



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



In the matter of: )  
)  
) ISCR Case No. 10-09065  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

October 14, 2011

**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On March 28, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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), effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on May 6, 2011, and elected to have her case decided on the written record. Department Counsel submitted the Government’s File of Relevant Material (FORM) on July 12, 2011. The FORM was mailed to Applicant,

and proof of receipt was received by DOHA on July 27, 2011. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant sought an extension to respond to the FORM, which was granted. She submitted her FORM Response (FR), containing 16 attachments, on September 3, 2011.<sup>1</sup> Department Counsel submitted a supplemental reply (SR) to Applicants FR on September 16, 2011. The case was assigned to me on September 27, 2011.

### Findings of Fact

In Applicant's answer to the SOR, she admitted ¶¶ 1.a, 1.e, 1.f, 1.h, and 1.i. She admitted parts of 1.b and 1.c and denied of other parts of those allegations. She denied 1.d, 1.g, and 1.j.<sup>2</sup> After a thorough and careful review of the written record, I make the following findings of fact.

Applicant is a 48-year-old employee of a defense contractor. Before working for her current employer, she worked in the private sector from 1994 through 2010. She is married and has two children ages 15 and 13. She has a high school diploma. Her husband is currently employed, but he went through a period of unemployment in January 2007. He was making over \$100,000 at the time. He is currently working and earning approximately \$62,000 a year.<sup>3</sup>

The SOR alleges a mortgage loan foreclosure, failure to file and pay federal and state taxes for certain years, and seven delinquent debts, including a tax lien, totaling about \$57,000. The debts are supported by credit reports, dated May 17, 2010, October 6, 2010, and October 26, 2010. By her own admission, her financial difficulties were caused by her family living above their means. They did so by refinancing their home approximately 15 times. The home was originally purchased for about \$117,000 in 1995. At the time it was foreclosed upon, they owed approximately \$325,000. During the ensuing time, Applicant and her husband used the acquired money to purchase cars and dirt bikes for their children, pay some bills, make home improvements, and to purchase "anything else they desired."<sup>4</sup>

In 2007, Applicant's husband lost her job and their overall financial wellbeing was jeopardized. Applicant remained employed, but her yearly income at that time was

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<sup>1</sup> In Applicant's FR, she refers to her attached documents by "Item" numbers. In order to distinguish these Items from the "Items" attached to the Government's FORM, I will use the terms FORM Item # and FR Item # respectively.

<sup>2</sup> Department counsel concedes the debts listed in SOR ¶¶ 1.f and 1.j are duplicative. Only SOR ¶ 1.j will be considered.

<sup>3</sup> FORM Items 4 and 8.

<sup>4</sup> FORM Items 6, 8.

about \$39,000. In addition to the delinquent debt listed in the SOR, Applicant currently makes payments on two car loans totaling about \$1,600 per month.<sup>5</sup>

The debt alleged in SOR ¶ 1.a is a delinquent mortgage loan. The amount of the debt was approximately \$325,000. The mortgage holder foreclosed on the debt. Applicant admits this debt. She provided a FORM 1099-A, Acquisition or Abandonment of Secured Property concerning this property. She did not provide any documentation supporting a cancellation of the debt. This debt is unresolved.<sup>6</sup>

The allegations listed in SOR ¶¶ 1.b and 1.c state Applicant failed to file and pay her federal tax returns for years 2007, 2008, and 2009, and her state tax returns for 2008 and 2009, as required. Applicant presented letters from her tax preparer addressing this subject. The first, dated January 5, 2010, indicated her 2007 federal tax return was ready for her signature. It also indicated she owed \$8,419 for that year. A second letter, also dated January 5, 2010, indicated both her 2008 federal and state tax returns were ready for filing. She owed \$1,649 on her federal return, but was due a refund of \$143 on her state return. In a letter dated April 27, 2011, her tax preparer indicated her 2009 federal and state tax returns (for two states) were ready for filing. She would receive refunds for her federal and one state tax returns, but owed \$173 on her other state tax return. The last letter from her tax preparer, dated April 28, 2011, indicated that her 2010 federal and state tax returns were ready for filing. She was due a refund on her federal return, but owed on her state return. Applicant presented documentary evidence of payment for her federal taxes for 2007 and 2008 in the amount of \$7,773.96, dated in September 2011. This evidence was a copy of a check; however, it was not a cancelled check showing any endorsements. She has included two copies of checks showing payments of state taxes for the years 2007 and 2009 in the amounts of \$7,548.55 and \$255.65, dated in August 2011. These were not cancelled checks showing endorsements. There is no evidence from the IRS or the state tax authority verifying receipt of payment. Applicant gave no reason why her returns were filed late, whether extensions were sought, or why payments were not made when they were due.<sup>7</sup>

The debt alleged in SOR ¶ 1.d is a delinquent credit card debt for \$3,148. Applicant reached a settlement agreement with the creditor to make five installment payments. Applicant made one installment payment in April 2009. Thereafter, a successor bought the debt and refused to honor the installment settlement agreement Applicant reached with the prior creditor. This debt is unresolved.<sup>8</sup>

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<sup>5</sup> FORM Items 4, 6, 8.

<sup>6</sup> FORM Item 6; FR Item 11.

<sup>7</sup> FR Items 1-4, 6-8.

<sup>8</sup> FORM Item 3; FR Items 14-16.

The debt alleged in SOR ¶ 1.e is a state tax lien for \$2,015. Applicant admits this debt, but failed to present any evidence of resolution. This debt is unresolved.<sup>9</sup>

The debt alleged in SOR ¶ 1.f is the same debt as SOR ¶ 1.j.<sup>10</sup>

The debt alleged in SOR ¶ 1.g is a delinquent second mortgage loan for \$33,043. Applicant claimed that the foreclosure on her first mortgage negated her obligation to pay the debt owed on the second mortgage. She presented no documentation supporting her position. This debt is unresolved.<sup>11</sup>

The debts alleged in SOR ¶¶ 1.h and 1.i are delinquent consumer debts for \$13,453 and \$319. Applicant admitted she has not been in a position to do anything about these debts. These debts are unresolved.<sup>12</sup>

The debt alleged in SOR ¶ 1.j is a delinquent credit card debt for \$5,637. Applicant failed to present documentary evidence concerning a payment plan or other attempts to resolve this debt. This debt is unresolved.<sup>13</sup>

Applicant has net income of about \$5,264 with monthly expenses of about \$3,090 and debt payments of \$2,070. She has a net remainder of \$104. There is no evidence of Applicant receiving financial counseling.<sup>14</sup>

### **Policies**

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

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<sup>9</sup> FORM Item 3; FR Item 10.

<sup>10</sup> FORM Item 3.

<sup>11</sup> FR.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> FORM Item 8.

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. 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, 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, and 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 that an 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 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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following are potentially applicable:

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

Applicant has numerous past-due debts that she was unable or unwilling to satisfy. Both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20, including the following:

- (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 did not provide sufficient evidence that she has paid or resolved any of her delinquent debts. Even giving her the benefit of the doubt concerning her submission of checks to the tax authorities, the remainder of her debts remain unpaid. Therefore, her behavior is recent and the delinquent debts remain a concern. I find mitigating condition AG ¶ 20(a) does not apply because Applicant's debts remain owed and unresolved.

Although Applicant's husband experienced a period of unemployment, she acknowledged her financial hardships were caused primarily by her choice of purchasing whatever the family wanted or needed with the proceeds of her multiple

refinancing actions. This is not a condition beyond her control. I find AG ¶ 20(b) does not apply.

There is no evidence Applicant sought financial counseling. There is no clear evidence that Applicant's financial problems are being resolved or under control. Although she documented payments to federal and state tax authorities, the remaining debts remain unpaid. Additionally, her tax filings for years 2007, 2008, and 2009 were delinquent. Under these circumstances, I find she has not made a good-faith effort to pay her delinquent debts or attempt to resolve them, other than SOR ¶¶ 1.b and 1.c. I find AG ¶¶ 20(c) and 20(d) apply to SOR ¶¶ 1.b and 1.c, but not to the remainder of the SOR debts.

Applicant failed to document her dispute of any debts. The failure of a successor creditor to honor a settlement agreement does not invalidate the underlying debt. I find AG ¶ 20(e) does not 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 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 has made some progress on her federal and state tax liability; however, the remainder of her debt is unresolved with no viable plan in place to address it. She does not have a track record of financial stability. She failed to provide sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, 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
Subparagraph 1.a	Against Applicant
Subparagraphs 1.b - 1.c:	For Applicant
Subparagraphs 1.d - 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g - 1.j:	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.

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Robert E. Coacher  
Administrative Judge