



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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) ISCR Case No. 11-08082  
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Applicant for Security Clearance

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

01/31/2013

**Decision**

WHITE, David M., Administrative Judge:

Applicant accrued about \$18,855 in delinquent debts over the past four years. She made no progress toward resolution of any of them, and offered no evidence of an effective plan to resolve these debts or of changes to prevent continued financial irresponsibility. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF 86) on January 21, 2011.<sup>1</sup> On July 3, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup> 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*

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<sup>1</sup>Item 5.

<sup>2</sup>Item 1.

*Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective in the Department of Defense on September 1, 2006.

Applicant received the SOR on July 17, 2012.<sup>3</sup> She submitted an undated written response, and requested that her case be decided by an administrative judge on the written record without a hearing.<sup>4</sup> Department Counsel submitted the Government's written case on November 6, 2012. A complete copy of the File of Relevant Material (FORM)<sup>5</sup> was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on November 15, 2012, and returned it to DOHA. She provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on January 4, 2013.

### **Findings of Fact**

Applicant is 65 years old, and has worked for a defense contractor since 1968. She graduated from high school in 1965, and has no prior military or Federal Government service. She is married, since 1973, and has one adult son. She has held a security clearance in connection with her work since at least 2006.<sup>6</sup>

In her response to the SOR, Applicant admitted the truth of the factual allegations set forth in SOR ¶¶ 1.a through 1.c. The total due on Applicant's 3 delinquent debts alleged in the SOR, and supported by entries in the record credit bureau reports, is \$18,855.<sup>7</sup> Applicant's admissions, including those made in response to DOHA interrogatories,<sup>8</sup> are incorporated into the following findings of fact.

Applicant submitted sworn statements concerning her then-delinquent debts to investigators from the Defense Investigative Service in October 1985 and September 1992. The Office of Personnel Management (OPM) obtained a copy of her credit reports in July 2004, which reflected nine delinquent accounts and several more that had

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<sup>3</sup>Item 3.

<sup>4</sup>Item 4.

<sup>5</sup>The Government submitted 13 Items in support of the SOR allegations.

<sup>6</sup>Items 5 and 6.

<sup>7</sup>Items 1, 4, and 9.

<sup>8</sup>Items 6 and 7.

recently been delinquent for 60 or 90 days. Only one of these debts exceeded \$1,000, and many were less than \$100.<sup>9</sup>

The \$4,636 debt alleged in SOR ¶ 1.a arose from a voluntary repossession on an account that was opened in March 2011 and became delinquent in August 2011. The \$2,219 debt alleged in SOR ¶ 1.b is a credit card account that was opened in October 2006 and became delinquent in September 2008. The \$12,000 debt alleged in SOR ¶ 1.c is actually a \$12,273 debt also arising from a repossession. This loan was opened in January 2007, with a date of last activity in November 2008. As noted by Department Counsel, Applicant's post-SOR credit report from November 2012 showed several additional minor delinquencies.<sup>10</sup>

Applicant told an interviewer from OPM that she got past due on her delinquent accounts because her spouse had cancer in 2009 and she was overwhelmed with medical bills.<sup>11</sup> Comparison of the dates noted in the preceding paragraph shows that each SOR-listed debt was either in delinquent status before 2009 or was an account opened after that date.

Applicant submitted a personal financial statement reflecting a net monthly surplus of \$220, but the arithmetic was inaccurate, the estimates were incomplete, and no payments toward her admitted delinquent debts were included. Applicant submitted no evidence of financial counseling.<sup>12</sup>

Applicant provided no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She submitted no evidence that would demonstrate her good judgment, trustworthiness, integrity, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

## **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.

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<sup>9</sup>Items 11, 12, and 13.

<sup>10</sup>Items 6, 8, 9, and 10.

<sup>11</sup>Item 6.

<sup>12</sup>Item 7.

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.

Department Counsel asserted, and 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 five years, and remain completely unresolved. Her financial problems were not shown to have arisen from incidents beyond her control. She provided no evidence of available income, or other assets, from which to satisfy these debts or avoid incurring additional delinquencies. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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 three SOR-listed delinquent debts arose over the past five years, total more than \$18,800, and continue to date. They are frequent, recent, and arose under circumstances that involved Applicant's voluntary choices. She showed no capacity to

avoid additional delinquent debt. The ongoing nature of these debts precludes a finding of unlikely recurrence. Applicant failed to demonstrate that her reliability, trustworthiness, and judgment have improved, and failed to resolve any of these debts even after their security implications became apparent. Her history of delinquent debt dates back to at least 1985, 1992, and 2004. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). She blamed her spouse's cancer for creating unexpected medical expenses, but offered no evidence to corroborate that claim. Furthermore, the SOR-listed delinquencies either predate 2009 or involve a loan obligation originating after that date. Finally, her absence of any effort toward resolution of these debts is not responsible action under the circumstances.

Applicant offered no evidence of financial counseling, and did not establish clear indications that the problem is being resolved or is under control. She provided no evidence to establish any good-faith effort to repay her overdue creditors or otherwise resolve her debts, particularly in the absence of evidence of the means to do so. MC 20(c) and 20(d) are therefore inapplicable.

Applicant admitted owing each of the SOR-listed delinquent debts. The record credit reports corroborate these allegations. Accordingly, she failed to demonstrate mitigation 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 an accountable

