



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



In the matter of:	)	
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	)	ISCR Case No. 11-07320
Applicant for Security Clearance	)	

**Appearances**

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

01/31/2013

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**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

On July 26, 2012, the Department of Defense (DOD) issued to the above-referenced Applicant a Statement of Reasons (SOR). The SOR enumerated security concerns arising under Guideline F (Financial Considerations). DOD took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

In a response dated September 5, 2012, Applicant admitted all 11 allegations set forth under Guideline F. She also requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. DOHA assigned the case to me on October 12, 2012. The parties agreed to a hearing date of November 8, 2012, and a notice setting the hearing for that date was issued on October 19, 2012.

The hearing was convened as scheduled. Applicant gave testimony and offered nine documents, which were accepted into the record as exhibits (Exs.) A-0 through A-8 without objection. She was given until November 13, 2012, to submit any additional documents. The Government offered seven documents, which were accepted into the record without objection as Exs. 1-7. The transcript (Tr.) of the proceeding was received

on November 29, 2012. On December 7, 2012, the Government forwarded to me five additional documents, which had been timely received from Applicant. Noting no objection, I accepted the documents as Exs. B-F. The record was then closed. Based on a review of the testimony, official case file, and exhibits, I find Applicant failed to meet her burden of mitigating security concerns related to financial considerations. Clearance is denied.

### **Findings of Fact**

Applicant is a 30-year-old planning and procurement control representative (Level Three) who has worked for the same defense contractor for nearly a year-and-a-half. She is presently single and raising one minor child. Applicant has a bachelor's degree in international business.

After serving two years in the military, Applicant sought and received an honorable discharge. She did so because she was concerned that there would be no one available to care for her daughter if she were deployed. She left the military without first having found a job that generated sufficient income to meet her monetary requirements and needs.<sup>1</sup> As a civilian with access to G.I. benefits, she returned to school and completed her associate's degree in 2004. She then worked on a bachelor's degree while employed by a defense contractor. Her academic program was partly funded by guaranteed student loans. Around the same time, she acquired debt on a credit card when she and her daughter temporarily evacuated their home due to a hurricane.

Applicant finished her bachelor's degree in 2006. Shortly thereafter, she tried to purchase a car, but discovered that her credit had been compromised by a relative who had assumed her identify and damaged her credit. Meanwhile, because her income at the time was so low, she claimed six exemptions toward her federal tax with the Internal Revenue Service (IRS). Consequently, in 2008, she was found to have under withheld to the IRS. She has since honored that obligation.

Applicant admits that she had financial difficulties following her discharge from the military, noting that she was unable to generate sufficient income after her time in service despite the benefits of the G.I. Bill while in college.<sup>2</sup> She also had difficulty securing payment of proper child support sums from her daughter's father.<sup>3</sup> Despite these obstacles, she maintained continuous employment and generated a regular income.<sup>4</sup>

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<sup>1</sup> Tr. 19.

<sup>2</sup> Tr. 19.

<sup>3</sup> Tr. 20.

<sup>4</sup> Tr. 20-21.

At issue in the SOR are 11 debts, ranging from \$87 to \$15,626, totaling about \$31,550. In her response to the SOR, Applicant admitted all of the debts at issue in the SOR. The evidence presented shows \$198.35 in payments toward the 11 debts at issue, the majority of which appear to have been paid in June 2012.<sup>5</sup> There is no documentary evidence showing she has tried to consolidate, dispute, or otherwise address the debts in any other manner. Applicant's strategy for addressing her debts is to continue working with her financial counselor in the same fashion the two have worked together since about May 2012. She described their strategy for addressing her debt as follows:

My approach right now is very slow because it's hard for me to pay this and still live. I would like for my approach to be more aggressive and that's what I'm trying to work toward with my financial planner.<sup>6</sup>

Applicant stated that she has acquired no new debt except for a medical bill on which she is currently making regular payments.<sup>7</sup> Her student loans are presently in forbearance. Applicant is aware that interest accrues on those loans while the loans are in forbearance.<sup>8</sup> To date, the following progress has been made:<sup>9</sup>

1.a – Balance of \$5,857 – Evidence of two \$5.00 payments.<sup>10</sup>

1.b – Balance of \$920 – Evidence of one payment of \$10.00.<sup>11</sup>

1.c – Balance of \$180 – Evidence that \$28 was paid on a revised balance of \$228 was initially presented.<sup>12</sup> After the hearing, evidence was submitted showing that \$148.35 has been paid on this account and noting that the current balance owed is \$80.

1.d – Medical balance of \$465 – No progress on balance for daughter's dental bill.

1.e – Balance of \$15,626 – Evidence that \$10 was paid on this balance.<sup>13</sup>

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<sup>5</sup> The remaining receipts are illegible in terms of issue dates.

<sup>6</sup> Tr. 68.

<sup>7</sup> Tr. 68.

<sup>8</sup> Tr. 69-70.

<sup>9</sup> Tr. 30.

<sup>10</sup> Tr. 27.

<sup>11</sup> Tr. 26.

<sup>12</sup> Tr. 27.

<sup>13</sup> Tr. 28.

1.f – Balance of \$6,405 – Evidence \$20 was paid on this student loan in June 2012.<sup>14</sup>

1.g – Balance of \$1,823 – No payments have been made.<sup>15</sup>

1.h – Balance of \$87 – No evidence of payment was offered.<sup>16</sup> A photostatic copy of a check made out to this creditor for \$88.00 was submitted after the hearing, but it does not reflect any indication that the check was ever transacted.<sup>17</sup>

1.i – Balance of \$97 – No payments have been made.<sup>18</sup>

1.j – Balance of \$245 – No payments have been made.<sup>19</sup>

1.k – Balance of \$144 – No payments have been made.<sup>20</sup>

Applicant wishes to avoid bankruptcy. She is currently living within her means. As of late November 2012, she had approximately \$329 in her savings account. Her net weekly salary is about \$743, Based on an annual salary of approximately \$50,000, her net weekly salary is about \$743 (or \$1,486 every two weeks).

After the November 2012 hearing, Applicant submitted a “Bill Payment Schedule,” without narrative. The schedule appears to have been designed for initiation on January 1, 2013, for payment on certain bills on January 1 (rent, phone, \$100 contribution to the emergency fund, gas, water, trash, and child care amounting to \$1,218.58) and other bills on January 15 (car payment, car insurance, credit card, cable electric, renters insurance, child care, groceries, \$100 contribution to the emergency fund, and gas amounting to \$1,344.56). Being prospective, there is no evidence of payments on this schedule. The schedule apparently ends after October 2013, but there is no indication why this is the case.

At work, Applicant is a valued employee. She is noted for her attention to detail, energy, and dedication. She offered into evidence six highly favorable recommendations from professional superiors and peers.<sup>21</sup>

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<sup>14</sup> Tr. 28.

<sup>15</sup> Tr. 29.

<sup>16</sup> Tr. 29.

<sup>17</sup> Ex. AE-E (Check, dated Nov. 15, 2012).

<sup>18</sup> Tr. 29.

<sup>19</sup> Tr. 29.

<sup>20</sup> Tr. 29-30.

<sup>21</sup> Exs. A1-A6 (Recommendations).

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>22</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. <sup>23</sup>

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 those 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 Executive Order (EO) 10865 states that 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 EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified/sensitive information). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>24</sup>

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<sup>22</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>23</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>24</sup> *Id.*

Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>25</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## Analysis

### Guideline F - Financial Considerations

Under Guideline F, failure or an 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.<sup>26</sup> It also states that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.<sup>27</sup> Applicant admits that she acquired numerous obligations resulting in the acquisition of significant delinquent debt. This is sufficient to 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*). With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

When Applicant sought a discharge from the military, she did so before finding a civilian job. Lacking a steady income, she acquired debts. She then sought to return to school and draw from G.I. Bill funds. She did not find economic stability until she finally had a civilian job that paid her a salary that could meet her economic needs. While the beginning of Applicant's economic distress may have been caused by her unemployment and underemployment after choosing to return to civilian life, there is scant evidence that she acted responsibly under the circumstances. For example, there is no explanation as to why she delayed finding work, failed to consider finding a second job after she did find employment, or did not make other lifestyle changes that could have better helped her economic situation. Therefore, it is difficult to conclude that she behaved responsibly at the time, thus obviating application of Financial Consideration Mitigating Condition AG ¶ 20(b) (*the conditions that resulted in the behavior 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*).

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<sup>25</sup> *Id.*

<sup>26</sup> AG ¶ 18.

<sup>27</sup> *Id.*

Given the total sum of her delinquent debt (\$31,550), the age of the debts, the time Applicant has had to address those debts since receiving the July 2012 SOR, and the minimal \$198.35 expended toward her debt load, that progress is negligible.<sup>28</sup> This process does not demand that an applicant pay or satisfy all of her debts. It does, however, require a showing that a workable and reasonable plan for satisfying those debts has been formulated and initiated, and a showing that some progress has been made. Applicant has failed to make such a showing. At best, she has provided evidence that, over the years, she has made haphazard and nominal payments satisfying less than .5% of the delinquent debt at issue. Applicant's submitted "Bill Payment Schedule" is of little worth in meeting this standard to the extent that promises to pay a debt in the future are inadequate for showing progress toward debt repayment. Given the negligible efforts exerted thus far, neither –

*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);*

*AG ¶ 20(d) (the individual indicated a good-faith effort to repay overdue creditors or otherwise resolve debts), nor*

*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) apply.*

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the specific facts and circumstances in this case. Applicant is a mature woman who made the affirmative decision to put the potential well-being of her child ahead of her career. While her decision is laudable, she returned to private life without first having acquired a civilian job or some other accommodation for her family. As she waited financial stability, she incurred debt. That debt has since become delinquent and now represents approximately \$31,550.

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<sup>28</sup> Even if Applicant's check for the debt noted as Ex.H for \$88 was transacted, the sum of payments on the total delinquent debt at issue (\$31,550) would still only amount to less than \$300.

Applicant provided evidence that, over the years, some payments had been offered or made toward her delinquent debts. The cumulative sum of those random payments is nominal. It also fails to reflect a concerted effort by Applicant to approach her debt in a reasonable and meaningful manner. Indeed, from the way her documents were presented, her scant progress appears to have been the result of haphazard measures or a repayment plan that was quickly abandoned. Given the years during which these debts have remained neglected and the manner in which her scant payments have been made, \$198.35 toward a total delinquent debt balance of \$31,550 does not reflect genuine progress toward satisfying one's debts.

Based solely on the evidence presented, I must conclude that minimal progress has been made on the debts at issue. Under such circumstances, financial considerations security concerns remain unmitigated. As previously noted, the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Applicant failed to mitigate financial considerations security concerns. Clearance is denied.

### **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.k:	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. Clearance is denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge