



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



In the matter of: )  
)  
) ISCR Case No. 11-03235  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

11/06/2012

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. She failed to present evidence of a plan to rehabilitate her financial situation or resolve her \$44,000 in delinquent debt. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on June 15, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. DOHA recommended the case be submitted to an administrative judge for a determination to revoke or deny Applicant’s access to classified information.

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on August 30, 2012. At the hearing convened on October 2, 2012, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through H, without objection. After the hearing, I admitted AE I without objection and appended the Government's memorandum regarding the exhibit to the record as HE 1. I received the transcript (Tr.) on October 5, 2012.

### **Findings of Fact**

Applicant, 35, is a divorced mother of four children. Her youngest children, 12-year-old twins, are from her marriage, which ended in 2009. Her two older children, ages 17 and 15, are from a previous relationship. Employed with a federal contractor as an information technology technician since June 2012, her annual salary is approximately \$78,400. Between October 2009 and May 2012, she worked in this position as a temporary employee earning \$80,000 annually.<sup>2</sup>

Applicant claims that her financial problems began when she and her ex-husband separated in 2007. Before the separation, her ex-husband paid the \$2,300 mortgage on their home and contributed another \$3,000 to the household expenses. After they separated, he continued to pay the mortgage, but refused to provide any additional financial support. As a result, Applicant could not pay all of the household bills. Under the terms of the divorce decree, Applicant's ex-husband pays the mortgage on the home where Applicant and the children continue to reside in lieu of child support. Despite living rent-free for the past five years, Applicant is still unable to meet all of her financial obligations. According to the SOR, Applicant is indebted to eight creditors for approximately \$44,332. As of September 2012, she has paid at least \$1,300 towards the SOR debts and \$3,300 in non-SOR debts, relying primarily on her 2011 tax refund.<sup>3</sup>

Applicant claims that she is unable to make regular payments toward her debts because a large amount of her income is diverted to home repairs. Although, Applicant's ex-husband pays the mortgage, he is not required to contribute any money for the maintenance or repair of the home's deteriorating electrical and plumbing systems. As a result, Applicant's utility costs vacillate. Since January 2012, she has incurred \$4,801 utility costs. She is unable to pay the bills in full each month. Applicant testified that she could petition the court for child support, if she moved out of the home. However, she does not have the money to move.<sup>4</sup>

In 2010, Applicant contacted a debt consolidation company for help. After completing the initial counseling session, she decided not to participate in the program because she did not like the idea of having a third party pay her bills. At hearing,

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<sup>2</sup> Tr. 17, 19-20, 23-25.

<sup>3</sup> Tr. 25, 35-36, 57-58,70; GE 2, 3; AE I.

<sup>4</sup> Tr. 28-34, 68-69; AE D, H.

Applicant did not convey any concrete plan for reducing her indebtedness or rehabilitating her financial situation.<sup>5</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, which 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 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

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<sup>5</sup> Tr. 39-41; AE B.

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

Unresolved, delinquent debt is a serious security concern because such “[f]ailure 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.”<sup>6</sup> Here, Applicant has accumulated over \$44,000 in delinquent debt. This shows both an “inability or unwillingness to satisfy debts”<sup>7</sup> and “a history of not meeting financial obligations.”<sup>8</sup>

When the facts proven by the Government raise doubts or security concerns, the ultimate burden of persuasion rests with the applicant,<sup>9</sup> who has the burden of demonstrating that he or she is not an unacceptable security risk. An applicant must present evidence of refutation, extenuation, or mitigation sufficient to overcome the Government’s *prima facie* case.<sup>10</sup> This evidence must be sufficient to address the security concerns by establishing mitigating conditions such that “it is clearly consistent with the national interest” to grant or continue access to classified information for Applicant. Given that some of Applicant’s financial problems were caused by events beyond her control, she receives some credit for consulting a debt consolidation program and for the payments she has made toward her delinquent debts. Accordingly, financial considerations mitigation conditions AG ¶¶ 20(b),<sup>11</sup> (c)<sup>12</sup> and (d)<sup>13</sup> are partially

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<sup>6</sup> AG ¶ 18.

<sup>7</sup> AG ¶ 19(a).

<sup>8</sup> AG ¶ 19(c).

<sup>9</sup> ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); ISCR Case No. 94-1011 at 3-4 n. 2 (App. Bd. Jul. 14, 1995); ISCR Case No. 94-0569 at 5 (App. Bd. Mar. 30, 1995).

<sup>10</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); ISCR Case No. 93-1234 at 7 (App. Bd. May 19, 1995).

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

applicable. However, these factors are not sufficient to mitigate the underlying security concerns. While Applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously, she is required to act responsibly given her circumstances and develop a reasonable plan for repayment, accompanied by actions that evidence a serious intent to effectuate the plan.<sup>14</sup> She has failed to present evidence that she has a plan to improve her current financial position or resolve the delinquent debt alleged in the SOR.

Applicant is understandably caught between a rock and a hard place. She is living in a home rent-free even though doing so is stressing her limited finances. In addition, she may have legitimate reasons for not wanting to remove her children from the environment that they have grown accustomed to over the past seven years. However, Applicant's precarious financial situation remains a significant security concern that must be resolved in favor of the Government. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to justify the granting of a security clearance. The award of a security clearance is not a once-in-a-life-time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not recommended with the Applicant's current circumstances, but should she be afforded an opportunity to reapply for a security clearance in the future, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

### **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.h.:	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 a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge

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<sup>14</sup> See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).