



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



In the matter of: )  
)  
) ISCR Case No. 11-02543  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

05/30/2012

**Decision**

DUFFY, James F., Administrative Judge:

Applicant has not mitigated the security concerns under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

On December 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA took that action under Executive Order (EO) 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) implemented on September 1, 2006.

On December 28, 2011, Applicant answered the SOR and initially requested a decision without a hearing. On January 20, 2012, she requested a hearing. The case was assigned to me on February 28, 2012. DOHA issued a notice of hearing on March 8, 2012, and the hearing was convened as scheduled on March 29, 2012. Department

Counsel offered exhibits (GE) 1 through 6 that were admitted into evidence without objection. Department Counsel's list of exhibits was marked as hearing exhibit (HE) 1. Applicant testified and offered exhibits (AE) A through F that were admitted into evidence without objection. The record was left open until May 10, 2012, for Applicant to submit additional matters. Applicant timely submitted AE G through N that were admitted into evidence without objection. Department Counsel's memorandum forwarding the post-hearing exhibits was marked as HE 2. DOHA received the hearing transcript (Tr.) on April 6, 2012.

### **Procedural Issue**

At the hearing, Applicant indicated that she was ready to proceed and affirmatively waived the 15-day notice requirement.<sup>1</sup>

### **Findings of Fact**

Applicant is a 40-year-old employee of a defense contractor. She has worked for her current employer for about 13 years. She graduated from high school in 1991 and earned an associate's degree in business in 2011. She expects to earn her bachelor's degree in about 10 months. She has been married twice. Her first marriage was from June 1991 to August 2004 and ended by divorce. She married her current husband in August 2005. She has two daughters; ages 2 and 19. Her oldest daughter is attending college. Applicant has held a security clearance since about 2008 without incident.<sup>2</sup>

The SOR alleged three delinquent debts totaling about \$24,207. Two of those debts are past-due mortgage loans with balances totaling \$165,000. In her answer, Applicant denied a medical debt (SOR ¶ 1.a) and admitted the two past-due mortgage loans (SOR ¶¶ 1.b and 1.c). Her admissions are incorporated herein as findings of fact. Substantial evidence of the alleged debts is contained in credit reports dated January 19, 2011, and January 17, 2012.<sup>3</sup>

Applicant attributed her financial difficulties to a combination of factors. These include raising costs of an insurance premium, added expenses resulting from the birth of her youngest child, failure to receive an anticipated pay raise at work, and fluctuations in her husband's income. Her youngest child was born in March 2010. At that time, she was living just within her means and, when her insurance premiums went up approximately \$200 per month, she was unable to keep up with the payments. Additionally, while she was on maternity leave in April 2010, her company issued pay raises and she did not receive one. She used up her savings paying the mortgage. In early 2010, she asked the mortgage holder for a loan modification. Eventually, she decided to stop paying the mortgages because she was short "a couple of hundred

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<sup>1</sup> Tr. 6, 13-14.

<sup>2</sup> Tr. 7-9, 31-35, 70; GE 1, 5.

<sup>3</sup> Applicant's Answer to the SOR; GE 4, 5, 6.

dollars.” She stated that she was unaware of the impact that the delinquent debts would have on her security clearance. At that time, she did not know how to resolve this situation and testified, “So I just stood by and waited for a long time.” In late 2011, she learned that she could file Chapter 13 bankruptcy.<sup>4</sup>

Applicant stated that her husband worked at a manufacturing plant. Work slowdowns would occur whenever the plant did not receive enough work orders. During the plant slowdowns, the employees were not paid for hours they did not work even though they were not laid off. She noted that, on occasion, her husband would work only 24 or 32 hours per week for several months. For example, his working hours were reduced from November 2007 to March 2008. These work slowdowns happened on several occasions and resulted in a reduction of their income. She also noted her husband has clinical depression and has been on antidepressants. When asked if her husband tried to obtain a second part-time job, she stated that he had not done so and indicated that he has a difficult time stepping out of his “comfort zone.”<sup>5</sup>

The debt in SOR ¶ 1.a is a medical debt for \$207 that was placed for collection in November 2006. Applicant stated that she never received a bill from a hospital or medical facility for this debt. When she received calls from the collection agency, they could not identify the original creditor. In the absence of further information verifying this debt was hers, she refused to pay it. She stated that she has disputed this debt on the telephone and through her attorney’s office. She has not had any contact with the collection agency in four or five years. The credit reports admitted into evidence do not reflect that she disputed this debt. Moreover, she did not provide any documentation showing that she has a legitimate basis for disputing this debt.<sup>6</sup>

Applicant purchased a home with her first husband in 1991. She obtained the home in their divorce. In about 2006, the home was refinanced and placed solely in her name. During the refinancing, approximately \$25,000 in equity was taken out of the home to purchase orthodontics for her daughter and pay off her current husband’s vehicle and a credit card debt that he had before their marriage. As a result of the refinancing, the home had two mortgages. She stated that she missed her first mortgage payments in April 2010. As of January 2012, the primary mortgage (SOR ¶ 1.b) had a balance of \$105,883 and was \$21,000 past due. This was a 30-year conventional mortgage with a monthly payment of \$1,095. A credit report indicated this mortgage was in a foreclosure status. The second mortgage (SOR ¶ 1.c) had a balance of \$60,300 and was \$7,000 past due. It was a 10-year conventional mortgage with a monthly payment of \$376. She stated the second mortgage was an interest-only

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<sup>4</sup> Tr. 16, 27-31, 40-43, 46-57; GE 5; AE B, C, D. In about 2007 or 2008, Applicant encountered financial difficulties and began withdrawing money from her 401k account to make mortgage payments. She withdrew about \$1,500 from that account for those payments. She is still making payments to reimburse her 401k account and owes about \$800. She also stopped receiving child support (\$400 per month) about one year ago when her oldest daughter turned 18.

<sup>5</sup> Tr. 29-31, 47-48, 53-54; AE D, G.

<sup>6</sup> Tr. 35-37; GE 1, 4, 5, 6.

mortgage. At the time of the hearing, she was still residing in the home. The home was recently appraised to be worth about a third of what she owes on the mortgages.<sup>7</sup>

During an interview with an Office of Personnel Management investigator on February 1, 2011, Applicant stated that she quit making the mortgage payment to qualify for a loan modification. In December 2010, she was notified that the loan modification for her first mortgage was approved. Under the loan modification, the new payment on the first mortgage would be \$777. The first payment under the loan modification was due in February 2011. In that interview, she also stated that she had not decided whether to accept the loan modification or just “walk away” from the home and begin renting. At the hearing, she indicated that she decided not to accept the loan modification because it did not apply to the second mortgage. Under the loan modification, she would have been paying \$1,153 per month for both mortgages, which was about \$300 less than her previous monthly payments. In the interview, she reportedly acknowledged that she could make credit card payment adjustments that would permit her to have \$1,300 available for either mortgage payments or rent. In responding to interrogatories, she apparently contends that she did not have sufficient money to make the mortgage payments. She provided a budget that did not include mortgage payments and reflected she had only \$695 remaining after deducting other expenses and debt payments. When asked at the hearing whether she could have afforded the modified mortgage payments of \$1,153, she stated, “Maybe when my next raise came around in 2011 I guess.”<sup>8</sup>

At the time of the hearing, Applicant had not made mortgage payments for about two years. When asked how that extra money was used, she indicated that she was paying down credit card balances. Upon further questioning, she acknowledged that the balances on the credit cards had not gone down during this time period. She also stated,

Some of it is probably spent a little frivolously, you know, going out to eat. Certainly, buying things for the baby. She has greatly increased our amount that goes out for sure. My oldest daughter, she’s going to college and I bought her things for her birthday and Christmas and -- there’s not any one thing I could really spot. It’s just, you know, the price of groceries have gone up.<sup>9</sup>

Her latest credit report reflected that she had two credit cards with balances totaling \$8,515.<sup>10</sup>

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<sup>7</sup> Tr. 33, 37-46, 55-60, 65; GE 2, 4, 5, 6.

<sup>8</sup> Tr. 33, 37-46, 56-59; GE 5; AE B, C, D, F.

<sup>9</sup> Tr. 63.

<sup>10</sup> Tr. 58, 61-63; GE 5, 6.

Applicant testified that she hired an attorney to file Chapter 13 bankruptcy. She made the first payment to the attorney in December 2011. At the time of the hearing, the bankruptcy petition had not yet been filed. She was still collecting paperwork for the petition. In her post-hearing submission, she provided a Chapter 13 Plan. Although it was signed, the plan did not contain a court case number and was not dated. The plan reflected that Applicant will pay \$1,675 per month for 60 months. Those payments will start in June 2012. No proof was provided that that plan had been approved by the court.<sup>11</sup>

Applicant received financial counseling as a prerequisite to filing bankruptcy. She also completed an online financial literacy program that included sections on budgeting and saving. At the hearing, Applicant indicated that she currently has a balance of about \$13,000 in her 401k account. She also has about \$57,000 in student loans that are currently deferred. The deferment will end six months after she graduates or drops below being a halftime student.<sup>12</sup>

Applicant's latest work performance appraisal reflected that she is very professional and competent. Her dedication to the company and its mission was described as "absolutely invaluable." She has consistently received high marks on her performance appraisals. A co-worker stated that she is totally committed to the highest ethical standards and her integrity is unquestionable. Another indicated that she was dependable, reliable, resourceful, and trustworthy. She is actively involved in community service activities.<sup>13</sup>

## **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 that are to be 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, administrative judges apply 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

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<sup>11</sup> Tr. 63-69; AE E, L.

<sup>12</sup> Tr. 42, 63-64, 69-74; AE I, M, N. At the hearing, Applicant provided a monthly budget that reflected she and her husband had a monthly income of \$4,680 and monthly expenses and debt payments of \$4,447, which left them a remainder of \$233. This budget included a mortgage payment of \$700 and Chapter 13 payment of \$400. See AE F. In light of the Chapter 13 Plan that was submitted, this budget appears to no longer be accurate.

<sup>13</sup> Tr. AE A, H, J, K.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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 notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated three delinquent debts totaling over \$24,000. She was unable or unwilling to satisfy them for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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's financial problems are ongoing and unresolved. Based on the evidence presented, I cannot find that her delinquent debts are unlikely to recur or that they do not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 20(a) is not applicable.

Applicant's rise in insurance premiums, her company's decision to not give her a pay raise, and her husband's pay fluctuations were conditions beyond her control that caused her financial problems. When these events occurred, she was apparently living just within her means. While an increase in insurance premiums is a foreseeable occurrence, she was not prepared to adjust to such a change. Additionally, to receive full credit under AG ¶ 20(b), the individual must also act responsibly under the circumstances. When she began incurring financial problems, she negotiated a loan modification for her first mortgage. Under the loan modification, the decrease in her mortgage payments was apparently greater than the increase in her insurance

premiums. Nevertheless, she declined the loan modification. She stated that she did not know how to resolve her financial situation and “just stood by and waited a long time.” For two years, she did not make her mortgage payments, but continued to reside in the home. She also admitted that, during this time, she “probably spent a little frivolously.” She could not account for how she expended the money that was not used for making the mortgage payments. In short, she has not established that she acted responsibly under the circumstances. AG 20(b) partially applies.

Applicant has received financial counseling. In December 2011, she hired an attorney to file Chapter 13 bankruptcy. At the time of the hearing, the bankruptcy petition had not been filed. In her post-hearing submission, she provided a signed Chapter 13 Plan, but it did not contain a court case number and was not dated. Insufficient evidence has been presented to establish that the Chapter 13 bankruptcy has been filed. Even if it has been filed, insufficient evidence has been presented to mitigate the financial security concerns arising in this case. Specifically, Applicant has not shown that she is now able or willing to make the \$1,675 monthly payments under the bankruptcy or will be after her student loans become due. Sufficient proof has not been provided to show her delinquent debts are being resolved or are under control. AG §§ 20(c) and 20(d) partially apply.

Applicant claims she disputed the debt in SOR § 1.a. However, she did not supply documented proof to substantiate her claim. AG § 20(e) is not applicable.

### **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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG § 2(a) were addressed under that guideline, but some warrant additional comment.



Applicant is a hard-working employee who is well thought of by her supervisors and coworkers. Despite some mitigation, her financial problems remain a security concern. At this point, it is unknown whether her bankruptcy proceeding will resolve her financial problems. She has not satisfied all of her financial obligations during any month in the past two years. In the absence of an established track record of meeting her financial obligations, insufficient evidence exists to conclude that her financial problems are behind her.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns under Guideline F.

### **Formal Findings**

Formal findings 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.c:               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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James F. Duffy  
Administrative Judge