



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-10377  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

05/21/2012

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**Statement of the Case**

On July 29, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued an interrogatory to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated October 3, 2011, detailing security concerns for financial considerations. These actions were 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). Applicant acknowledged receipt of the SOR on October 24, 2011.

Applicant answered the SOR on November 1, 2011. He admitted all but four of the 16 allegations under Adjudicative Guideline F. She denied the four allegations stating that they were paid. Department Counsel was ready to proceed on December 22, 2011, and the case was assigned to me on February 21, 2012. DOHA issued a Notice of Hearing on February 27, 2012, scheduling a hearing for March 20, 2012. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified. I left the record open for Applicant to submit documents. Applicant timely submitted six documents, which I marked and admitted into the record as Applicant Exhibits (App. Ex.) A through F. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 5, Memorandum, dated April 3, 2012; Gov. Ex. 6, Memorandum, dated April 9, 2012) DOHA received the transcript of the hearing (Tr.) on March 28, 2012.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 42 years old, and has been a help desk administrator for a defense contractor since July 2010. She served on active duty in the Marine Corps from March 1988 until March 1993. She received an honorable discharge. She married in November 1993, and divorced in November 1997. She has two grown children not at home. Her monthly net pay is approximately \$1,700, with approximately \$1,400 in monthly expenses, leaving \$300 monthly in discretionary funds. Most of these funds are used to pay delinquent debts. (Tr. 10-12, 31-36; Gov. Ex. 1, e-QIP, dated July 29, 2010)

A credit report (Gov. Ex. 3, dated May 18, 2011), Applicant's answer to the interrogatory (Gov. Ex. 2, dated September 12, 2011), and Applicant's testimony to a security investigator, (Gov. Ex. 4, Personal Subject Interview, dated September 7, 2010) show the following delinquent debts for Applicant: a debt for apartment rent in collection for \$3,396 (SOR 1.a); medical accounts in collection for \$175 (SOR 1.b), \$195 (SOR 1.c), \$137 (SOR 1.d), \$137 (SOR 1.e), and \$387 (SOR 1.f); a utility bill in collection for \$41 (SOR 1.g); apartment rent in collection for \$270 (SOR 1.h); a cable bill in collection for \$235 (SOR 1.i); a judgment of \$2,034 for apartment rent (SOR 1.j); a judgment of \$3,042 for apartment rent (SOR 1.k); a car repossession debt for \$4,140 (SOR 1.l); a credit card debt charged off for \$300 (SOR 1.m); a state tax lien for \$799 (SOR 1.n); a judgment of \$2,034 for a state university (SOR 1.o); a bank debt in collection for \$898 (SOR 1.p); a bank debt in collection for \$243 (SOR 1.q); and a cable debt in collection for \$91 (SOR 1.r). The total debt is approximately \$18,500, with \$8,700 for apartment rent, \$4,140 for a car repossession, and \$1,000 in medical bills. The remaining debts are for student loans, utilities, and cable service.

Applicant's financial problems started with her divorce in 1997, the need to support two children on one income, and inconsistent child support. Applicant started employment with a police department in 2001, but had to resign for health reasons when she was diagnosed with Type 2 diabetes in 2008. Because of her health, Applicant determined that it was in her best interest to find employment in the

information technology field. Until she was employed by the defense contractor in July 2010, she did not have steady employment. She moved from area to area, many times to different states, to find good, well-paying work. When she found work, she would rent an apartment for her family. When she lost employment, she had to break the leases and move. The moves resulted in judgments against her by the apartment owners for breaking leases. She did not have health insurance. Her Type 2 diabetes deteriorated to Type 1 and she required extensive medication. She also experienced significant dental problems because of the diabetes. She incurred medical debts from her treatment until she could qualify for health care under the Department of Veteran's Affairs (VA) health care system. She no longer incurs medical debts. She is current with her taxes, car payment, and student loans for courses she took that she could not complete. Applicant does not have a credit card. With her children no longer at home, Applicant is only responsible for maintaining her own life style. Applicant is living within her means. Applicant's plan is to pay the smaller debts first. As funds are freed from paid accounts, she will make arrangements to pay the next higher amount debts. (Tr. 13-16, 21-23, 34-38; Gov. Ex. 4, Testimonies, dated September 7, 2010)

The delinquent debt at SOR 1.g has been paid. (Tr. 25, Response to SOR and App. Ex. B, Receipt, dated September 13, 2011) The cable debt at SOR 1.i has been paid. (Tr. 25, App. Ex. C, Receipts, dated October 2, 2011, and November 9, 2011; App. Ex. F, Bank Statement, dated April 2, 2012) The apartment lease debt at SOR 1.k has been paid through a settlement paid by wage garnishment. (Tr. 26; App. Ex. E, Judgment, dated February 9, 2006; App. Ex. G, Paid-in-full Letter, dated March 30, 2012) The cable debt at SOR 1.r. was paid on October 6, 2011. (Tr. 25; App. Ex. F, Bank Statement, dated April 2, 2012)

The delinquent debt at SOR 1.a, for \$3,396, is for breaking an apartment lease. Applicant has not paid this debt since it is one of her larger debts. The delinquent debts at SOR 1.b, 1.c, 1.d, 1.e, and 1.f, are debts for Applicant's medical treatment. The debts were the result of recurring laboratory tests and insulin treatment for her diabetes. Applicant has not started to pay these debts. (Tr. 21-25, 36-37)

The delinquent debt at SOR 1.h is for another broken apartment lease. This debt has not been paid. (Tr. 25) Applicant also has not paid the debt for the apartment lease at SOR 1.j. Applicant does not believe she owes the full amount of the debt. When she rented the apartment, she also worked as the apartment complex courtesy officer receiving credit for half of the rent. She was led to believe that if she left the apartment, she would not owe the remaining lease amount. However, the judgment was filed. She intends to contact the creditor to determine the amount owed and hopes to settle the account when she has funds available after paying other smaller debts. (Tr. 25-26)

Applicant voluntarily returned her car to the dealer when she lost employment and could not make the loan payments. She owed approximately \$7,000 on the loan, and the car was sold for \$3,000, resulting in the \$4,140 debt at SOR 1.i. She will pay the debt according to her plan after paying smaller debts. (Tr. 26-27)

Applicant has not paid the credit card debt at SOR 1.m. She applied for a credit card and was provided a \$300 credit on the card. She did not use or make any

purchases with the card. The debt is for the initial credit fee. She plans to settle and pay the debt as soon as some funds are available. (Tr. 27)

Applicant's position with a company was moved from one state to another. Applicant was going to move to keep the position, but the position was eliminated before she could move. She continued to work for the company in the original state for three months, but her income was taxed by the new state since her company reported she was employed in that state. She did not learn of the tax lien until she discussed her finances with the security investigator. She plans to question the tax and pay it, if required, when funds are available. (Tr. 27-28)

The debt at SOR 1.o is for tuition and books at a state university. She started to take courses but discovered she could not work full-time, raise two children, and go to school. She dropped the courses and then relocated to a new state. She has not started paying this debt. (Tr. 28) The bank debts at SOR 1.p and 1.q are for fees from accounts she closed when she moved. She admits these debts and plans to pay them when funds are available. (Tr. 28-29)

## **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 must be considered 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, 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 in seeking 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 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.

## **Analysis**

### **Financial Considerations**

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) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts established by a credit report and Applicant's admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant incurred financial problems from being a single mother raising two children, medical expenses not covered by health insurance, and frequent moves to find employment.

I considered Financial Considerations Mitigating Conditions 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) and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions apply. Applicant divorced and had to raise two children without receiving regular child support funds. She was employed, but developed diabetes and had to find employment that was consistent with her medical condition.

Applicant's debts were incurred by conditions beyond her control. She divorced and did not receive consistent child support. She was employed but had to find another job because her medical condition prohibited her from working in that field. She moved many times to find what she believed to be good and steady employment. She has a significant medical problem, and incurred medical debts because of her changing employment and lack of health insurance. She has a clear understanding of the status of her finances. Her plan is to pay her smaller debts first and then move to the larger debts. She has sufficient income to live within her means, and pay delinquent debts as funds become available. She implemented her plan by paying four debts, and is in the process of paying the next debt. She is current with her present debts, has not incurred additional delinquent debts, and does not use credit cards. She is current with her taxes, car payments, and student loans. She has steady and good employment, and is not likely to incur additional debts. Her finances are under control. Applicant established that she acted responsibly towards her debts under the circumstances.

I considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. Applicant is not required to establish that she paid each and every debt listed. All that is required is that Applicant has an established plan to resolve her financial problems, and show she has taken significant actions to implement that plan.

Applicant is resolving her delinquent debts. She settled and paid four of her debts. She has a plan to pay the smallest debts first, and as funds become available, to pay her next larger debt. She is current with her present debts. Her effort to settle and pay her debts is significant and credible information to show a desire to resolve debt. Her payment of debts establishes a meaningful track record of debt payment. These efforts show a reasonable and prudent adherence to financial obligations, and establish a good-faith effort to resolve and pay debts. Her past delinquent debts do not reflect adversely on her trustworthiness, honesty, and good judgment. Based on all of the financial information provided by Applicant, she has mitigated security concerns based on financial considerations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered Applicant's five years of honorable active duty service with the Marines. I considered that Applicant's financial problems were caused by circumstances beyond her control. She settled and paid four of her delinquent debts, and has a credible plan to pay the remaining debts. Applicant established a good-faith effort to pay or resolve her delinquent debts. Her actions to resolve her past financial obligations indicate that she will be concerned, responsible, and careful regarding classified information. 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 mitigated security concerns arising from financial considerations. She is granted access to classified information.

### **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
Subparagraphs 1.a – 1.r:	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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THOMAS M. CREAN  
Administrative Judge