



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-05814
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

06/28/2013

**Decision**

WHITE, David M., Administrative Judge:

Applicant incurred less than \$4,000 in delinquent debts, all but one of which are medical, since 2006 when she left her abusive first husband who subsequently failed to meet his support obligations. She then suffered a serious illness. She and her second husband have incurred no newly delinquent debt for two years, and she intends to repay her creditors when they have funds to do so. The evidence is sufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on January 10, 2011. On October 26, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). 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*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on November 29, 2012 (AR), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 14, 2013. The case was assigned to me on March 12, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on April 9, 2013, and I convened the hearing, as scheduled, on April 25, 2013. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A and B, and testified on her own behalf. I granted Applicant's request to leave the record open for submission of additional evidence until May 9, 2013. DOHA received the transcript of the hearing (Tr.) on May 3, 2013. Applicant did not submit any additional evidence, and the record closed as scheduled.

### **Findings of Fact**

Applicant is a 31-year-old employee of a defense contractor, where she has worked for two and a half years and earns about \$46,000 per year. She is married, for the second time, with three children, ages 12, 7, and 4, and two stepchildren. She is a high school graduate, with no prior military service. She held a security clearance during previous employment with a different defense contractor between 2002 and 2004. She worked in three different private sector jobs between 2004 and 2010, with no periods of unemployment. (GE 1; GE 4; Tr. 6.)

In her response to the SOR, Applicant admitted the truth of all factual allegations except SOR ¶¶ 1.e and 1.j through 1.m, with explanations. Applicant's admissions, including her statements in response to DOHA interrogatories (GE 4), are incorporated in the following findings.

Applicant separated from her first husband in mid-2006 because of domestic violence on his part. She moved with their two children back to the area where she grew up and where they had married in December 2000. Their divorce was finalized in February 2009. Prior to their separation, they lived within their means and had good credit. They purchased a home in 2004, when they moved to his hometown after his discharge from the Navy. The home and mortgage loans became her first husband's responsibility in their property settlement. A couple years after their separation, her first husband defaulted on the loans, leading to foreclosure, and he declared bankruptcy. Applicant started living with her current husband in June 2008, and they married in August 2011. Her husband works as a janitor for a school district, earning about \$26,000 per year. (AR; GE 1; GE 4; Tr. 35, 38-39, 58, 83.)

For about six months in 2008 and 2009, Applicant suffered from a very severe antibiotic-resistant bacterial infection that she estimates resulted in hundreds of thousands of dollars in medical bills. Most of these were covered under her employer-provided medical insurance, but some remain unresolved. She also incurred some medical expenses for her children, for which her first husband was supposed to pay half but failed to do so. He is also substantially delinquent on court-ordered \$600 monthly child support payments to Applicant. His wages are garnished only \$134 twice per

month for Applicant due to other child support obligations he has subsequently incurred. (AR; GE 4; AE A; Tr. 48-50, 55-56.)

Applicant's debts, as listed in the SOR, appear on one or more of the three record credit reports. (GE 2; GE 3; GE 5.) A review of those documents reveals that the two \$570 debts alleged in SOR ¶¶ 1.a and 1.m are duplicate listings of the same debt, and only the former appears on the most recent report. (Tr. 70-72.) The two \$81 debts listed in SOR ¶¶ 1.e and 1.i are also duplicate listings of a telephone debt for the final month of service when she changed rental homes in August 2007. The SOR incorrectly identifies the debt in ¶ 1.i as a medical debt, while GE 5 shows it to be a collection account originally owed to a telephone company that was taken over by the original creditor identified in SOR ¶ 1.e. (Tr. 62.)

The \$15,113 credit card debt alleged in SOR ¶ 1.j is an account opened by Applicant's first husband in both of their names in May 2006, shortly before she moved out. Responsibility for this account was assigned to him in their property settlement. He ran the debt up to the \$15,000 account limit, then stopped making payments on it in June 2008. The issuing credit union charged off the account, and has never contacted Applicant seeking any collection action. (AR; GE 2; GE 4; GE 5; Tr. 43-44, 63-67.)

Applicant's first husband took out the loan alleged in SOR ¶ 1.l from a bank in his hometown in August 2007, a year after their separation. He put her name on the loan without her knowledge or consent. The last activity listed for the account was in March 2008, and the bank charged off the debt. Responsibility for this debt was assigned to her first husband in their property settlement, and the bank has never sought any payments from Applicant. (AR; GE 2; GE 4; GE 5; Tr. 68-70.)

Applicant denied any knowledge of the \$1,386 collection account alleged in SOR ¶ 1.k. My review of the record credit reports reveals that this listing was a report by the collection agency to which the account was transferred by the medical care credit card company identified as GEMB/CARECRD and GECRB/CARE. It was a \$1,000 credit card account for medical services opened in November 2010, and was paid as agreed until becoming delinquent in September 2011. (AR; GE 2; GE 3; GE 4; GE 5; Tr. 67-68.)

The seven remaining SOR-listed debts involve relatively small medical charges that Applicant could not afford to pay while supporting her children on her formerly limited income. She admitted that she owes them, as well as the \$81 phone bill, and intends to repay them when her finances permit. Two of these debts became delinquent in 2006, three in 2010, and two in 2011. Applicant's credit reports reflect no new delinquencies since her remarriage, after which she began managing the combined family budget. (AR; GE 2; GE 3; GE 4; GE 5; Tr. 53-58, 72-74.)

To summarize, two of the SOR-listed debts totaling \$17,312 were incurred by, and are the legal responsibility of, her first husband. They have been charged off, and no payments toward either debt have been sought from Applicant. She intends to pay

the delinquent \$81 phone bill from 2007, and the eight medical debts totaling \$3,777 when she has funds available to do so.

Applicant submitted a letter from her department's senior manager, for whom she works directly as an administrative professional. (AE B.) He said:

During the entirety of her employment, she has been entirely professional, has excellent closure, is proactive, and has an outstanding work ethic and attendance record. She has received several "High Five" awards for outstanding support presented to her by her peers. I am completely satisfied with her work and have no reason to believe she [is] anything but a highly trustworthy and dependable individual.

Applicant was well organized and knowledgeable about her financial circumstances. She testified credibly concerning her efforts to responsibly manage her family budget and provide for the essential needs of her husband and five children while maintaining adequate insurance against unforeseen problems in the future.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the

ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

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

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant’s SOR-listed delinquent debts arose over the past several years. The two largest debts, totaling \$17,312, were incurred by her former husband without her knowledge or consent, and were assigned to him in their divorce. She owes a six-year-old \$81 telephone bill and eight miscellaneous medical debts totaling \$3,777, which she cannot presently afford to pay but intends to when she is financially able. This evidence raised security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns. The evidence does not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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 delinquent debts accumulated over the past few years, total \$3,858, and continue to date. They arose due to her inability to pay some of the very significant medical bills incurred by Applicant and her children. She has since gained better-paying full-time employment and married her second husband who is also employed. They have incurred no new delinquent debt during the past two years, and she intends to pay the old debts when she can. The evidence establishes partial mitigation under MC 20(a).

Applicant offered sufficient evidence to support substantial mitigation under MC 20(b). Her inability to pay some debts arose due to her large loss of income and support from her first husband during their separation and divorce, and his failure to comply with his court-ordered financial obligations toward their children. This divorce resulted from her former husband's domestic violence, which was beyond her control. She also suffered a very serious illness during 2008 and 2009, resulting in significant unexpected medical expenses. She worked continuously throughout this period to support herself and her children, remarried, and managed her finances so well that she incurred a relatively small amount of delinquent debt - almost all of which involves medical bills. Her decisions to remove herself and her children from an abusive relationship, and to live frugally enough to have only these few remaining debts, demonstrate that she acted responsibly under those difficult circumstances.

Applicant did not offer evidence of financial counseling, or establish clear indications that her relatively minor financial problems will be promptly resolved. She is still unable to repay her remaining overdue creditors. MC 20(c) and 20(d) are therefore inapplicable.

Applicant established that she was not responsible for the debts alleged in SOR ¶¶ 1.j and 1.l, which were incurred by her former husband after their separation and assigned to him in their property settlement and divorce decree. To the extent those debts could be considered to support security concerns, she mitigated those allegations under MC 20(e).

### **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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and hard-working individual, who suffered economic hardship due to a separation and divorce from her first husband, and contracting a serious illness. She is mature and accountable for her choices and actions, and has prioritized her spending of limited resources in an effective and reasonable way. Her ability to remain current on all financial obligations over the past two years while supporting a family of seven, and her outstanding performance of challenging and responsible duties at work, demonstrate positive permanent behavioral changes and rehabilitation. The potential for exploitation or duress is minimal, and the likelihood of recurrence of financial issues is low. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                      FOR APPLICANT

Subparagraphs 1.a through 1.m:              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.

DAVID M. WHITE  
Administrative Judge