



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 -----<sup>1</sup> ) ISCR Case No. 10-11199  
 )  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

02/27/2012

**Decision**

HOWE, Philip S., Administrative Judge:

On July 30, 2010, Applicant submitted her Security Clearance Application (SF 86). On June 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on June 23, 2011. She answered the SOR in writing on July 6, 2011, and requested a hearing before an administrative judge. DOHA received the request on July 12, 2011. Department Counsel was prepared to proceed on August 25, 2011, and I received the case assignment on August 31, 2011.

<sup>1</sup> Applicant married after the SOR was issued. Her name used in the SOR is in parenthesis.

DOHA issued a Notice of Hearing on October 27, 2011, and I convened the hearing as scheduled on November 17, 2011. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through G, without objection. DOHA received the transcript of the hearing (Tr.) on December 1, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Procedural and Evidentiary Rulings**

#### **Motion to Amend SOR**

Department Counsel moved to amend the SOR by striking ¶ 1.c, alleging Applicant voluntarily returned a vehicle to the loan provider as repossession. The Government explained that the documents showed Applicant had an auto lease and returned the vehicle at the lease expiration. It was not repossession. I granted the motion. (Tr. 20-22; Exhibit D)

#### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b, of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 35 years old, married, and works for a defense contractor as a data specialist. She also has other office duties to perform. She divorced her first husband in 2009 and has recently remarried. After the divorce she moved from another state to the one in which she and her new husband presently live. Her first husband handled the family finances. (Tr. 36, 37; Exhibit 1, E)

She has two delinquent debts that she is resolving. They total \$28,125 as alleged in the SOR. The first debt is to the Internal Revenue Service (IRS) for self-employment taxes resulting from her work in her brother's real estate business. She earned \$40,000 in that position. Applicant owes \$8,087.00 on that debt and is paying \$250 monthly pursuant to an installment payment agreement. She has made payments since August 2011. Applicant sought assistance from the IRS in March 2011 to arrange an installment payment agreement. This debt is being resolved. (Tr. 30-32, 42-45; Exhibits 2-5, A, G)

Applicant owes \$19,700 on a student loan to a government agency. Applicant graduated in 2001 with an associate's degree in culinary arts. She paid \$150 monthly several years ago, but when she got divorced she stopped paying. She now has resumed making payments of \$200 monthly beginning August 2011. This debt is being resolved on the installment payment plan. (Tr. 33, 34, 47; Exhibits 2-5, F)

Applicant's income dropped from \$40,000 to \$28,000 when she changed jobs after her 2009 divorce and moved to another city. Her current job pays her \$36,000 and she is better able to make her debt payments. If her husband's house sells she will be

able to repay her loans faster. They currently live in a home Applicant rents from her father for \$350 monthly. (Tr. 32, 33, 34, 38, 40, 41)

Applicant submitted two character letters from her supervisors. Both describe her as competent, conscientious, hard-working, and dedicated. (Exhibits B and C)

### **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 useful 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 (AG ¶ 2(a)). 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. 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$28,125 in delinquent debt from 2001 to the present time that remains unpaid. Applicant has two delinquent debts listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be applicable:

- (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;

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant is currently paying her debts in an orderly manner. She makes regular payments on each of the two delinquent debts. Therefore, there are clear indications from the evidence she presented that the financial problems are under control and being resolved. AG ¶ 20 (c) applies.

Applicant has a regular debt repayment program in operation on the IRS debt and the student loan debt. She should be able to repay both debts in less than eight years. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay her delinquent debts.

### **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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 explained credibly her past efforts to pay these two debts and the reasons they were incurred. She admitted frankly why they were not paid before now. Her changing income, usually downward,

adversely affected her ability to make the payments. Applicant was an adult when she incurred the debts. She has tried in the past to repay them and continues that effort. There is no likelihood of recurrence. The potential for pressure, coercion, exploitation, or duress is very slight because of the regular repayment plan she is using, and the character letters from her supervisors' show her situation is known within her employer's managerial ranks.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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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PHILIP S. HOWE  
Administrative Judge