



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



In the matter of: )  
)  
) ISCR Case No. 11-07810  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

05/02/2013

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to mitigate security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

**Statement of the Case**

On February 18, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On October 26, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD acted 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) effective within the DOD for SORs issued after September 1, 2006.

Applicant provided an answer to the SOR, which she signed and dated. However, while a notary signed the document, the notary did not identify the date when

the document was notarized, and Applicant did not specify whether she wished a hearing or a decision on the record. On December 3, 2012, Applicant signed a second answer to the SOR before a notary, and she requested that, in lieu of a hearing, her case be determined on the record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The Government compiled its File of Relevant Material (FORM) on January 17, 2013.<sup>1</sup> The FORM contained documents identified as Items 1 through 10. On January 22, 2013, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file January 31, 2013. Her response was due on March 2, 2013. Applicant timely filed additional information in response to the FORM. Department Counsel did not object to the information in Applicant's response to the FORM. On April 23, 2013, the case was assigned to me for a decision. I marked Applicant's 59-page response to the FORM as Item A and entered it in the record.

### **Findings of Fact**

The SOR contains five allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.e.). In her notarized and dated Answer to the SOR, Applicant denied the five allegations and stated that the debts identified on the SOR were not paid because of "a dispute on my credit report." With her second answer to the SOR, Applicant included information provided to her by a firm she hired to dispute her debts with the three national credit reporting agencies. She stated that she was not trying to avoid paying what she owed, but she wanted to get her credit reporting issues clarified first. (Item 1; Item 3; Item 4; Item 5.)

The Government and Applicant provided records that establish the facts in this case. In addition to Applicant's response to the FORM and her answers to the SOR, the record evidence includes Applicant's 2010 e-QIP; her responses to DOHA interrogatories;<sup>2</sup> and her credit reports of March 18, 2010, and June 3, 2011. The credit reports establish the debts alleged on the SOR. (See Items 6 through 10; Item A.)

Applicant is 36 years old and divorced. She has no children. In October 1995, she enlisted in a branch of the U.S. military. She served on active duty until March 1997, and, at the end of her service, she received an honorable discharge. Applicant was awarded a security clearance during her military service. (Item 6.)

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<sup>1</sup> Both of Applicant's answers to the SOR are included in the FORM to provide a complete record. (Item 3; Item 4.)

<sup>2</sup> Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on January 24, 2011. On May 24, 2012, in response to DOHA interrogatories, Applicant signed a notarized statement in which she agreed that the investigator's summary accurately reflected the information she provided in her interview. She did not change or modify any facts as reported in the investigator's summary. (Item 7.)

Applicant attended a vocational school for three months in 2007. She discontinued her studies when they conflicted with her job. She has worked for her current employer as a data entry clerk since February 2010. In her work for her employer, she is deployed overseas. (Item 4.)

The SOR alleges that Applicant is responsible for delinquent debts totaling approximately \$25,080. When Applicant completed her e-QIP in February 2010, she was asked to identify and list her financial obligations. In response to Section 26, Applicant answered "Yes" to questions which asked if her possessions or property had been repossessed; if she had defaulted on loans; if her bills or debts had been turned over to collection agencies; and if accounts and credit cards she held had been suspended, charged off, or cancelled for failure to pay as agreed. Additionally, Applicant identified and provided information on four financial obligations later alleged in October 2012 on the SOR. (Item 1; Item 6.)

On her 2010 e-QIP, Applicant acknowledged the \$14,380 debt, in collection status, identified at SOR ¶ 1.a., and stated: "Will contact company and make payment arrangements." She acknowledged the \$590 debt alleged at SOR ¶ 1.c. and stated: "collection account, will contact the company for payoff." Applicant also acknowledged the \$137 debt alleged at SOR ¶ 1.d. and stated: "collection account, will contact company and pay off." She acknowledged the \$9,930 debt alleged at SOR ¶ 1.e. as her "bad debt." (Item 6.)

In October 2011, Applicant was interviewed by an OPM investigator about her financial issues. She told the investigator that she opened the delinquent account alleged at SOR ¶ 1.c. in 2004, and the account became past due in 2005. She also told the investigator that she had made no effort to repay the debt because she lacked the money to do so. (Item 7.)

Applicant also told the investigator that she opened the delinquent account alleged at SOR ¶ 1.d. in 2006, and the account became past due in 2007. Applicant stated that her sister was supposed to take over payment of the account, but failed to do so. Applicant stated that she had made no attempt to pay this account because she lacked the money to do so.<sup>3</sup> (Item 7.)

Applicant also discussed the \$14,389 debt alleged at SOR ¶ 1.a. with the investigator. She told the investigator that she acquired a \$30,000 loan to purchase an automobile in 2002. Her stepmother co-signed the loan with her. She reported that the loan became past due in late 2004 or early 2005, and the vehicle was repossessed in early 2005. Applicant stated that she had not made an effort to pay the loan since January 2005 because she lacked the money to do so. (Item 7.)

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<sup>3</sup> In the same interview, Applicant told the investigator she opened this account in 2003, and her last payment on the account occurred in August 2003. (Item 7.)

Applicant told the investigator that she acquired an \$11,000 loan to purchase an automobile in 1999, and the loan became past due in the summer of 2002. She stated that the past-due amount is \$9,930. She told the investigator that she had not attempted to repay the loan. This debt is alleged at SOR ¶ 1.e. (Item 7.)

Applicant's credit report of March 2010 shows that she owes a communications company \$43 on a delinquent account referred for collection. This debt is alleged at SOR ¶ 1.b. In her notarized answer to the SOR, dated December 3, 2012, Applicant stated she had gone to the communications company's store in January 2011 and attempted to pay the debt. She reported that a clerk at the store looked for the debt in the company's computer system, but could not find it. Applicant acknowledges that she has not paid the debt. (Item 4.)

Applicant stated that the credit firm she hired advised her not to contact her creditors. The credit firm's information brochure, provided by Applicant, confirmed this advice. Applicant provided a list of creditors that the credit firm had approached to dispute her debts. (Item 3; Item 5.)

In her response to the FORM, Applicant provided documentation showing that she and the credit firm had disputed many of her debts and denied that she owed them. Applicant also provided documentation addressed to the creditors identified at SOR ¶¶ 1.a. and 1.e. in which she asserted that the account numbers they used to identify her debts were not accurate. She also challenged the credit reporting agencies and asserted that they had not followed proper legal procedures in identifying and notifying her of her debts. (Item A.)

Applicant provided a current personal financial statement. She reported a net monthly income of \$3,524. Her fixed monthly expenses total \$623. Each month, she makes \$1,334 in payments on five current debts. Her financial statement does not reflect payments on the delinquent debts alleged on the SOR. Applicant's monthly net remainder is \$1,567. Her financial statement lists \$9,000 in bank savings. The record does not reflect that Applicant has had financial counseling. (Item 8.)

Applicant provided a letter of character reference from a co-worker. The individual stated that Applicant provided high quality work as an individual and as a team member. The co-worker stated her belief that Applicant was reliable and trustworthy. (Item A.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.*

at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 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.

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 as to 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**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 two conditions that could raise security concerns in this case. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns.

The record reflects that Applicant is responsible for several long-standing unresolved debts. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)).

Still other mitigating circumstances that might be applicable include evidence that “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(c)) or “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20(d)). Finally, security concerns related to financial delinquencies might be mitigated if “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.” (AG ¶ 20(e)).

Applicant has a history of financial delinquency, and her delinquency continues to the present time. She is responsible for debts dating back several years. She has not experienced reversals beyond her control, and she has been steadily employed by her current employer for three years. Her personal financial statement shows she has the financial resources to pay or settle her old debts, but she has failed to do so.

Applicant has not contacted her creditors to resolve over \$25,000 in delinquent debt which she has acknowledged is hers. She has yet to establish a track record of timely and consistent payment of those delinquencies. She has not shown good faith in meeting her financial obligations. Applicant’s unwillingness to address these debts also raises concerns about her judgment, reliability, and trustworthiness.

Applicant provided information in her response to the FORM that purported to dispute the legitimacy of debts listed on her credit reports. Her disputes lacked credibility when viewed against her own admissions of debt on her e-QIP and in her interview with an OPM investigator. I conclude that none of the mitigating conditions under the Financial Considerations adjudicative guideline apply to the facts of Applicant’s case.

### **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 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. Applicant has a history of unresolved debt. Her financial statement demonstrates that she has sufficient resources to pay or settle her delinquent debt. Instead, she continues to avoid responsibility for

debts she has admitted she owes. Applicant failed to show that she possesses the reliability, judgment, and trustworthiness of a person who can be trusted with classified and sensitive information.

Overall, the record evidence leaves me with serious doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant failed to mitigate security concerns about 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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.e.:	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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Joan Caton Anthony  
Administrative Judge