed her state-allowed \$5,000 vehicle exemption and indicated that she would retain the vehicle and reaffirm the debt toward which she currently owes \$720 per month.<sup>22</sup>

The total of unsecured nonpriority claims that Applicant is seeking to discharge in her bankruptcy proceedings is \$94,682. Her gross wages in 2009 and 2010 were \$33,153 and \$33,475, respectively. She is presently working two jobs, with gross monthly income of \$4,761; and net monthly income of \$3,676. These figures yield

---

<sup>16</sup>Items 8 and 9.

<sup>17</sup>Item 5 at 10, 11, 28.

<sup>18</sup>Items 8 and 9.

<sup>19</sup>AE 1 at 31.

<sup>20</sup>Item 7.

<sup>21</sup>Item 4.

<sup>22</sup>AE 1 at 13, 14, 27, 32, 36, 37.

annual amounts of \$57,132 (gross) and \$44,112 (net). Applicant's monthly living expenses total \$3,658, leaving a surplus of \$18. This expense estimate includes her \$720 vehicle loan but no other debt payments. Applicant also reported \$1,250 in gross gambling income for 2010. She owns no real property, and has \$2,579 in personal property assets.<sup>23</sup>

On August 22, 2011, Applicant completed the credit counseling required by bankruptcy laws via an internet briefing.<sup>24</sup> She supplied no evidence of any other financial counseling or effort to educate herself on financial responsibility.

Applicant provided no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her history of handling sensitive information and observing security procedures. She submitted no other character references, or evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

### **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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and

---

<sup>23</sup>AE 1 at 10-12, 25, 27, 29, 30, 33.

<sup>24</sup>AE 1 at 6.

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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant’s SOR-listed delinquent debts total over \$80,000. She admitted owing these debts, and that she cannot afford to repay them. Except for a \$494 telephone debt from mid-2006, all of these debts became delinquent since April 2008 while she held a full-time job. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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 multiple delinquent debts arose over the past three years, and continue to date. They are both frequent and recent, and arose under circumstances that have not materially changed. Applicant failed to demonstrate that her reliability, trustworthiness, and judgment have improved, since her total unsecured debt has risen to more than \$94,500, and she recently bought an expensive new car with a \$720 monthly payment that will absorb all but \$18 of her post-bankruptcy estimated monthly surplus income. The evidence does not establish mitigation under MC 20(a).

Applicant has been continuously employed since well before these debts became delinquent, and she offered no evidence to support mitigation under MC 20(b). None of the debts were shown to have arisen from conditions beyond her control. If, as she claimed without providing specifics, the job she started in 2007 paid substantially less than her previous job, the extent of her subsequent delinquent debt shows that she did not act responsibly under those circumstances. Between 2003 and 2007, she apparently withdrew close to \$70,000 in equity from the home she owned before she stopped making her mortgage payments and the lender foreclosed on the property. She has almost no assets to show for all her earnings, equity withdrawals, and debt incurred over the past eight years.

Applicant offered no evidence of effective financial counseling, and her failure to repay any of her delinquent debts does not establish clear indications that the problem

is being resolved or is under control. Her last-minute filing for Chapter 7 bankruptcy relief to discharge more than \$94,500 in acknowledged debts, that she made no effort to repay, is insufficient to establish a good-faith effort to resolve her debts. She obligated herself to a new \$720 monthly car payment that consumes all but \$18 of her projected post-discharge budget solvency, precluding any conclusion that her financial situation will be under control in the foreseeable future. Applicant admitted the validity of all SOR-listed debts. MC 20(c), 20(d), and 20(e) are therefore inapplicable.

### **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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for her voluntary choices and conduct that underlie the security concerns expressed in the SOR. Her financial irresponsibility spans the past several years, and continues at present. It involves substantial delinquent debts totaling more than \$80,000, toward which she had paid nothing at the close of the record. She very recently filed for Chapter 7 bankruptcy discharge of more than \$94,500 in acknowledged debts, yet did not establish that she would become financially responsible after receiving such relief. She did not demonstrate that these debts arose under unusual circumstances, or that she initiated any changes to prevent additional financial difficulties. She offered no evidence of effective financial counseling, rehabilitation, or responsible conduct in other areas of her life. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising from her financial considerations.



### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	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.

DAVID M. WHITE  
Administrative Judge