



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-07091
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

June 28, 2011

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant acquired 14 debts totaling near \$22,000 that have been delinquent for a number of years. She recently resolved nine debts. Notwithstanding, her evidence is insufficient to establish financial responsibility in the acquisition of the debts, good-faith efforts in the resolution of the debts, or a current track record of financial responsibility. She is financially overextended, and there are not clear indications that her financial problems are being resolved or are under control. Clearance denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 22, 2010. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

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<sup>1</sup> Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On December 1, 2010, DOHA issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).<sup>2</sup>

Applicant answered the SOR on January 11, 2010. She requested a hearing before an administrative judge. The case was assigned to me on February 11, 2011. DOHA issued a notice of hearing on February 17, 2011, convening a hearing on March 8, 2011. At the hearing, the Government offered six exhibits (GE 1 through 6). Applicant testified, presented one witness, and offered four exhibits (AE 1 – 4). AE 4 was received post-hearing. All exhibits were received without objection. DOHA received the transcript of the hearing (Tr.) on March 15, 2011.

### **Findings of Fact**

Applicant admitted the factual allegations under SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.g, 1.h, 1.k, and 1.n, with explanations. She denied SOR ¶¶ 1.c, 1.f, 1.i, 1.j, 1.l, and 1.m. Her admissions are incorporated as findings of fact. After a thorough review of the evidence of record, her answers to the SOR and interrogatories, and her demeanor and testimony, I make the following additional findings of fact.

Applicant is a 43-year-old document management analyst employed by a defense contractor since August 1994. She graduated from high school in 1985. Applicant testified she was granted access to classified information at the secret level shortly after she was hired by her current employer in 1994. However, in her SCA, she indicated she was granted access to classified information in August 2000. There is no evidence she has ever compromised or caused others to compromise classified information. She has never been married. She has two adult children, ages 26 and 23, and four grandchildren for whom she provides financial support. Her 26 year-old-son is unemployed and she provides him with \$200 a month. She provides financial assistance to her 23-year-old daughter as needed.

In her April 2010 SCA, Applicant disclosed that during the last seven years she had debts turned over to collection agencies, her wages had been garnished, and she had been over 180 days delinquent on some debts. Applicant's background investigation addressed her financial problems and revealed the 14 delinquent debts alleged in the SOR, totaling over \$22,000.

Applicant explained that she developed financial problems around 2005-2006, because of a number of factors. She purchased a new car in 2005. In 2006, her rent was increased, and she acquired new financial obligations associated with the birth of some of her grandchildren. She also had some medical problems that kept her out of work and reduced her income. She testified that in 2007, she underwent surgery and

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<sup>2</sup> Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

was out of work for a period of five months. Although she had medical insurance, she received only a portion of her income and it was not sufficient to cover her expenses.

As a result of the above circumstances, in 2007, Applicant became delinquent on her car note. (SOR 1.e) She claimed she contacted the creditor and tried to make some reduced payments, but her car was repossessed in February 2010. She also claimed that in November 2010, she entered into a payment schedule with the creditor to pay her remaining obligation after the sale of the car. As of her hearing day, she had not made any payments because she was paying the smaller debts first. She presented no documentary evidence of any contacts with the creditor, of any reduced payments, or of a November 2010 payment schedule. Applicant also failed to disclose the February 2010 car repossession in her April 2010 SCA.

Around 2007, Applicant also became delinquent on her rent payments. She was evicted, and she moved in with her foster parents in September 2008. Her foster father is out of work, and her foster mother only receives social security benefits. Her two foster siblings also live in the household with three children, and they are unemployed. Applicant testified that she is currently the sole financial provider for the whole household, which includes the two foster parents, two foster siblings, their three children (ages 11, 9, and 6), and Applicant. In January 2009, her landlord obtained a \$12,000 judgment against her (not alleged in the SOR). Applicant's wages were garnished until satisfaction of the judgment.

In 2009, Applicant assumed responsibility for four of her foster parents' delinquent obligations – SOR ¶¶ 1.a, 1.g, 1.k, and 1.n. Concerning SOR ¶ 1.a, Applicant established a payment schedule in November 2010, and she made payments in November 2010, and January through March 2011. Concerning SOR ¶¶ 1.g and 1.n, Applicant claimed she established payment arrangements for both accounts in November 2010. She claimed she made consecutive \$75 monthly payments since November 2010, except for the March 2011 payment that she missed. She failed to present documentary evidence to support her claims.

In 2009, Applicant's son was involved in a bad accident, and she took four months of leave without pay to care for him. Applicant's son's health issues caused her to incur additional expenses. In 2009, she was out of work for two weeks because the contract she was working on expired. Applicant would like to pay her delinquent debts, but her limited income is not sufficient to provide financial assistance to her children, her foster family, their day-to-day living expenses, and her accrued debts.

Applicant paid the debts alleged in SOR ¶¶ 1.b (AE 3), 1.d (AE 5), 1.f ((AE 3) returned check for insufficient funds), 1.i (AE 3), 1.j ((AE 4) paid through garnishment of wages), and 1.k (AE 5), around March 2011. She established a payment plan of \$20 a month for the debt alleged in SOR ¶ 1.c (AE 5).

Concerning the debt alleged in SOR ¶ 1.g, Applicant testified she has two delinquent utility accounts with the same creditor. One debt remains from the rental

property she was evicted from, and the other is a debt from her foster mother that she assumed. Her evidence shows she is making payments on her utility account, but not on the account Applicant assumed. Concerning the debts alleged in SOR ¶¶ 1.h, 1.l, and 1.m, Applicant testified that she either paid them, or that they were not her debt. She presented no evidence to support her payment claims or that she disputed the debts.

A review of Applicant's July 2000 credit report (GE 6) shows that she was delinquent on two accounts: a student loan with a balance of \$6,194, and a clothing store account for \$93. The remaining credit reports document the debts alleged in the SOR. Applicant's November 2010 personal financial statement indicates a net monthly income of approximately \$1,900. Her monthly expenses totaled \$1,550. She listed \$325 in monthly debt payments, which included payments to some of the creditors alleged in the SOR. Applicant did not participate in financial counseling, and she does not have a working budget.

Applicant expressed remorse for her financial situation, and promised to pay her delinquent debts. She needs her job to pay her delinquent obligations and support her family. Without her security clearance, she believes she would lose her job. Applicant is overwhelmed by her family circumstances, financially overextended, and at her wits' end.

### **Policies**

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information "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).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## 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.

The evidence established that Applicant acquired (or assumed) the 14 delinquent debts alleged in the SOR, totaling nearly \$22,000 that have been delinquent for a number of years. AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations,” apply. Applicant’s documentary evidence shows she paid six of the alleged SOR debts (¶¶ 1.b, 1.d, 1.f, 1.i, 1.j, and 1.k). She is

making some payments on three of the alleged debts (§§ 1.a, 1.c, and 1.g). The remaining five SOR debts are unresolved.

Applicant has a history of ongoing financial problems, dating back to 2000, and the evidence fails to show they developed under circumstances that are unlikely to recur. AG § 20(a) does not apply.

Applicant presented evidence to establish circumstances beyond her control contributing to her inability to pay her debts, e.g., her and her son's health problems; her periods of diminished earnings resulting from her five-month medical absence, a four-month period of leave without pay; and a two-week furlough. Notwithstanding, Applicant has been gainfully employed since 1994. Her periods of diminished earnings do not fully explain her precarious financial situation. Most of her efforts to resolve her financial problems started after she received DOHA's financial interrogatories. Applicant presented no evidence of contacts with creditors, settlement agreements, or payments made before November 2010. Applicant's documentary evidence is not sufficient to show that she acted responsibly in the acquisition of her debts, that she made good-faith efforts to resolve her debts, or that she has a track record of financial responsibility. AG §§ 20(b) and (d) do not apply.

AG § 20(c) does not apply because there are not clear indications that her financial problems are being resolved or under control. She presented no evidence that she received financial counseling, or that she is following a budget. The remaining mitigating conditions are not reasonably supported by the facts in this case.

I considered Applicant's periods of diminished earnings and leave without pay. I also considered that Applicant is providing financial support for her two grown children, four grandchildren, two foster parents, and two foster siblings and their three children. Applicant's efforts to provide financial support to her family, although commendable, placed her in an untenable position. She is financially overextended and overwhelmed by the circumstances. She clearly does not have the financial means to provide for such a large family. Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the limited documentary evidence of efforts to resolve her legal financial obligations before November 2010, Applicant's information is insufficient to establish that her financial problems will be resolved in the foreseeable future, or that they are unlikely to recur.

### **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 the 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.

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. AG ¶ 2(c). I have incorporated in my whole-person analysis my comments on the analysis of Guideline F.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for her work history for a Government contractor. Apparently, she was held a security clearance since 1994, with no adverse incidents or security concerns. She is a good mother, daughter, and grandmother.

Considering the record as a whole, I find that security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant's evidence failed to show financial responsibility in the acquisition of the debts, good-faith efforts to resolve her financial problems in a timely manner, or a current track record of financial responsibility. Moreover, she is financially overextended and overwhelmed by her circumstances. Applicant's information is insufficient to establish that her financial problems will be resolved in the foreseeable future, or that they are unlikely to recur. The mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. Applicant failed 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d, 1.f, 1.g, and 1.i – 1.k:	For Applicant
Subparagraphs 1.e, 1.h, and: 1.l – 1.n:	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 eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge