



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



In the matter of:

ISCR Case No. 10-07711

Applicant for Security Clearance

**Appearances**

For Government: Jeffrey Nagel, Esq., Department Counsel

For Applicant: *Pro se*

July 1, 2011

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 42-year-old employee of a defense contractor. She is alleged to be indebted to eight creditors in the approximate amount of \$88,494. In addition, she had a Chapter 13 bankruptcy which was dismissed and two 2008 foreclosures. Applicant mitigated the Financial Considerations security concerns, because the debts were caused by unforeseen circumstances beyond her control, and she has acted responsibly by attempting to resolve her outstanding debts. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 17, 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. The action was taken under Executive Order (EO) 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 for cases after September 1, 2006.

Applicant answered the SOR on February 10, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 4, 2011. DOHA issued a notice of hearing on April 19, 2011, scheduling the hearing for April 27, 2011. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. The Applicant offered Exhibits (AE) A through N, which were all admitted without objection. Applicant testified on her own behalf. The record was left open for Applicant to submit additional exhibits and on May 6, 2011, Applicant presented AE O through AE Y. Department Counsel had no objections to AE O through AE Y and they were admitted. DOHA received the transcript of the hearing (Tr.) on May 11, 2011.

### **Findings of Fact**

Applicant admitted the SOR allegations 1.a., 1.b., 1.c., 1.d., 1.h., 1.i., and 1.j. She denied allegations 1.e., 1.f., 1.g., and 1.k. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 42-year-old employee of a defense contractor. She has worked for her current employer since October 2009. She was married April 2005 and separated from her former spouse in December 2007. Her divorce was finalized May 2009. She has two children, ages 5 and 13, and a 16-year-old foster child. (AE A; GE 1; Tr. 35.)

As stated in the SOR, Applicant is alleged to be indebted to eight creditors in the approximate amount of \$88,494. Each debt was established through the credit reports entered into evidence by the Government. In addition, the credit reports show that she had two home foreclosures in 2008 and 2009, and that she filed Chapter 13 bankruptcy in January 2008, but it was dismissed in February 2008. (GE 4; GE 5; GE 6; GE 7.)

Applicant attributes her recent financial problems to a series of events beyond her control. In 2005-2006 she had been off work on medical leave for the birth of her child. When she returned to work in March or April 2006, she experienced back pain caused by a degenerative disk. She was placed on disability and received disability benefits from her employer until October of 2007. Applicant was current on her financial obligations until fall of 2007. At that time, the disability payments ended, but she was still unable to return to work. She appealed the disability denial and began looking for work. At about the same time, she discovered that her husband had stopped making payments on the house in which they lived. Due to their disagreements about finances, the couple separated in December 2007. Applicant's ex-husband has failed to provide any financial support since that time. Applicant used credit cards to make ends meet. She had to prioritize providing food and clothing for her children, above paying her increasingly delinquent accounts. In May 2008 she was able to find work as a substitute teacher and worked for several different school districts, but only made 50% of her former salary. (AE A; AE B; GE 2; GE 3; Tr. 36-37, 55-65.)

In January 2008 knowing she had excessive financial delinquencies, she contacted a credit counseling service that recommended she file Chapter 13 bankruptcy. She filled out the paperwork to file bankruptcy, but after she turned the

documentation into the counseling service, she decided that she would rather work to satisfy her financial obligations than to file for bankruptcy. She called the company and was told that bankruptcy would not be filed if she failed to appear for her first court appearance. When she did not appear for court in February 2008 the bankruptcy petition was dismissed. Prior to receiving the SOR, she was not aware that the bankruptcy petition had actually been filed, based upon the advice of the credit counseling service. (AE H; GE 2; GE 3; GE 4; GE 5; GE 6; GE 7; Tr. 51-53, 83, 94.)

Applicant's Social Security Statement supports her testimony regarding her decrease in pay. It shows that in 2005 her taxed Medicare earnings were \$61,760. Her income fell in 2006 to \$30,793. Her annual income for 2007 was only \$4,752 and in 2008 was only \$2,235. Her budget for 2008 showed that she had a shortfall of \$2,154 per month. (AE U; AE C.)

In October of 2009 she was hired into her present position with a government contractor with a substantial increase in pay, and immediately began addressing her delinquent debts. She now makes approximately \$74,500 a year. She presented documentation that shows she satisfied four delinquent accounts, not listed on the SOR, prior to receiving the SOR. She continues to work on the debts listed on the SOR. (AE F; AE J; AE K; AE L; AE M; AE X; GE 3; Tr. 64-65, 84.)

She has satisfied four of her debts, as alleged in 1.a., 1.d., 1.f., and 1.g., totaling \$981. Applicant was indebted to a collection agent for a cable company in the approximate amount of \$162, as alleged in 1.a. She provided documentation showing a payment of \$135.42 to this creditor on February 22, 2011. (AE D.) Applicant was indebted to a credit union in the approximate amount of \$95 as alleged in 1.d. She provided a bank statement showing a payment of \$100.20 to this creditor. (AE D.) Applicant was indebted on a medical account in the approximate amount of \$296, as alleged in 1.f. She provided a letter from the creditor as proof of payment. (AE G.) Applicant was indebted on another medical account in the approximate amount of \$428, as alleged in 1.g. She provided a receipt from the creditor and a copy of the canceled check as proof of payment. (AE G; Tr. 40-42, 43, 47-53, 66-67, 70-71.)

She is making payments on the debt in 1.c. Applicant admits she is indebted to the credit union on a charged off account in the approximate amount of \$6,411. She included an invoice from the collection agent for a \$150 payment due April 20, 2011. She testified that the collection agent has agreed to accept payments of \$150 on this debt. She also provided a copy of the canceled check, dated April 20, 2011, as proof that she made this payment. (AE G; AE Q; AE X; Tr. 42-44, 68-70.)

She contests the debts alleged in 1.b. She is unsure what the account was for and does not believe she ever incurred a debt with this creditor. She has contacted the creditor by phone and requested proof that the debt belonged to her. She indicated that it is possible that the debt is for furniture she acquired on a deferred payment program. The store which sold her the furniture went out of business before she was ever billed. After she was unable to resolve what the debt was for by telephone, she wrote the

creditor a letter, dated May 1, 2011, and again disputed the debt. She is willing to pay the debt once the creditor can tell her how it was incurred. (AE P; Tr. 41-42, 67-68.)

During the time Applicant was out of work and then subsequently underemployed, she also had two properties foreclosed upon. The first property was purchased in 1997 for approximately \$120,000, although she later refinanced this debt to help her child out with legal problems. After refinancing her property she had a first mortgage of approximately \$338,000 (allegation 1.j.) and a second mortgage of \$61,902 (allegation 1.k.). She lived in this property until she married and moved. After she moved, she rented the property out for approximately \$100 less monthly than her monthly mortgage payment. Applicant was able to afford the difference, without many difficulties, until she became unemployed. The renter moved out at approximately the same time that she began experiencing financial difficulties in late 2007. Although she tried to rent the property, she was unable to find new tenants. This property was foreclosed upon in 2008. The house was resold. She presented a letter from this creditor stating that the account is closed and should reflect a zero balance. Applicant's credit report reflects there is a zero balance on these debts. She wrote to the creditor and requested copies of the 1099-C for each loan. (AE I; AE T; Tr. 44-46, 53-54, 71-82, 96-97.)

Applicant also owned a second property, foreclosed upon on August 5, 2008. She purchased this property with her ex-husband for approximately \$438,760 during their marriage at the end of 2005. The purchase was based upon both her and her husband's incomes at that time, and they were able to afford the payments at the time of purchase. The first mortgage was for approximately \$351,000 (allegation 1.i.) and the second was for \$87,760 (allegation 1.e.). They were current on their mortgage payments for the first year. However, Applicant's husband stopped making payments on their mortgage in 2007, unbeknownst to Applicant. When Applicant realized the mortgage payments were delinquent, she contacted the bank and attempted to work out payment arrangements and applied for a modification or reduced payment. The bank did not approve the modification and the property was foreclosed upon. At the time of foreclosure, the property's value declined to only \$200,200. The home was resold. The lender issued Applicant a 1099-A on the property that shows the first mortgage balance was \$348,693.54, at the time of sale. It also issued Applicant a 1099-C that shows that the remainder of the debt, \$148,493.54, was forgiven by the creditor. Applicant did not receive a 1099-C for the \$86,974.51 remainder on her second mortgage for this property. She remains in contact with this creditor and presented documentation to show that she is disputing the balance due. (AE C; AE R; AE S; Tr. 44-46, 53-54, 71-82, 94-95.)

Applicant is well respected by her manager and colleagues, as expressed in letters from both. She presented letters from a manager that noted she "has been an exemplary employee that is reliable, accurate, timely and a pleasure to work with." Her performance appraisal for 2010 demonstrated that Applicant met all performance requirements in all areas of evaluation. (AE V; AE W.)

## **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 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security 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 EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 notes several conditions that could raise security concern under AG ¶ 19. Two are potentially applicable in this case:

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

Since fall of 2007, Applicant has not been financially solvent. She admits that she had an inability to fully satisfy her debts since then. The evidence is sufficient to raise the above disqualifying conditions.

Three Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (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 financial problems are directly attributable to her unforeseen unemployment, her divorce, and loss of a tenant at the same time. She has been resolved to repay her creditors since inquiring in early 2008 about Bankruptcy and causing a Chapter 13 petition to be filed unintentionally. Despite her financial difficulties,

she immediately began to repay delinquent accounts, one at a time, after she obtained a higher paying job. Prior to receiving the SOR, she satisfied four delinquent debts. She has also satisfied four delinquent debts listed on the SOR in paragraphs 1.a., 1.d., 1.f., and 1.g., and made payment arrangements with another of her creditors as alleged in 1.c. While she lost her properties in foreclosure, it appears that she no longer is indebted to the creditors in allegations 1.i., 1.j., and i.k. She is disputing the mortgage debt listed in 1.e. and presented documentation of her efforts to resolve this account. She is also disputing the debt listed in 1.b. in writing with the creditor, because she currently does not know what the debt pertains to. While she has suffered financial problems in the past due to unforeseen circumstances, Applicant's recent steps to repay her creditors show that she can be trusted to monitor her finances closely and resolve her debts in the future.

The Appeals Board has noted:

. . . an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan.<sup>1</sup>

Applicant has demonstrated she has a reasonable plan for resolving each of her remaining accounts. Given her recent history of satisfying her financial obligations, it is likely that she will continue her payments to the creditor in 1.c. Further, she is continuing to work to resolve the debts she disputes in 1.b and 1.e and will follow through with making sure those accounts are satisfied if she fails to resolve the disputes. She has acted responsibly, given his resources, by settling her debts one by one. AG ¶¶ 20(b) 20(d), and 20(e) apply.

### **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.

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<sup>1</sup> ISCR Case No. 08-06567 at 3 (App. Bd. Dec. October 29, 2009).

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected by her manager and colleague. She performs well at her job. Her integrity, as attested to by her manager and colleague, show that her commitment to continue to pay her remaining delinquent account and follow up on her disputes is credible.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concern.

### **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:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	For Applicant
Subparagraph 1.k.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Jennifer I. Goldstein  
Administrative Judge