



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-06400
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

05/22/2012

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant had three collection accounts which totaled approximately \$55,000. She has paid one account, is making payments on another, and is waiting a payoff amount on the third so it can be paid. Applicant has rebutted or mitigated the financial considerations security concerns. Clearance is granted.

**Statement of the Case**

Applicant contests the Defense Department’s (DoD) intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on October 18, 2011, detailing security concerns under Guideline F, financial considerations.

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On October 14, 2011, Applicant answered the SOR and requested a hearing. On March 15, 2012, I was assigned the case. On April 5, 2012, DOHA issued a Notice of Hearing for the hearing held on April 25, 2012.

At the hearing, the Government offered exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified on her own behalf and submitted exhibits A through D, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. On May 2, 2012, additional material was received and admitted into the record, without objection, as Ex. E. On May 4, 2012, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, she admitted all of the factual allegations in the SOR with explanation. Her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 48-year-old director of an improvement team who has worked for a defense contractor since 2010, and seeks to maintain a security clearance. (Tr. 26) She has worked almost 30 years for government contractors. (Tr. 27) In her current job, she travels to overseas locations for periods of two weeks to three months. (Tr. 29) Last year, she was assigned overseas for six months. She has come under hostile fire while assigned overseas. (Tr. 29) During a rocket attack, a rocket exploded 15 feet from her. (Tr. 30)

Applicant's co-workers, supervisors, and friends state: Applicant is a trusted member of the leadership team, performs her duties in an extraordinary manner, and is trustworthy. (Ex. A)

In 2003, Applicant separated from her husband and in March 2004, their 23-year marriage ended. (Ex. 2) She was unemployed for approximately a year while separated prior to the divorce and following the divorce. She left the marriage with those items that fit into her car. She moved to another state and started rebuilding her life. Her living expenses were met with the help of credit cards and her intermittent work. (Tr. 31)

Since obtaining employment, she has worked hard at repaying her debts and rebuilding her credit. Her FICO<sup>2</sup> score has increased from 500 to 672. (Ex. D) Prior to her divorce, her FICO score was 720 or greater. (SOR Answer) Her credit improved sufficiently that she was able to purchase a \$268,000 home in January 2010. (Ex. 2) She is current on her \$3,200 monthly mortgage payments. (Ex. 3) The home's fair market value is approximately \$310,000 and her equity in the home is approximately \$60,000. (Tr. 39) At the time she obtained her home loan, she was current on all of her

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<sup>2</sup> FICO stands for *Fair Isaac Corporation* and is the best-known and most widely used credit score model in the United States.

accounts. (Tr. 32) She has paid one creditor \$25,000 and settled another \$8,000 debt, neither of which were SOR debts. (Ex. 2)

Until 2007, Applicant was making payment on three accounts, but stopped when she could no longer reduce the balance owed on the accounts due to over limit fees and 29.9% interest on the accounts. (SOR Answer, Tr. 32) As of July 2011, she had been unsuccessful in her efforts to renegotiate the accounts. The creditors were unwilling to work with her. She was continuing in her efforts to reach settlement on these accounts. (Ex. 3)

As of July 2011, Applicant's monthly net income was more than \$11,000, her monthly expenses approximately \$9,000, and the monthly net remainder was approximately \$2,400. Since that time, she received a \$4,000 annual salary increase. (Tr. 36) Her base salary is \$163,000. (Tr. 35) She is current on her two vehicle loans and has approximately \$14,000 in her company's 401(k) retirement fund. (Ex. E, Tr. 39) She uses her credit card "sparingly." (Tr. 38)

In March 2012, Applicant reached a post-judgment settlement agreement related to the collection account listed in SOR 1.a. (Ex. B) In March 2012, she made a \$3,000 payment. In April 2012, she made a \$2,000 payment, which leaves a balance of approximately \$6,700 on which she makes monthly payments. (Ex. B, Tr. 37) In April 2012, she reached a settlement on the \$18,194 collection account (SOR 1.c). (Tr. 33) The account has now been paid and will be marked as "Settled-In-Full." (Ex. C)

Applicant has yet to pay the final collection account (SOR 1.b, \$28,339). She is hoping to negotiate a settlement with the creditor. (Tr. 34) Once she locates the holder of the account, she believes a settlement in the matter can be achieved. (Tr. 34)

In 2005 and 2006, Applicant spoke with credit counselors. (Tr. 38) She is not currently receiving calls or letters from creditors demanding payment. (Tr. 39) Other than the remaining collection account, she is current on all of her obligations. (Tr. 40) In December 2010, when she completed her Electronic Questionnaires for Investigations Processing (e-QIP), she listed her financial problems. (Ex. 1)

## **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 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems. Applicant had three collection accounts, which totaled approximately \$55,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

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

Following Applicant's 2004 divorce, she was unemployed. Once she obtained employment, she contacted her creditors and arranged settlements or repayment agreements with those willing to work with her. Under AG ¶ 20(a), her financial problems were contributed to by her divorce. Since becoming employed, she has acted reasonably in contacting her creditors and paying her debts. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced both separation and divorce along with the financial burden associated with each. She has acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant has received financial counseling and her financial obligations are under control. She has paid one debt, is making monthly payments on another, and is attempting to reach a settlement on the third collection account. AG ¶ 20(c) and ¶ 20(d) apply.

The sole remaining debt does not raise concerns about her current reliability, trustworthiness, or good judgment. After she obtained employment, following her divorce, she paid \$25,000 to a non-SOR creditor and settled an additional \$8,000 non-SOR obligation. Having paid one SOR debt and making payments on another, it is likely she will pay the remaining debt once settlement is reached. Her salary is sufficient to pay this account. Additionally, she has approximately \$75,000 equity in her home and 401(k) retirement fund.

### **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 the facts and circumstances surrounding this case. Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Her financial problems arose due to her separation and divorce. Even if her financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, it must still be considered whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. She has acted in good faith.

Applicant has performed duty in overseas locations and has come under hostile fire while performing her duties. The debts incurred do not show a lack of judgment or unwillingness to abide by rules and regulations. Money was used for living expenses during the one-year of unemployment during her separation, divorce, and shortly after the divorce. She acted responsibly moving to different locations for employment. When employed, she contacted her creditors and starting addressing her debts. She never attempted to hide her financial problems on her e-QIP.

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. (See AG ¶ 2(a)(1).) Of the three SOR debts, one has been paid, one is being paid, and one has yet to be addressed. I believe she will address the remaining collection account. Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations.

### **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, financial considerations: FOR APPLICANT

Subparagraphs 1.a – 1.c: 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 a security clearance. Eligibility for access to classified information is granted.

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CLAUDE R. HEINY II  
Administrative Judge