



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-01607
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

January 20, 2012

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on November 3, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on June 6, 2011, detailing security concerns under Guideline F, financial considerations, that provided the basis for its preliminary decision to deny her a security clearance. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on June 15, 2011. She answered the SOR on June 29, 2011. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on July 27, 2011. I received the case assignment on August 3, 2011. Due to circumstances beyond the control of all interested parties, the original hearing date scheduled for the first week of October 2011 was rescheduled. DOHA issued a Notice of Hearing on October 7, 2011, and I convened the hearing as scheduled on October 24, 2011. The Government offered exhibits marked as GE 1 through GE 6, which were received and admitted into evidence without objection. Applicant testified. She submitted exhibits marked as AE A through AE C, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 1, 2011. I held the record open until November 30, 2011, for Applicant to submit additional matters. Applicant timely submitted AE D through AE M, which were received and admitted into evidence without objection. The record closed on November 30, 2011. After reviewing Applicant's submissions AE H and AE M, I held a conference call on January 10, 2012 with Applicant and Department Counsel for the purpose of requesting two documents to clarify information in these submissions. I reopened the record and gave Applicant one week to submit clarifying documents, which she did. AE N and AE O are admitted into the record without objection.

## **Procedural Rulings**

### **Notice**

Applicant received the hearing notice on October 18, 2011, less than 15 days before the hearing. (Tr. 9) I advised Applicant of her right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived her right to the 15-day notice. (*Id.*)

## **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.d and 1.e of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.a -1.c of the SOR.<sup>1</sup> She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

Applicant, who is 36 years old, works as a benefits specialist for a Department of Defense contractor. She began her current employment in November 2010. She previously worked in the produce industry for two and one-half years. This job required her to work between State A, where she now lives, and State B, where she grew up and lived until she moved to State A in 2005. She also worked as a property manager for her rental property from 2005 until 2010. She hired a property manager for her rental property in 2010.<sup>2</sup>

In 1992, at age 16, Applicant gave birth to her oldest son. She then completed high school. She and her son's father lived together as husband and wife for more than 18 years. They had three other children, ages 13, 11, and 7. Her oldest son was murdered in July 2008, when he was 16 years old. His father and her common-law husband committed suicide in May 2009. She is a single parent for her other three children.<sup>3</sup>

Applicant and her common-law husband purchased a home in State B in January 1996 and lived in this home until December 2005, when they moved to State A. Prior to their move to State A, Applicant and her common-law husband refinanced their State B home with a primary mortgage of \$376,000 and an equity loan of \$47,000. They also purchased a home in State B for \$645,000, intending to live in the home upon their return from State A in a year.<sup>4</sup> They financed this purchase with a primary mortgage of \$516,000 from lender 1 and a home equity loan of \$129,000 from lender 2. When they moved to State A, they rented these homes and made their mortgage payments until late 2007. With the decline in the economy and housing market in 2007 and 2008, they were unable to rent their properties in State B. They defaulted on their mortgages, and the mortgage company foreclosed on the properties in June 2008 and September 2008. As a result of the foreclosure, Applicant totally resolved both mortgages on the property purchased in 1996 and later refinanced. Applicant provided a 1099-A from lender 1, which showed the primary mortgage debt for the second property purchased in State B in 2005 at \$516,000 and a fair market property value of \$360,000 on September 2, 2008, the date of foreclosure. The difference in the mortgage debt and the fair market value of the property was \$156,000. The \$128,898 home equity line of credit is shown as charged off and closed on the five 2011 credit reports in the record. Lender 2, a bank, provided Applicant with a 1099-C for the tax year 2008. This document indicates that a home equity secured installment loan of \$128,898.04 was cancelled on September 20, 2008. This document lists a personal home equity loan account number which differs from the account number listed in the credit reports. Since the record contains no evidence that Applicant took out two home equity loans on this property for \$128,898, I find that the 2008 1099-C reflects a cancellation of the \$128,898 home equity loan listed as charged off by the bank. Applicant's 2008 federal tax return

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<sup>2</sup>GE 1; Tr. 27-28, 41, 77.

<sup>3</sup>GE 1; GE 2; Tr. 24-25, 27.

<sup>4</sup>They decided to remain in State A. Tr. 41.

indicates that \$284,898 in debt was discharged in the year 2008. When the cancelled debt amount of \$128,898 on the 1099-C and the \$156,000 loss of fair market value are added together, these amounts total the amount of cancelled debt on her 2008 federal tax return.<sup>5</sup>

After moving to State A, Applicant and her husband purchased a home and two rental properties. She continues to live in the house and to rent the other properties. Until her son's murder and the economic downturn, Applicant paid her bills, a fact shown by the credit reports of record. After her son's murder and during her grieving process, Applicant focused her attention on her other children, not on paying her bills. As a result of her husband's suicide, she stopped paying many bills, including the mortgage payments on her house and her rental properties. In February 2010, Applicant made a list of her debts and other items she needed to address. Over the next 15 months, Applicant paid or resolved seven past-due debts and eventually brought her past-due mortgages current. She also developed a payment plan for the \$2,415 judgment in SOR allegation 1.d, which is fully paid, and a payment plan for a \$15,000 debt owed to another creditor, which is now paid. Applicant paid the two debts listed in SOR allegations 1.b and 1.c.<sup>6</sup>

The Government mailed financial interrogatories to Applicant on March 14, 2011. The interrogatories asked Applicant to verify the status and payments on 11 accounts totaling \$1,090,660. Applicant provided information, showing the resolution of eight accounts totaling \$960,660. The bulk of the debts related to her mortgages on the two houses in State B. Only three debts identified in the interrogatories were listed in the SOR (allegations 1.b, 1.c, and 1.e). The judgment in SOR ¶ 1.d is not listed as a debt in the interrogatories. Applicant has paid the judgment.<sup>7</sup>

The \$43,432 medical bill (SOR ¶ 1.a) first appeared on the April 22, 2011 credit report. Applicant advised that this is the MEDIVAC bill for transporting her common-law husband to a major hospital center for treatment, as he was still alive when medical personnel arrived to care for him. She acknowledged signing the authorization for this bill on May 10, 2009. After receiving the SOR, Applicant drove to the medical facility and spoke with a billing representative about this bill in July 2011. The billing representative asked Applicant to provide a copy of her 2010 tax return, which Applicant did. Based on her tax return and other information provided by Applicant, the billing representative advised Applicant that she qualified for a program where her existing medical bills would be paid as would any medical bills incurred for the upcoming six months and not paid by insurance. This bill is no longer listed on the October 11, 2011 credit reports from all three credit reporting agencies. On October 28, 2011, Applicant wrote the medical facility to verify that this debt is resolved. The medical facility referred her to a collection

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<sup>5</sup>GE 2; AE M, p. 11 (Form 982); AE O; Tr. 41-43, 56-67.

<sup>6</sup>GE 2; GE 5; GE 6; Response to SOR; AE A; AE G - AE K; Tr. 28-36, 44-45, 72-73, 82.

<sup>7</sup>Response to SOR; GE 2; AE A .

agency, which advised that the medical center cancelled its account on July 9, 2011, and the collection agency cancelled its account. Applicant received further clarification from the collection agency verifying that the hospital account number and its account are for the same bill. The hospital cancelled this debt.<sup>8</sup>

Applicant earns \$2,880 in monthly gross income, and she receives \$2,200 a month in net income. She also receives \$1,722 in Social Security benefits for her children and \$5,195 in rental income. Her total monthly household income is \$9,117. She pays three mortgage payments each month, which total \$4,100. Her other monthly expenses include \$900 for utilities, Direct TV, and phone bills, \$800 for food, \$150 for clothing, \$400 for car expenses and gasoline, \$200 for child care, \$500 for the property manager, \$50 for life insurance, \$300 on an equity line, and \$250 on a credit card for total monthly expenses of \$7,650. She did not identify any miscellaneous expenses, such as hair cuts, school supplies, and dry cleaning. I estimate that she would spend an additional \$150 a month on miscellaneous expenses. Her expenses total \$7,800, which is \$750 less than her expenses listed on her personal financial statement. At the hearing, she testified that she completed her monthly payments of \$200 and \$100 on two debts and that one mortgage company reduced her monthly payment from \$2,800 to \$2,100. Thus, she reduced her monthly expenses by \$1,000. She also testified that she increased her monthly payment on the equity line by \$100. This change plus the inclusion of \$150 for miscellaneous expenses increased her monthly expenses by \$250. These changes are the reason for the \$750 in reduced monthly expenses. She owns three vehicles, a 1990 Toyota, a 2000 pickup truck, and a 2003 SUV. All three vehicles were purchased as used vehicles and are completely debt free. Applicant has not received financial counseling.<sup>9</sup>

Applicant provided a copy of her federal and state income tax returns for the years 2008 and 2009. Her 2009 federal tax return reflects that her \$47,000 equity line of credit has been cancelled. Her 2008 federal tax return shows debt forgiveness totaling \$284,898.<sup>10</sup>

The Human Resource manager for her employer describes Applicant as dependable, reliable, hard-working, conscientious, honest, courteous and professional. She is a trusted employee and an asset to the company. Her deputy manager also praises her work ethic and skills.<sup>11</sup>

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<sup>8</sup>GE 4 - GE 6; AE H - AE K; AE N; Tr. 46-51.

<sup>9</sup>GE 2; AE E; AE F; Tr. 72-77.

<sup>10</sup>AE L; AE M.

<sup>11</sup>AE B; AE C.

## 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, 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, 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. . . ." An 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 an 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Appellant developed financial problems after she and her common-law husband purchased a home in 2005 and refinanced their existing home just prior to the economic downturn. Her financial problems deepened after the murder of her son and subsequent suicide of her common-law husband. Several large debts have not been resolved. These two disqualifying conditions apply.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." *See, e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. *See, e.g.*, ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." *See, e.g.*, ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching

a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 20(a) through 20(f), and the following are potentially 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Three major events between 2007 and 2009 created Applicant’s current financial problems. She and her common-law husband purchased a home in State B in 2005 intending to rent it while they lived out-of-state for a year. During their absence from State B, they also rented their family home. When they decided to remain living in State A, they continued to rent these properties for a time, but when the economic downturn began, they could not find renters for their properties. Eventually they defaulted on their mortgages because they lacked sufficient income to pay them. About the time the mortgage banks foreclosed on these properties, Applicant’s oldest son was murdered. Ten months later, her husband committed suicide. These two tragedies are unusual events and circumstances which are not likely to recur and do not cast doubt upon Applicant’s current reliability, trustworthiness, or good judgment. The murder of her son, the suicide of her husband, and the economic downturn are factors beyond Applicant’s control. During her initial grieving process, Applicant fell behind in her bills. She missed payments on her mortgages and other bills. In February 2010, she realized that she needed to take control of her finances. She developed a list of bills which needed to be resolved. She started paying her smaller debts and worked towards paying her larger debts. She created a plan to resolve her debts and has followed her plan. The hospital



cancelled the \$43,432 debt for the MEDIVAC helicopter after receiving and reviewing Applicant's 2010 tax return. The bank holding the \$128,898 equity loan on the rental house in State B cancelled this debt a few weeks after the primary lender foreclosed on the property in September 2008, but failed to correct the credit reports. Mitigating conditions AG ¶¶ 20(a) and 20(b) are applicable in this case.

Since February 2010, Applicant has steadily worked to resolve her debts. She contacted many of her creditors and worked out a plan to resolve her past-due debts. She brought her past-due mortgages current, and she paid a number of smaller debts. She developed a payment plan, which resolved the judgment obtained against her. She also contacted another creditor and resolved her \$15,000 indebtedness. Her two large mortgage debts were resolved through foreclosure and two equity loans have been forgiven and included as part of her 2008 or 2009 taxes. While she has not received financial counseling, she has resolved her debts. The hospital cancelled her large MEDIVAC debt after reviewing her 2010 income tax return. Her good-faith efforts with her creditors has resulted in the payment of many of her debts. She pays her current living expenses and lives within her monthly income. Mitigating conditions AG ¶¶ 20(c) and 20(d) 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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant paid her bills until the onset of the economic downturn. She rented her two properties in State A, which allowed her to pay the mortgages. As the economy worsened in 2007, she encountered problems finding renters for her properties. By the end of 2007, she could not find renters nor could she meet her monthly mortgage payments. She and her common-law husband decided to default on their mortgages, as they had no other option. About this time, unexpected tragedy struck. Her 16-year-old son was murdered. During her initial grieving, Applicant prioritized her family and its needs. She started to fall behind in her bills. Less than one year later, tragedy struck a second time when her common-law husband committed suicide. With all the emotional stress, she gave her first priority to her young children and their needs. Many of her bills became past-due.

By February 2010, she realized she needed to take control of her finances. She created a list of debts and other issues to resolve. She slowly and steadily worked through her debts, paying the small bills first and bringing her past-due mortgage payments current. She contacted the creditors and worked out payment plans for the judgment and a large debt. Her mortgage indebtedness and MEDIVAC bill are resolved. She developed a plan of action two years ago and has followed through with her plan. Most significantly, she has taken affirmative action to pay or resolve all of the delinquent debts raising security concerns. (See AG & 2(a)(6).) She has control over her finances and her bills. She has sufficient income each month to pay her expenses and any remaining debts. She lives within her income. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. Her debt arose under extremely unusual circumstances and are unlikely to occur again. These circumstances and her subsequent handling of her finances indicate that any security concerns are not an issue. (See AG ¶ 2(a)(1).)

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 finances under Guideline F.

### **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
Subparagraph 1.c:	For Applicant

Subparagraph 1.d:  
Subparagraph 1.e:

For Applicant  
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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MARY E. HENRY  
Administrative Judge