



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 ----- ) ISCR Case No. 11-09132  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

March 5, 2013

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on May 25, 2010. (Government Exhibit 1.) On August 24, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on August 31, 2012, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 8, 2012. This case was assigned to me on October 16, 2012. DOHA issued a notice of hearing on October 16, 2012. I convened the hearing as scheduled on November 8, 2012. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf, and submitted Applicant Exhibits A through D, which were also admitted without objection. Applicant asked that the record remain open for the receipt of additional documents. The

Applicant submitted Applicant Exhibit E on November 30, 2012, and it was admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 15, 2012. The record closed on November 30, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 27 and married. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR under this Paragraph. Those admissions are findings of fact. She also submitted additional information to support her request for a security clearance.

The SOR lists 28 delinquent debts, totaling approximately \$30,631. The existence and amount of these debts is supported by credit reports dated August 12, 2010; June 22, 2012; October 8, 2012; and November 7, 2012. (Government Exhibits 3, 4, 5, and 6.) (See *also* Interrogatories dated August 1, 2012. (Government Exhibit 2.)) The current status of the debts is as follows:

1.a. Applicant admits that she is indebted to a creditor for a medical debt in the amount of \$1,852. She has not made any recent payments on this debt and has no current plans to pay this debt. This debt has the same account number as that set forth under 1.u, below. Applicant had no information as to whether they are duplicate allegations of the same debt. (Tr. 40-41.) This debt is not resolved.

1.b. Applicant admits that she is indebted to a creditor for a medical debt in the amount of \$356. She has not made any recent payments on this debt and has no current plans to pay this debt. This debt has the same account number as that set forth under 1.t, below. Applicant had no information as to whether they are duplicate allegations of the same debt. (Tr. 40-41.) This debt is not resolved.

1.c. Applicant admits that she is indebted to a creditor for a medical debt in the amount of \$381. She has not made any recent payments on this debt and has no current plans to pay this debt. This debt has the same account number as that set forth under 1.s, below. Applicant had no information as to whether they are duplicate allegations of the same debt. (Tr. 40-41.) This debt is not resolved.

1.d. Applicant admits that she is indebted to a creditor for a medical debt in the amount of \$128. She has not made any recent payments on this debt and has no current plans to pay this debt. This debt has the same account number as that set forth

under 1.r, below. Applicant had no information as to whether they are duplicate allegations of the same debt. (Tr. 40-41.) This debt is not resolved.

1.e. Applicant admits that she is indebted to a creditor for a medical debt in the amount of \$755. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 40-41.) This debt is not resolved.

1.f. Applicant admits that she is indebted to a creditor for a medical debt in the amount of \$747. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 40-41.) This debt is not resolved.

1.g. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$559. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 41-42.) This debt is not resolved.

1.h. Applicant admits that she is indebted to a creditor for a automobile loan in the amount of \$7,396. Applicant testified that she reached a verbal agreement about a year ago with this creditor to pay \$100 per month on this account, vice the original payment amount of \$323. She also testified that she has missed several payments, including the one in October 2012. (Tr. 42-43.) This debt is not resolved.

1.i. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$108 for insurance. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 43-44.) This debt is not resolved.

1.j. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$749 for mobile telephone service. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 44.) This debt is not resolved.

1.k. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$191 for cable television. She was not sure whether this was an unpaid debt or for equipment that was not returned. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 44-45.) This debt is not resolved.

1.l. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$69. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 45.) This debt is not resolved.

1.m. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$907 for a loan she received in 2006. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 45-46.) This debt is not resolved.

1.n. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$2,478. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 46-47.) This debt is not resolved.

1.o. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$1,965 for a loan she received in 2006. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 47.) This debt is not resolved.

1.p. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$4,181. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 47-48.) This debt is not resolved.

1.q. Applicant admits that she is indebted to a creditor on a past-due medical debt in the amount of \$3,443. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 48-49.) This debt is not resolved.

1.r. Applicant admits that she is indebted to a creditor for a medical debt in the amount of \$110. She has not made any recent payments on this debt and has no current plans to pay this debt. This debt has the same account number as that set forth under 1.d, above. Applicant had no information as to whether they are duplicate allegations of the same debt. (Tr. 49-51.) This debt is not resolved.

1.s. Applicant admits that she is indebted to a creditor for a medical debt in the amount of \$326. She has not made any recent payments on this debt and has no current plans to pay this debt. This debt has the same account number as that set forth under 1.c, above. Applicant had no information as to whether they are duplicate allegations of the same debt. (Tr. 49-51.) This debt is not resolved.

1.t. Applicant admits that she is indebted to a creditor for a medical debt in the amount of \$303. She has not made any recent payments on this debt and has no current plans to pay this debt. This debt has the same account number as that set forth under 1.b, above. Applicant had no information as to whether they are duplicate allegations of the same debt. (Tr. 49-51.) This debt is not resolved.

1.u. Applicant admits that she is indebted to a creditor for a medical debt in the amount of \$1,577. She has not made any recent payments on this debt and has no current plans to pay this debt. This debt has the same account number as that set forth under 1.a, above. Applicant had no information as to whether they are duplicate allegations of the same debt. (Tr. 49-51.) This debt is not resolved.

1.v. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$315. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 51.) This debt is not resolved.

1.w. Applicant admits that she is indebted to a creditor on a past-due medical debt in the amount of \$400. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 51-52.) This debt is not resolved.

1.x. Applicant admits that she is indebted to a creditor on a past-due medical debt in the amount of \$225. However, she also stated that she had disputed this debt because she believed her half-sister used her name to get medical care. According to Applicant, the dispute was denied. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 52, 58-60.) This debt is not resolved.

1.y. Applicant admits that she was indebted to a creditor on a past-due debt for electrical service in the amount of \$357. She submitted evidence showing that she has paid this debt. (Applicant Exhibits D, E at 5; Tr. 52-53, 60-61.) This debt is resolved.

1.z. Applicant admits that she is indebted to a creditor on a past-due debt for electrical service in the amount of \$82. However, she also stated that she had disputed this debt because she believed her half-sister used her name to acquire the service. According to Applicant, the dispute was denied. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 53-54.) This debt is not resolved.

1.aa. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$86. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 54.) This debt is not resolved.

1.bb. Applicant admits that she is indebted to a creditor on a past-due debt in the amount of \$585. She has not made any recent payments on this debt and has no current plans to pay this debt. (Tr. 54-55.) This debt is not resolved.

Applicant testified that she has had financial problems for several years. (Tr. 27-30.) She was interviewed by an investigator for the Office of Personnel Management in August and September 2010 concerning her finances. (Government Exhibit 2 at 9-16.) Accordingly, she had notice of the Government's concerns with her debts since that time.

In July 2012 Applicant sent letters to her creditors proposing various payment arrangements. None of her creditors responded to the letters. (Government Exhibit 2 at 18-34; Tr. 61.) Applicant also submitted evidence showing that she had made a payment arrangement with another creditor, concerning a debt that was not included in the SOR. (Government Exhibit 2 at 36; Tr. 61-62.)

Applicant has just started working with a lawyer about filing a Chapter 7 bankruptcy. Subsequent to the hearing she completed the credit counseling required by the Bankruptcy Court. (Applicant Exhibits C and E at 6; Tr. 30-33, 63-64.)

## **Mitigation**

Applicant submitted letters of recommendation from her union chief shop steward, and her site supervisor. (Applicant Exhibits A and B.) Applicant's site supervisor stated that he felt Applicant had been proactive in trying to resolve her debt situation and is on the "right track" to resolve her debt problems.

## **Policies**

Security clearance decisions are not made in a vacuum. 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 and mitigating conditions, which are to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. 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, "The 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."

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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (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 several conditions that could raise security concerns. 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. Applicant has over \$30,000 in past-due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), a disqualifying condition may be mitigated where “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.” Applicant’s financial difficulties have been in existence since at least 2006. She has resolved only one of the debts that caused the problems, which continue to date. This mitigating condition does not have application in this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant did not submit any evidence that would support application of this mitigating condition.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has paid one past-due debt for \$357. That particular allegation is found for Applicant. She has also begun the process of retaining a lawyer to file a bankruptcy for her. However, as of the date the record closed she had not filed for bankruptcy relief. Applicant has made small steps towards resolving her debts, but the large amount of delinquent debt she still owes makes it impossible to apply this mitigating condition in whole.

Applicant stated that she unsuccessfully disputed the debts set forth in subparagraphs 1.x and 1.z. Given that the dispute was denied, AG ¶ 20(e) does not apply to those two debts: It requires that “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 received the credit counseling required by the Bankruptcy Court. However, looking at her entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as also required for mitigation under AG ¶ 20(c). Paragraph 1 is found against Applicant.

### **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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which have not been resolved. She made some very poor financial choices, and has a long history of not paying her debts. Applicant’s conduct with regards to her finances was not mitigated.

Under AG ¶ 2(a)(3), her conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation. Accordingly, the evidence supports denying her request 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:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.p.:	Against Applicant
Subparagraph 1.q.:	Against Applicant
Subparagraph 1.r.:	Against Applicant
Subparagraph 1.s.:	Against Applicant
Subparagraph 1.t.:	Against Applicant
Subparagraph 1.u.:	Against Applicant
Subparagraph 1.v.:	Against Applicant
Subparagraph 1.w.:	Against Applicant
Subparagraph 1.x.:	Against Applicant
Subparagraph 1.y.:	For Applicant
Subparagraph 1.z.:	Against Applicant
Subparagraph 1.aa.:	Against Applicant
Subparagraph 1.bb.:	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.

WILFORD H. ROSS  
Administrative Judge