



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-08183
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

June 30, 2011

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire on January 6, 2010. On February 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On April 13, 2011, Applicant answered the SOR and requested that her case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on April 29, 2011. The FORM was forwarded to Applicant on May 6, 2011. Applicant received the FORM on May 24, 2011. She had 30 days to submit a response to the FORM. She timely submitted a 34-page response to the FORM. On June 22, 2011, Department Counsel submitted a reply to Applicant's response to the FORM indicating that they had no objection. On June 23, 2011, the FORM was forwarded to the hearing office. The FORM was assigned to me on June 24, 2011.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In her answer to the SOR, Applicant admits to SOR allegations ¶¶ 1.a, 1.b, 1.d, 1.j, 1.k, and 1.p. She denies SOR allegations ¶¶ 1.c, 1.e – 1.i, 1.l – 1.o, and 1.q – 1.u. (Item 3)

Applicant is a 27-year-old employee of a Department of Defense contractor seeking a security clearance. She has been employed with the company since August 2007. She is a high school graduate and has some college credit. She is single and has no children. (Item 4)

Applicant's security clearance background investigation revealed 21 delinquent accounts, an approximate total balance of \$32,405. (Items 6, 7 and 8) Of that amount, \$22,149 relates to nine delinquent student loan accounts. (SOR ¶¶ 1.e -1.h, 1.n, and 1.r -1.u)

On March 9, 2010, Applicant was interviewed as part of her background investigation. She admitted to the delinquent student loan accounts. She was not aware that some of her consumer debts were placed for collection. She is willing to pay all of the accounts on her credit report. Her net monthly pay was \$2,994. She paid \$600 monthly rent to her parents. Other monthly expenses included \$200 utilities, \$148 for cell phone, groceries \$450, clothing \$100, transportation \$100. She also paid \$50 a month towards a credit card and \$54 a month to her student loans. Applicant had \$982 left over each month to apply to other debts or purchases in March 2010. (Item 6)

On January 13, 2011, Applicant updated her personal financial worksheet. Her net monthly pay was \$2,630. Her total monthly expenses were \$2,195. She had approximately \$435 left over each month after expenses. (Item 6 at 13)

In her response to the SOR, on April 13, 2011, Applicant stated that the student loans alleged in SOR ¶¶ 1.r – 1.u were paid off. She provided the copy of an order from a collection agency telling her employer that the company is no longer required to withhold money from Applicant's wages. While it was clear the withholding related to the student loan account, it was not clear which student loan account it applied towards. In her response to the FORM, Applicant provided a statement dated May 12, 2011, from the student loan agency collecting the account alleged in SOR ¶ 1.r verifying that it was paid. (Response to FORM at 3) In her response to the FORM, Applicant included a credit report dated May 14, 2011. The remaining student loans with the creditor alleged in SOR ¶¶ 1.s – 1.u were listed in the credit report. The status was described as the "Debt being paid through insurance." (Response to FORM at 27 – 28)

The May 14, 2011, credit report listed the student loan debts alleged in SOR ¶¶ 1.e – 1.h as being paid. (Response to FORM at 25-26) However, the credit report also

listed that a judgment was entered on April 27, 2010, for the \$7,626 student loan debt alleged in SOR ¶ 1.n. The debt now has a balance of \$8,371. (Response to FORM at 19) The credit report dated May 14, 2011, listed 18 negative entries. Applicant's credit category was rated, "very poor" by the credit reporting agencies. (Response to FORM at 33 – 34)

In Applicant's response to the FORM, she indicated that her total installment debt is \$12,383. She paid off one student loan and is making \$300 monthly payments towards the loan alleged in SOR ¶ 1.n. This is the debt that a judgment was entered against her in April 2010. She is also making \$72 monthly payments towards another student loan. She pays monthly payments towards some of her debts. She claims to have resolved \$10,000 in debt. She is working with a law firm to resolve her delinquent accounts. She is still working to pay off her delinquent accounts. After her bills are paid, she has \$761.20 left over each month. When she was younger, she did not understand the significance of good credit. She has learned a lot. (Response to FORM, at 1-2)

Applicant provided billing statements and money orders which verify that she is making payments towards her financial obligations. Some are alleged in the SOR, others are not. Of the consumer debts alleged in the SOR, there is proof that the \$505 debt alleged in SOR ¶ 1.l is resolved. (Response to FORM at 27) None of the other SOR debts have been resolved.

Applicant provided copies of pay statements dated April 15, 2011 and May 13, 2011. Her net pay every two weeks is \$1,439, or \$2,878 each month. Her wages are garnished \$150 each pay period. It is not clear which creditor is being paid with the garnishment. (Response to FORM at 16) Applicant did not provide any reference letters or copies of her performance evaluations for consideration under the whole-person factors.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when 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 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining 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 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 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).

## **Analysis**

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

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting

financial obligations); apply to Applicant's case. Applicant incurred numerous delinquent debts. The SOR alleged 21 delinquent accounts, an approximate total of \$32,405.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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. While Applicant resolved some of her accounts, she still has a significant amount of unresolved delinquent debt.

FC MC ¶ 20(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) does not apply. The record evidence does not indicate that there were circumstances beyond Applicant's control that caused her financial problems. Her financial problems resulted from financial irresponsibility and a lack of financial planning.

FC MC ¶ 20(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) does not apply. Applicant did not indicate that she attended financial counseling. It would be helpful for her to do so in order to learn how to create a budget and manage her finances more effectively. While she paid some accounts, most of the debts are unresolved. Applicant's financial situation is unlikely to be resolved in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with regard to the debt alleged in SOR ¶1.i. She also resolved several student loan accounts alleged in SOR ¶¶ 1.e – 1.h, and 1.r. However, Applicant has a significant amount of unresolved delinquent accounts. As a result, FC MC ¶ 20(d) is only given partial credit.

### **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 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 the facts and circumstances surrounding this case. Applicant resolved some of her accounts, but a significant number of delinquent debts remain. While she should be commended for beginning to resolve her delinquent debts, it is premature to conclude that she is security-worthy based on the extent of the unresolved delinquent accounts. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under 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:	Against Applicant
Subparagraphs 1.e – 1.h:	For Applicant
Subparagraphs 1.i – 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m – 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s – 1.u:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge