



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 11-02004  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

10/19/2012

**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 October 5, 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 interrogatories to Applicant to explain potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated April 23, 2012, detailing security concerns based on Applicant's finances. 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) effective in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on May 2, 2012.

Applicant answered the SOR on May 15, 2012. She admitted 37 of the 46 allegations and denied nine (SOR 1.b, 1.e, 1.l, 1.m, 1.t, 1.ff, 1.gg, 1.jj, and 1.mm). Department Counsel was ready to proceed on June 12, 2012. The case was assigned to me on July 18, 2012, and DOHA issued a Notice of Hearing on July 19, 2012, scheduling a hearing for August 16, 2012. I convened the hearing as scheduled. The Government offered eight exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 8. Applicant testified, and submitted six documents that were marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through F. I left the record open for Applicant to submit additional documents. Applicant timely submitted nine documents, which were marked and admitted into the record without objection as Applicant Exhibits G through N. Department Counsel had no objection to admission of the documents. (Gov. Ex. 9, e-mail, dated September 6, 2012). DOHA received the transcript of the hearing (Tr.) on August 29, 2012.

### **Findings of Fact**

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

Applicant is a 43-year-old high school graduate who is employed by a defense contractor as a material handling specialist. She married at age 19 in 1988. That marriage ended in divorce in 1994. She married again in 1999, and that marriage ended in divorce in 2003. She has been cohabitating with an individual since November 2009. Applicant has two sons, age 19 and six. Her oldest son has a severe mental health issue that requires extensive medical treatment.

Applicant has an extensive work history. Applicant worked in a cotton mill from May 1989 until the mill shut down in December 2001. She was unemployed for five months from December 2001 until May 2002, when she found employment at an automobile manufacture's parts distribution center. That company downsized and she was laid off in October 2003 and was unemployed until February 2004, when she started working for a defense contractor in their warehouse. She again experienced a downsizing and lay-off in July 2007. She was unemployed from July 2007 until February 2008, when she started working for another defense contractor in the warehouse. She had a long expensive commute for this job so she moved to another part of the state in February 2010 for better employment opportunity with a shorter and less expensive commute. She started working with her present defense contractor employer in February 2010.

In a four-year period, she had unemployment times of five months, six months, five months, and seven months. Approximately half the time in the four years, she was unemployed. She always sought employment after being laid off. When not employed, Applicant received unemployment compensation of approximately \$270 per week. (Tr. 11-13; Gov. Ex. 1, e-QIP, dated October 5, 2010; Gov. Ex. 2, e-QIP, dated July 12, 2007; Gov. Ex. 3, Response to Interrogatories, dated August 23, 2011) .

Applicant's income has varied over time. She and her second husband both worked at the cotton mill from their marriage in 1999 until the mill closed in 2001. Their combined yearly income was approximately \$44,000. Her hourly rate at her next job was from \$10 to \$14, with an approximate yearly salary of only \$16,000. Her salary with her present employer is approximately \$44,210 per year. Her hourly rate is \$17, but she has significant overtime. Her co-habitant nets about \$2,000 per month. They have expenses in excess of \$3,000 and have monthly discretionary income of approximately \$400. Applicant has been able to save some money recently and has a few hundred dollars in savings. They do not live paycheck to paycheck. (Tr. 28-30, 33-41; Gov. Ex. 5, Financial Interrogatory, dated August 23, 2011, at 227)

Credit reports (Gov. Ex. 6, dated August 9, 2006; and Gov. Ex. 7, dated October 19, 2010; and January 26, 2012), Applicant's answers to interrogatories (Gov. Ex. 4 and Gov. Ex. 5, dated August 23, 2011), and her response to questions from a security investigator (Gov. Ex. 3, dated August 23, 2011) enumerate 46 delinquent debts. These debts include 25 medical accounts (SOR 1.a, 1.b, 1.f, 1.j through 1.n, 1.s, 1.bb through 1.ee, 1.hh, 1.ii, and 1.kk through 1.tt); five phone accounts (SOR 1.c, 1.h, 1.t, 1.gg, and 1.jj); four credit accounts (SOR 1.d, 1.q, 1.aa, and 1.ff); five student loan accounts (SOR 1.g, 1.o, 1.u, 1.w, and 1.x); one utility account (SOR 1.e); one vehicle repossession (SOR 1.i); two apartment rent accounts (SOR 1.p, and 1.y); and three cable service accounts. Applicant kept meticulous financial records and provided detailed information on her debts. She prepared a spreadsheet on all of the SOR debts. (Tr. 11-12, 22-24; See Response to SOR, dated May 15, 2012) After the hearing, Applicant presented an updated spread sheet on the status of her finances. (App. Ex. G, Spreadsheet, undated)

Applicant started experiencing financial difficulty in 2003. Her oldest son needed extensive medical care for his condition that was costing her about \$400 to \$500 per month. Her first priority was to pay the medical expenses so her son could continue medical care. She received only sporadic child support from her former husband. He stopped all support when their son turned 18 years old. She had an unplanned difficult pregnancy in 2005/2006. Some of the medical debts were incurred from this pregnancy. She was unable to work and was on bed rest because of the pregnancy-related medical problems. During the pregnancy, Applicant had health insurance and most of the debts were co-pays.

She incurred additional medical expenses. She was unable to pay bills without her income. She had extensive medical problems in February 2010 and February 2011.

Both times, she required surgery and hospitalization. The medical bills were mostly paid by health insurance. (Tr. 26-29, 72-78)

The medical debt for \$60 at SOR 1.a is a co-payment for a neo-natal test. She does not believe this debt has been paid. She is making inquiries as to the method of paying this debt. (Tr. 41-42)

The medical debt for \$58 at SOR 1.b is for a chiropractor Applicant saw during the pregnancy. She paid a co-payment and does not know why there is a debt owed. She disputed this debt with the doctor even before she left the doctor's office. (Tr. 42-44)

The delinquent debt for \$43 at 1.c is for a telephone debt from the apartment Applicant rented during part of the pregnancy. The apartment was on the second floor. She could not climb stairs because of her condition, so she terminated the lease. She does not remember paying the final bill and believes this may be that bill. She is attempting to make arrangements to pay the debt. (Tr. 44-45)

The delinquent debt for \$147 at SOR 1.d is a pay advance Applicant received from an employer. She was laid off before the entire amount was repaid. She has paid the debt in full. (Tr. 45; App. Ex. K, Moneygram, dated August 22, 2012)

The \$85 electric utility bill at SOR 1.e has been paid. The bill originates from an apartment Applicant rented with her second husband until 2006. She thought the final bill had been paid. When she needed electric service again in 2008 at another apartment, she was informed of the debt. She paid the debt so she could get electric service. (Tr. 24, 45-46; App. Ex. D, Utility Notice, dated May 23, 2008)

The delinquent debt for \$106 at SOR 1.f is another medical bill from her 2006 pregnancy. She does not remember if she paid the co-payment. She believes the debt is still outstanding. (Tr. 46-47)

The delinquent debt for \$529 at SOR 1.g is for an on-line course. The school claimed Applicant failed the course but Applicant disputed this with the school. The school reduced the debt to a quarter of the normal fee. The debt has not been resolved and is not part of the consolidation of her student loans. (Tr. 47-49)

The delinquent debt for \$654 at SOR 1.h is for her son's cell phone. He incurred a large bill one month and Applicant notified the phone company to block her son's access to texting and calling. The phone company did not block his phone and a large debt was incurred the next month. She disputed the debt with the phone company, but it has not been resolved. (Tr. 49-51)

The delinquent debt for \$5,151 at SOR 1.i is for a 2007 car repossession. The car was a used car she purchased for approximately \$12,000. She had the car for about

a year. Her commute to work was expensive and she had child care expenses. She could not afford the car so it was repossessed. She remembers receiving a statement about the car but does not remember the amount owed. The debt has not been resolved. (Tr. 52-53)

The delinquent debts at SOR 1.j to 1.n are medical debts from Applicant's 2010 thyroid surgery. Applicant's 2010 state tax return was applied to the debts at SOR 1.l and 1.m. The debt at SOR 1.l has been paid in full and the debt at SOR 1.m reduced to \$254. Applicant's 2011 state tax refund was applied to the debt at SOR 1.j. The debt is paid in full. The other debts have not been resolved. She does not have information on the debt at SOR 1.n. (Tr. 51-55; App. Ex. B, Tax Receipt, dated February 7, 2011; App. Ex. C, Hospital Statement, dated September 27, 2010; App. Ex. I, Tax Refund, dated February 3, 2012)

Applicant's student loans at SOR 1.o, 1.u, 1.w, and 1.x have been consolidated and are in a rehabilitation program. Applicant paid the first installment on the rehabilitation program and subsequent payments will be automatically deducted from her account. (Tr. 19-20; App. Ex. A, Rehabilitation Documents and Bank Transaction, dated July 27, 2012; App. Ex. J, Bank Transaction, dated August 21, 2012)

The delinquent debt for \$423 at SOR 1.p is from an apartment lease dispute. There was a violent incident in the apartment complex where Applicant lived in 2011. She notified the landlord that she would be moving at the end of the one year lease. She had an unexpected major medical problem requiring an operation and recuperation. She tried to extend the lease but the apartment was rented. When Applicant moved, the landlord claimed there was damage needing repair. Applicant claimed the apartment was in excellent condition and disputed the need for repairs. She has pictures of the condition of the apartment when she left. The dispute has not been resolved. (Tr. 55-57)

The delinquent debt for \$1,109 at SOR 1.q is for a credit card Applicant acquired in 2007. She was trying to rebuild her credit but was laid off and could not continue to pay the bill. The debt has not been resolved. (Tr. 57-58)

The delinquent debt for \$69 at SOR 1.r is for cable television service. Applicant had service with the same company in 1999 to 2003, in 2005, and again in 2008. She did not like the service in 2008 and canceled the contract. However, the company debited her bank account for equipment charges. She disputed this at the time. She has not been in contact with the company recently, and the debt is not resolved. (Tr. 58-59)

The delinquent debt for \$152 at SOR 1.s is a medical debt. Applicant has researched the debt but was unable to learn the origin of the debt. It has not been resolved. (Tr. 59)

The delinquent debts at SOR 1.t (\$439), 1.gg (\$440), and 1.jj (\$440) are the same debt for computer service equipment from a phone company. Applicant inquired from the phone company if computer service was available. She was told that it was not available but the phone company sent the equipment anyway. She never opened the box and did not know it contained equipment. When she moved and requested service at her new address, she was advised of the bill for the equipment. She found the box unopened and offered to return it to the phone company. The phone company would not accept it. She disputes the debt and it has not been resolved. (Tr. 59-61)

The delinquent debt for \$245 at SOR 1.v is for cable service at one of her former residences. The debt has not been resolved. (Tr. 61)

The delinquent debt for \$1,322 at 1.y is for apartment rent before Applicant moved to her present location in February 2010. Applicant was three months into a one year lease when she admits making a business decision to break the lease to move for a better job. She provided thirty day notice of her intent to move. She is in negotiation with the leasing agent to settle the debt for half of the amount requested. (Tr. 61-64)

The delinquent debt for \$145 at SOR 1.z is for television service Applicant and her first husband had in 2002. The debt has not been resolved. (Tr. 64)

The delinquent debts at SOR 1.aa (\$149) and 1.ff (\$149) are the same debt. It was a joint bank account Applicant had with her second husband. She was unaware of the debt because it was necessary for her to leave her husband. She believes the debt is her former husband's debt and she does not know if it has been resolved. (Tr. 64-65)

The delinquent debts at SOR 1.bb (\$65), 1.cc (\$50), 1.dd (\$207), and i.ee (\$11), were incurred over 16 years ago. Applicant is unaware of these debts. Some of the medical offices no longer exist. She does not know if they have been resolved. (Tr. 65-66)

The delinquent debt for \$284 at SOR 1.hh is for a hospital emergency room visit over 16 years ago caused by a self-inflicted injury to her son. The debt has not been resolved. (Tr. 66-67)

The delinquent debts at SOR 1.ii (\$106), 1.kk (\$291), 1.ll (\$82), 1.pp (\$154), 1.qq (\$35), 1.rr (\$291), and 1.ss (\$291) are other old medical debts. The debts at 1.rr and 1.ss are the same debt. Applicant is not aware of the debts and does not know if it has been resolved. (Tr. 67, 70)

The delinquent debt for \$154 at SOR 1.mm is a medical debt from the medical facility that initially treated her son's mental issues. Applicant had health insurance at the time but had to pay all other charges so her son would continue to be treated. Since the treatment of her son was her top priority, she was sure all of the bills were paid. She disputed this debt, but it has not been resolved. (Tr. 67-68)

The delinquent debt for \$4,762 at SOR 1.nn is from a chiropractor who treated Applicant after an accident in 2001 that she claims was not her fault. She disputed the case and it went to litigation. She lost the litigation but she has not paid the claim and has not been contacted again by the chiropractor. (Tr. 68-70)

The delinquent debt for \$154 at SOR 1.tt is for emergency room treatment of her son. She believes it is a co-payment, but it has not been resolved. (Tr. 71)

Applicant is current with her federal and state taxes. She applied recent tax refunds to debt relief, and to supplement her income since her co-habitant was not working. She has not had formal debt counseling. However, she has kept extensive and accurate financial records and was able to provide the spreadsheet on the status of her SOR debts. She also paid some debts not included in the SOR. (Tr. 72-73; app. Ex. L, Account Statement, dated August 2, 2012; App. Ex. M, Account Statement, dated October 11, 2012; App. Ex. N, Billing Statement, dated July 23, 2012)

Applicant's immediate supervisor wrote that she has been a valuable addition to their company. He has known her for over two years, and she works directly for him. She is one of the best people he has working for him. She is highly intelligent and very responsible. (App. Ex. E, Letter, undated) Applicant performance evaluation shows that her work is rated as outstanding and above expectations. (App. Ex. F, Performance Evaluation dated April 2, 2009)

### **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 his or 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 exhibits a risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts established by credit reports 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 when she was laid off a number of times and was unemployed for over two years in a four year period. She also had extensive medical debt for treatment of herself and her son. She always sought better employment after she was laid off.



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. Most of her debts are medical debts over 16 years old from extensive medical treatment for either her son or herself. She also was laid off a number of times and was unemployed for two years in a four year period. The debts are not for extravagant purchases but are medical debts and debts caused by her efforts to gain better employment opportunities. The debts happened long ago and were largely caused by conditions beyond her control. She acted responsibly under the circumstances. She kept detailed financial records, contacted the creditors that she was aware of, and has paid the debts she could within her financial resources. She is negotiating settlement agreements on other debts. She has steady and good employment, and is not likely to incur additional debts. She has been able to save a little money, and her present 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 periodic payments to reduce 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 shows she has taken significant actions to implement that plan.

Using her extensive financial records, Applicant was able to establish that five of the SOR debts are duplicates. She established that she paid four of the debts and is paying two others. She is disputing ten debts. She is negotiating settlement agreements on two debts. She knows of and admits six of the non-medical debts but has not had the financial resources to pay or settle them. The remaining debts are old medical debts that she has not had the resources to settle and pay. Some of the creditors are also unknown.

I also considered AG ¶ 20(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 is disputing ten of the debts. She has a

legitimate basis for the disputes based on the extensive financial records she maintains. The debts are old and have not been resolved.

I considered AG ¶ 20(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). Applicant admits that she has not sought or received financial counseling. However, she kept extensive and detailed financial records. The management of her finances, the records she kept, and her action to address her delinquent debts establish that her financial problems are being resolved and are under control. Her efforts to learn about and resolve her debts are significant and credible information and 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, I conclude that she 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 that Applicant is highly regarded by her employer and is an excellent worker. Applicant has had a difficult time financially in her life. Many delinquent debts were caused by lay-offs and medical bills that were beyond her control. Applicant kept meticulous financial records and has a firm grasp on the status of her debts. She paid, is paying, or is disputing most of her debts. When she has financial resources, she takes action to pay past-due obligations.

Applicant has shown her good-faith efforts to pay or resolve her delinquent debts. Her finances are under control. Her actions in regard to her past financial obligations indicate that she will be concerned, responsible, and careful regarding classified information. 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 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.tt: 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