



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-14809
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

06/28/2012

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant has mitigated the security concerns caused by her history of financial problems. Clearance is granted.

**Statement of the Case**

On January 6, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations. 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) implemented by the Department of Defense on September 1, 2006.

DOHA received Applicant's answer to the SOR on February 24, 2012. Applicant admitted all of the allegations, except subparagraph 1.e, and requested a hearing. The case was assigned to me on April 12, 2012. A notice of hearing was issued on April 20,

2012, scheduling the case for May 9, 2012. On May 4, 2012, Applicant moved for a continuance. Department Counsel opposed the motion. Applicant agreed to withdraw the motion provided that the record was held open after the hearing for her to submit exhibits. Subsequently, I held the hearing as scheduled, considering Applicant's testimony, and receiving seven Government exhibits, marked as Government Exhibits (GE) 1 through 7. I held the record open until June 9, 2012 for Applicant to submit exhibits. On June 8, 2012, Applicant submitted six exhibits that I marked and admitted as AE A through F. DOHA received the transcript (Tr.) on May 17, 2012.

### **Findings of Fact**

Applicant is a 50-year-old woman with two adult children, ages 36 and 23. She was previously married from 1987 to 2002. The marriage ended in divorce. Applicant has been working for a defense contractor since 1993. (GE 1 at 17, 27) She started in the position of security clerk and gradually advanced to her current position as a senior contract negotiator. (Tr. 19) She has held a security clearance since approximately 1986. (Tr. 19)

Applicant finished college in 1994, majoring in technical management. She earned a master's degree in the field of organizational management in 2002, and is currently working on a doctorate in management. (Tr. 17)

In 1992, Applicant gave birth to a child that was diagnosed with a rare, untreatable blood disorder. The child died four years later. (Tr. 9) This was extraordinarily traumatic for Applicant as she was still taking prescription medication to help her cope with the loss as recently as 2003. (GE 6 at 9) Moreover, after her child died, she and her husband gradually grew apart emotionally, and ultimately divorced. After the divorce, her ex-husband provided minimal child support for their surviving child.<sup>1</sup> Currently, his whereabouts are unknown. (Tr. 34)

Consistent with the advice of a grief counselor, Applicant tried to raise her son in as normal a manner as possible after the death of her daughter and her subsequent divorce. (Answer at 1) However, she overcompensated, spending money on things that she could not afford, and accruing delinquent debt. Also, in an effort to maintain continuity for her son, she stayed in their house after the divorce, even though she could no longer afford it. (Tr. 20-21)

In February 2004, Applicant filed a petition for Chapter 13 bankruptcy. The following year, she converted the case to a Chapter 7 bankruptcy. Approximately \$190,000 was discharged through the bankruptcy. The majority of the discharged debt was \$170,000 that was generated by the foreclosure on her home. The commercial debt totalled \$20,000. (Tr. 51)

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<sup>1</sup>Applicant's ex-husband is not the father of her oldest child.

In April 2006, the IRS filed a lien against Applicant's property for \$7,532 for unpaid taxes for tax years 1997 through 1999. (GE 5 at 6) Applicant contends that when she was married, she and her husband filed joint income tax returns. Each year, he claimed too many exclusions, but never set any money aside in escrow to pay the resulting tax bills. (Tr. 44) In 2010, Applicant retained an accountant to help her resolve the tax bill. (GE 5 at 6; Tr. 32) In June 2012, three weeks after the hearing, Applicant negotiated a settlement with the IRS agreeing to pay the lien entirely on October 5, 2012. (AE B) The current amount outstanding, including interest and penalties accrued since 2006, is \$11,889. (AE B) Applicant has approximately \$42,000 in her 401(k) account. (AE E) She will pay the tax lien through a withdrawal from this account.

Over the years, Applicant has struggled to stay current on her student loans. (Tr. 9) By October 2010, she had defaulted on a two student loan accounts held by the same creditor, as listed in subparagraph 1.e. (GE 2 at 15) As of October 2011, the balance was approximately \$46,000. That month, Applicant negotiated a rehabilitation agreement with the creditor. (GE 5 at 16) In accord with the plan, she has been making monthly \$225 payments since November 2011. (GE 5 at 14) In June 2012, the student loan creditor wrote Applicant congratulating her for adhering to the payment plan and informing her that she was close to "completing the required number of payments that will enable [her] to rehabilitate [her] defaulted federal education loan(s)." (AE C)

As of July 2010, Applicant had four delinquent student loan accounts with another student loan creditor totalling approximately \$24,000 (subparagraph 1.f). (GE 2 at 11-13) By July 2011, Applicant had obtained a deferral on these loans. (GE 3 at 2) The Government's most recent credit report, dated March 14, 2012, indicates that these accounts are not past due. (GE 7 at 2) Recently, the deferral status of these loans ended. Per agreement, Applicant paid the creditor \$246, and will continue to make monthly \$246 payments until the loan is satisfied. (AE D; Tr. 36)

The SOR lists a delinquent utility bill in the amount of \$354 (subparagraph 1.c) It has been delinquent since May 2006. (GE 3) Applicant contends that she satisfied this debt approximately a year ago, but did not provide any supporting documentation. (Tr. 23, 36)

The SOR lists a miscellaneous debt totaling approximately \$2,000 (subparagraph 1.d) Applicant does not recognize this creditor. Applicant retained a credit counselor in 2011 to research subparagraph 1.d and obtain confirmation that she had paid the debt listed in subparagraph 1.c. (Tr. 41-43) She did not obtain documentation of her agreement with the credit counselor.

Applicant maintains a budget. She earns approximately \$75,500 annually. Recently, she moved to an apartment with a rent that is nearly \$800 cheaper than her previous dwelling. (Tr. 21) This move increased her monthly discretionary income to \$2,000. (Tr. 21, 32) Applicant has a total of approximately \$1,450 deposited in a checking and a savings account. (Tr. 19; AE D)

## **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, “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” (AG ¶ 18). Applicant’s history of financial problems trigger the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 financial problems began after her divorce in 2002. Her ex-husband provided little financial support. To preserve a sense of normalcy for her son, she attempted to stay in the marital home even though she could no longer afford it, and ultimately became financially overextended. Her most significant outstanding delinquency, a tax lien, was the result of her ex-husband's actions in underwithholding their taxes on his W-2 forms over multiple years in the late 1990s. Her then husband repeatedly claimed too many deductions on his tax returns without setting aside sufficient money to pay the subsequent tax bills.

Currently, Applicant has made arrangements to satisfy the tax lien. Also, she has been steadily paying one of her student loan accounts, and made the first payment, as scheduled, toward the other student loan account after its deferral status ended. AG ¶ 20(b), however, is only partially applicable. Applicant's student loan delinquencies post-dated the bankruptcy, and she procrastinated in satisfying the tax lien. Moreover, she failed to substantiate payment of the utility bill (subparagraph 1.c), or her dispute of the debt listed in subparagraph 1.d.

Nevertheless, she has either resolved or made plans to resolve the largest and most significant delinquencies, the tax lien and the student loans. She maintains a budget and moved to a cheaper apartment to increase her discretionary income, which can now be allocated toward bill payments. Further, the amount of the unresolved delinquencies are minimal in comparison to the amount of money Applicant has in her savings and 401(k) accounts. Consequently, although she did not establish the applicability of AG ¶ 20(e) to subparagraphs 1.c and 1.d, her steps toward resolving the student loan and income tax delinquencies were sufficient to establish AG ¶¶ 20(c) and 20(d).

### **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. 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.

Applicant had her first child at age 14. She married several years later only to experience the marriage's deterioration after her youngest child died. After the divorce, she spent the next several years attempting to provide a sense of emotional and financial stability for the surviving child from her failed marriage while simultaneously trying to overcome the lingering grief from the loss of her youngest child. Despite these obstacles, Applicant cultivated a successful career, working with the same company for 19 years, advancing from a security clerk to a senior contract negotiator. While climbing the corporate ladder and raising her son, guiding him through the death of his sister and the divorce, Applicant also finished college, earned a master's degree, and is now pursuing her doctorate.

Neither of Applicant's student loans are currently in delinquent status, and she has negotiated the payment of the tax lien. She maintains a budget and has ample discretionary income to pay her bills.

Applicant procrastinated in resolving the tax lien. Moreover, she never substantiated the basis of the dispute of the debt listed in subparagraph 1.d, nor provided documentation supporting her contention that she paid the debt listed in subparagraph 1.c. I conclude that these negative factors regarding Applicant's financial stability are outweighed by Applicant's positive steps at rehabilitation, when viewed through the prism of the whole-person concept. Applicant has mitigated the security concern.

### **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:	FOR APPLICANT
Subparagraphs 1.a - 1.f:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY  
Administrative Judge

