



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



In the matter of: )  
)  
) ISCR Case No. 11-00397  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

06/26/2012

**Decision**

HOWE, Philip S., Administrative Judge:

On June 21, 2010, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On July 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 answered the SOR in writing on September 8, 2011. Applicant requested her case be decided on the written record in lieu of a hearing.

On January 30, 2012, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant

on February 2, 2012. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on February 10, 2012. Applicant filed an extension of time request to file a Response to the FORM on March 9, 2012. This request was within the 30 day time allowed that would have expired on March 11, 2012. Department Counsel had no objection to a 20-day extension (Item 2). The Response was submitted on March 28, 2012, and a Supplemental Response was sent by Applicant on April 26, 2012. Department Counsel had no objection to either Response or the times they were submitted.

I received the case assignment on May 10, 2012. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

### **Findings of Fact**

Applicant denied the allegations in Subparagraphs 1.a, 1.b, 1.d, 1.e, 1.f, 1.i, 1.j, 1.k, 1.l, and 1.n. She admitted allegations in Subparagraphs 1.c, 1.g, 1.h, and 1.m. (Items 2, 6-11)

Applicant is a divorced mother of two children, aged 20 and 18. She works for a defense contractor. She has been continuously employed except for the period of April to August 2007. Applicant claims her son's college tuition of \$24,000 for one year of attendance and her daughter's four brain surgeries adversely affected her financial ability to pay her delinquent debts. (Items 2-6)

Applicant has 14 delinquent debts listed in the SOR totaling \$25,278. Applicant denies 10 of the debts and admits four remaining financial obligations. Applicant's Answer and two Responses contain documents showing actual debt payments relating to only three debts. Applicant, upon whom the burden of proof and persuasion rests, does not present any other documents relating specifically to any of the debts listed in the SOR. She refers to debts not listed in the SOR or merely makes statements that debts are paid without proof. Her September 7, 2011 Answer, and interview with the government investigator in July and August 2010, contained representations by Applicant that she would resolve the delinquent debts by December 2011 or would start installment payment plans on various debts. Applicant did not submit documentary evidence she complied with her statements. (Items 2, 6-11, Answer, Response, Supplemental Response)

Applicant claims she paid a hospital \$355 for her daughter's surgeries, but did not submit documents connecting the debt in SOR Subparagraph 1.a to her assertion in her Response. The Government states in its FORM that the January 3, 2012 credit report shows the debt as satisfied, and it is the only debt in that section of the credit report that does not contain the notation, "unpaid." Therefore, I conclude it is paid. (Items 2, 10)

Applicant submitted documents showing payments to a residence community on an original judgment debt of \$108 (SOR Subparagraph 1.b). She paid \$695 on April 2, 2012. This debt is resolved. (Item 11, Response)

Applicant paid a medical debt for \$184 on April 4, 2012 (SOR Subparagraph 1.j). She paid it with her debit card, the bank statement for which she submitted with her Response. This debt is resolved. (Response)

Applicant paid \$11,100 to her mortgagee bank in three checks dated in August 2011. The SOR in Subparagraph 1.n alleges she owes \$13,000 on a loan balance of \$358,000 for her house. Applicant's Answer states this amount was requested by the bank to stop foreclosure proceedings. Applicant claims the mortgage balance is \$338,000. This debt is being resolved. (Items 2-11, Answer)

The remaining 10 delinquent debts she has not resolved, regardless of her admissions or denials in her Answer. Applicant also claims the two telephone debts to the same company (SOR Subparagraphs 1.c and 1.h) are the same, but her government interview admits they are two different accounts, the second debt for \$1,559 being for a cell phone she purchased for a global conference she conducted. They remain unpaid. Applicant also claims that after the first cell phone debt could not be negotiated to a lesser amount she changed to another cell phone provider, but continues to owe the second provider \$111 as alleged in SOR Subparagraph 1.f) (Items 2-11, Answer, Response)

Applicant continues to owe \$11,631 in delinquent debt after deducting the amounts listed in the three accounts she showed she paid. The earliest delinquent debt is dated in 2004. (Items 6-11)

### **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 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, the administrative judge applies the guidelines 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.

According to 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. 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. From these nine conditions, 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.

From 2004 to the present, Applicant accumulated 14 delinquent debts, totaling \$25,278 that was unpaid or unresolved.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. None of the mitigating conditions have applicability.

Applicant paid only four of the debts listed in the SOR. Her Responses contain information about other debts she alleges she paid. Therefore, 10 delinquent debts remain unpaid by Applicant in the amount of \$11,631. She has not shown a plan to resolve these debts despite her repeated assertions in her Answer and government interview that she would do so.

### **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 relevant 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 facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She has not taken any action to resolve her delinquent debts beyond the four that she did pay. The remaining 10 debts are significant and of long duration. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Her lack of action continues to this day, and is obviously voluntary. Her inaction will continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments on most of her delinquent debts during the past eight years.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" concept against Applicant.

### **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.b, 1.j, and 1.n:	For Applicant
Subparagraphs 1.c to 1.i, 1.k to 1.m:	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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PHILIP S. HOWE  
Administrative Judge