



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 10-07881
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Raashid Williams, Esquire, Department Counsel  
For Applicant: *Pro se*

08/02/2012

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On March 29, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action 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 by the DOD on September 1, 2006.

In a response dated April 18, 2012, Applicant admitted 22 of the 26 allegations raised under Guideline F and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on May 29, 2012. The parties proposed a hearing date of July 6, 2012. A notice setting that date for the hearing was issued on June 11, 2012. The hearing was convened as scheduled. Applicant testified and was given until July 13, 2012, to submit any documents for consideration. The Government introduced five documents which were accepted into the record as Exs 1-5 without objection, as well as a Hearing Exhibit marked as Hearing Exhibit (HE) 1.

Applicant timely contacted Department Counsel on July 10, 2012 and offered a single sheet indicating four payments on debts. On July 13, 2012, she forwarded two

additional documents, but her documents failed to attach to her e-mail. They were resent on July 23, 2012. Department Counsel forwarded the three documents to me without objection or comment that same day. They were accepted into the record as Exs. A-C, and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden of mitigating security concerns related to financial considerations. Clearance is denied.

### **Findings of Fact**

Applicant is a 26-year-old access control administrator who has held her current position for over a year. She is a high school graduate currently studying business management at a local community college. She received financial counseling in June 2011. Applicant is married and has three children.

From 2003 until June 2005, Applicant was enrolled in a medical assistant program. She dropped out of the program and left a retail sales position after she had her first child in May 2005. After having her second child in January 2007, Applicant found work in May 2007 in the insurance industry. She left that position in September 2008 due to undisclosed medical issues. She had her third child in June 2009. Between 2008 and 2010, she was unemployed. She returned to the workforce in February 2010.

At issue in the SOR are 26 delinquent debts (1.a-1.z). The dates of last activity on those debts range from 2005 to 2011. About half of the debts are related to medical care or treatment (1.d-1.q). Applicant does not recognize the debt noted at 1.a for \$2,183,<sup>1</sup> disputes the debt noted at 1.d for \$270,<sup>2</sup> and denies owing money on the accounts noted at 1.r for \$1,230 and 1.y for \$18.<sup>3</sup> There is no evidence that she has formally disputed these entries with a credit reporting bureau. She testified that she has paid the debts enumerated at 1.e-1g and 1.u, representing approximately \$588,<sup>4</sup> and is setting up payment arrangements for the debts set forth at 1.v (\$3,650) and 1.z (\$5,836).<sup>5</sup> No supporting evidence with regard to these debts, however, was offered. The remaining debts set forth in the SOR represent at least \$14,200 in unaddressed delinquent debt.<sup>6</sup>

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<sup>1</sup> This creditor is associated with a rental apartment. Applicant denies having rented from this entity. Tr. 26-27. It is no longer noted, however, on her credit report.

<sup>2</sup> Tr. 27.

<sup>3</sup> Tr. 27-29. As for 1.y, Applicant denies ever having had service with this provider.

<sup>4</sup> In support of this contention, Applicant submitted Ex. C (Bank Statement Excerpt, undated). It is unclear, however, which debt is associated with which Ex. C notation. Given her credible statements, however, I find these accounts were paid.

<sup>5</sup> Applicant provided an updated credit report indicating by hand some accounts that have been paid or disputed, but such updates are not yet posted. Ex.C (TransUnion Report part II, dated Jul. 4, 2012).

<sup>6</sup> The debt referenced in the SOR at 1.q indicates the balance owed is "\$2,1367.00." In actuality, the balance alleged is \$2,137. Ex. 3 (Credit Report, dated Feb. 3, 2012) at 2.

After the hearing, she provided evidence that the account at 1.q for \$2,137 has been successfully disputed and deleted from her credit report, reducing the outstanding balance to about \$12,152.<sup>7</sup> Applicant also stated that she is in economic hardship deferment on the student loans referenced in 1.w and 1.z, but provided no documentation supporting that arrangement.<sup>8</sup>

Applicant attributes her financial distress to her periods of unemployment and underemployment in such areas as retail sales and insurance.<sup>9</sup> She also cited to the medical accounts, the majority of which are related to her children and her pregnancies.<sup>10</sup> As a result of these conditions and because of the needs of her growing family, she was unable to pay her bills. She also added that her husband suffered a period of unemployment in the past few years.<sup>11</sup> Her plan in accepting her present position was to pay off her delinquent debts, but she was only guaranteed 32 hours of work per week. Her salary did not provide her with the income needed to make progress on her debts. After learning the true extent of her debt, Applicant “cut out a lot of monthly bills. We just did what we could. We were on assistance for a little while, but other than that, we didn’t do anything.”<sup>12</sup>

Applicant’s husband, a truck driver, has returned to work part-time, earning about \$500 bi-weekly. Applicant currently earns a full-time salary of about \$42,500, receiving about \$2,800 in net salary a month. Consequently, their household generates a net income of approximately \$3,800 a month. Applicant currently has about \$200 in her bank account and no savings. Their monthly expenses are not unreasonable.<sup>13</sup> The couple uses Applicant’s mother’s car. Applicant generally has about \$100 left over each month after all bills are paid. She has received financial counseling, but she does not maintain a budget.<sup>14</sup> This is because she needs to stay “more conscious of how [she spends] money.”<sup>15</sup>

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<sup>7</sup> Ex. C (TransUnion Investigation Results part I, dated Jul. 4, 2010) referencing account # 1412–.

<sup>8</sup> Tr. 25-26.

<sup>9</sup> Tr. 29-30. In those positions, Applicant earned between \$8.50 and \$13 an hour.

<sup>10</sup> Before reviewing her credit report, Applicant assumed Medicaid had covered these bills because her children have each received government assistance since their births. Tr. 33-34.

<sup>11</sup> The length of Applicant’s husband’s period of unemployment is unclear. At one point, she said it lasted three to four months, elsewhere she implied that it was from November 2009 to June 2012. Tr. 29-31. It appears most likely he was unemployed from November 2009 until June 2012. He was otherwise providing support for Applicant during the births of their children and Applicant’s illness. They reversed their roles of provider and caregiver in 2010.

<sup>12</sup> Tr. 34.

<sup>13</sup> Tr. 37-39.

<sup>14</sup> Tr. 39.

<sup>15</sup> Tr. 40.

It is Applicant's plan to start paying off her smaller debts first. She stated that she has thus far paid off about one-fourth of the debts at issue, such as 1.e (\$37), 1.f (\$43), and 1.g (\$53), as well as 1.u (\$455).<sup>16</sup> To satisfy other debts, she recently contacted a debt consolidation program, through which she received the above-referenced financial counseling. However, "with all of the accounts listed, [her] payment would be around \$393 a month," a sum she cannot afford.<sup>17</sup> She hopes to pay off more of the smaller bills up front so as to reduce the monthly payments on the plan. At present, the repayment plan is basically poised for implementation, but only after the total debt is reduced sufficiently to reduce the monthly payments to an affordable sum. She hoped to have the plan implemented by the end of July 2012, but she had not yet met her goal by the time of the July 6, 2012, hearing.<sup>18</sup> The post-hearing documentation received on July 23, 2012, showed no progress toward that goal.

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. The 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." The administrative judge must consider all 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.

The 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>19</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>20</sup>

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<sup>16</sup> Tr. 41. The debt at 1.u was apparently paid off following receipt of a bonus. Applicant provided no documentary evidence showing payment of these debts.

<sup>17</sup> Tr. 42.

<sup>18</sup> Tr. 43.

<sup>19</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>20</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 those 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.<sup>21</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>22</sup>

## Analysis

### Guideline F - Financial Considerations

Under Guideline F, “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.”<sup>23</sup> It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”<sup>24</sup>

The Government’s evidence showed that, between 2005 and 2011, Applicant acquired numerous delinquent debts. The evidence shows that the majority of those debts remain outstanding. Giving her the benefit of the doubt with regards to debts she stated were paid, unrecognized, or in dispute, the delinquent balance yet owed is in excess of \$12,000. At present, Applicant does not have the financial ability to satisfy her delinquent debt balance. Such facts are sufficient to raise Financial Considerations Disqualifying Condition AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> AG ¶ 18.

<sup>24</sup> *Id.*

The debts at issue are multiple in number. They were mostly acquired between 2005 and 2011. During that time, Applicant experienced notable periods of unemployment and underemployment, making her unable to meet all of her financial obligations. Until 2010, her husband was the primary provider, while Applicant was the primary caregiver in the family. They reversed roles in 2010. Today, Applicant and her husband generate a net monthly income of about \$3,800. Despite an attempt to reduce expenses, Applicant testified they have done little more to economize. She received financial counseling, but does not use a budget, nor is there evidence that her counseling improved her ability to address her debts. There is no evidence that she tried to address any of her debts before the issuance of the SOR. While she testified without supporting documentation that a few minor debts were satisfied, she is currently unable to afford monthly allotments of \$393 to implement a debt consolidation payment plan. She hoped to make the first payment on that plan by the end of July 2012, but there is no evidence she was poised to do so as of July 23, 2012. Applicant has the desire and motivation to satisfy her debts, but she presently lacks the income to do so. Consequently, there is insufficient evidence to raise Financial Considerations Mitigating Condition 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*). Based on the facts, however, 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*) applies in part.

Several of the debts at issue are for medical care. Those debts incurred for her personal care were not explained, so they cannot be characterized as having been for an unexpected medical emergency. The same may be said for those debts acquired for pediatric medical care, although Applicant did state that she had expected much or all of their medical bills to be paid through Medicaid or other state assistance program. Without a showing that these debts were incurred due to unexpected medical emergency, 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.

That condition, AG ¶ 20(b), can also be successfully invoked in cases where an applicant, through no fault of her own, experienced periods of unemployment. Here, Applicant permanently quit her retail sales position after giving birth. She later left her insurance position on her own volition – for undisclosed medical reasons and under unexplained circumstances. Without a showing that her medical issues necessitated her permanently leaving her position, as opposed to first trying to take advantage of some sort of medical absence or requesting a temporary period of leave, I cannot conclude that her departure from this position was caused by a factor outside of her control *and* that she acted reasonably under the circumstances. Therefore, AG ¶ 20(b) does not apply to Applicant's periods of unemployment.

Giving Applicant the benefit of the doubt, I find that she paid some smaller debts, even though she failed to document such actions. I also note that she did provide

evidence of successfully disputing one debt (1.q). Although she observed that some of the debts referenced in the SOR are no longer on her credit report, this process does not give credit for that factor alone. Entries on a credit report can be removed for a variety of reasons other than satisfaction of the underlying debt. In light of the smaller debts she credibly testified were paid, her one documented credit report dispute, and her actions thus far to develop a debt consolidation repayment plan, AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to a limited extent.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

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 a credible 26-year-old woman. She is endeavoring to complete a college degree. Applicant has balanced the demands of being a student, mother of three, and employee for the past few years. She and her husband switched roles for a period in the hopes that their reversal might increase their household income. They have tried to economize. Applicant received financial counseling, although she does not feel that using a budget will help her manage her funds. Despite a net family monthly income of \$3,800, Applicant seldom has more than \$100 left over each month after bills are paid. She presently has \$200 in her bank account and no savings. Applicant credibly expressed her desire to honor her debts; hence her resort to a debt consolidation plan. However, she cannot implement that plan until more debts are paid and the monthly plan payments are reduced from \$393 a month to a more realistic sum.

Although Applicant has started to take measures to improve her credit and satisfy her debts, her past neglect of them has left her in a current state of financial distress. By satisfying more small debts, she should eventually be able to reduce the monthly payments on her debt repayment plan and ultimately implement that plan. When that will happen cannot be determined. As of July 23, 2012, however, it did not appear to be poised for implementation by her goal of the end of July 2012.

This is not a case of an individual spending extravagantly. Applicant simply does not currently have the income to make any meaningful progress on her debts. This process does not demand that an applicant satisfy all of her debts. It only requires that she articulate a workable plan to address her debts and provides evidence that her plan has been implemented. Here, I took much of Applicant's progress as a matter of faith, based on her credible testimony alone. In terms of documentary evidence, however,

she only provided a portion of a more current credit report with handwritten notations showing subsequent actions on the accounts, and a document showing that one debt was deleted from her credit report. She did not provide receipts for the smaller debts she paid, and she did not offer a copy of the proposed debt consolidation plan she hopes will yet help her address her debts. While Applicant states she has a plan for addressing her debts in terms of paying off the smaller debts first, she failed to document her progress. She also failed to explain how her current approach is more than an ad hoc approach to addressing multiple debts. While implementation of the debt consolidation plan would surely demonstrate that such a plan was executed, she simply does not currently have the funds to implement it at this point in time. As previously noted, any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such information. Based on Applicant's evidence and argument, financial considerations security concerns remain unmitigated. 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.d:	Against Applicant
Subparagraph 1.e-1.g:	For Applicant
Subparagraphs 1.h-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r-1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraphs 1.v-1.z:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge