



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 12-00903  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

08/22/2012

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**Decision**

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CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**Statement of the Case**

On August 3, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued an interrogatory to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated May 2, 2012, detailing security concerns for financial considerations. These actions were 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 in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on May 15, 2012.

Applicant answered the SOR on June 1, 2012. She admitted all but 4 of the 15 allegations under Adjudicative Guideline F. She denied the four allegations stating that the alleged debts were either duplicates of other debts, not her debts, or paid. Department Counsel was ready to proceed on June 13, 2012, and the case was assigned to me on June 27, 2012. DOHA issued a Notice of Hearing on June 28, 2012, scheduling a hearing for July 24, 2012. Applicant received the Notice of Hearing on July 6, 2012. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant and one witness testified. Applicant offered seven exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through G. I left the record open for Applicant to submit additional documents. Applicant timely submitted four documents, which I marked and admitted into the record as App. Ex. H through K. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 6, Message, dated August 7 2012) DOHA received the transcript of the hearing (Tr.) on August 9, 2012.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 36 years old, and has been employed by a defense contractor since January 2012 as an administrative assistant for a military command. She is divorced and has three children living with her, ages 18, 17, and 11. Her oldest child just graduated from high school and will start college this year. The two older children are from a prior relationship. The father of those children has never provided child support. The youngest child is from her marriage. The father is an active duty soldier and provides approximately \$300 a month in child support. However, he is not consistent with his child support payments. She served on active duty in the Army from January 1997 until February 2008. She deployed twice from February 2003 until January 2004 to Iraq and from January 2005 until December 2005 to Kuwait. She first served as a wheeled vehicle mechanic before transferring to a signal military occupation specialty. She was discharged with an honorable discharge because she lacked an approved family care plan. After her discharge, she worked as an instructor for a defense contractor from March 2008 until June 2010, when the company's contract was completed. She was unemployed from June 2010 until December 2010. She worked again as an instructor for the same contractor from December 2010 until November 2011, when that contract was completed. She was unemployed from November 2011 until January 2012, when the contractor placed her in her present position. (Tr. 11-13, 26-30, 38-40; Gov. Ex. 1, e-QIP, dated August 3, 2011)

Applicant's monthly income is \$1,309. She also receives \$921 monthly in veteran's disability payment, and \$459 quarterly in GI bill educational benefits. She is shortly switching to the latest GI schooling benefit program which will pay her \$1,000 monthly while she is in school. At present, her total monthly income is approximately

\$3,000, with \$2,850 in monthly expenses, leaving discretionary funds of \$150 per month. She has not included child support in her income. When Applicant was discharged, she received a lump sum payment of approximately \$17,000. However, since she previously received a bonus for a reenlistment that she did not complete, she was required to pay back the bonus. Her first few disability payments were used to complete payment of the reenlistment bonus. (Tr. 43-47; Gov. Ex. 3, Personal Financial Statement, at 132)

Credit reports (Gov. Ex. 4, dated August 16, 2011, and Gov. Ex. 5, dated April 6, 2012), Applicant's answer to the interrogatory (Gov. Ex. 3, dated March 29, 2012), and Applicant's testimony to a security investigator, (Gov. Ex. 2, Personal Subject Interview, dated August 29, 2011), show the following delinquent debts for Applicant: a judgment on a loan for \$1,783 (SOR 1.a); a charged-off loan for \$4,455 (SOR 1.b); another charged-off loan for \$9,745 (SOR 1.c); a medical debt for \$5,000 (SOR 1.d); a charged-off credit card debt for \$2,196 (SOR 1.e); a charged-off loan for \$1,363 (SOR 1.f); a credit card collection account for \$621 (SOR 1.g); a medical account in collection for \$2,039 (SOR 1.h); a medical account in collection for \$346 (SOR 1.i); a credit card account in collection for \$1,931 (SOR 1.j); a loan in collection for \$211 (SOR 1.k); a book club debt in collection for \$87 (SOR 1.l); a credit card debt charged-off for \$2,102 (SOR 1.m); a credit card account in collection for \$300 (SOR 1.n); and a medical account in collection for \$826 (SOR 1.o). The total debt listed in the SOR is approximately \$33,000. However, some debts are duplicates and the actual debt is lower. (Tr. 9-10) Applicant has paid other debts not listed in the SOR. The SOR debts are the debts she is still working to pay. (Tr. 23-25; See App. Ex. H, Bank letter, dated August 6, 2012)

Applicant's financial problems were caused by being a single mother, caring for three children without child support, caring for her sister's three children without support, and caring for her parents. She had debts from her marriage that her husband did not help her pay. In 2007, while on active duty, Applicant agreed to care for three of her sister's children as well as her mother and father. She had nine people in the household that she was supporting. In August 2007, her 13-year-old nephew burned himself with scalding water. He had to be treated at the emergency room. Applicant had a Power of Attorney to treat her nephew, but his medical care was to be paid by Alabama Medicaid. Even though the hospital sent the medical bills to Alabama, the bills have not been paid, and the hospital submitted bills to Applicant as the adult admitting the child for the care. Applicant and the hospital have continued to seek payment from the Alabama Medicaid plan. These bills are listed as delinquent debts at SOR 1.d, 1.h, and 1.o. (Tr. 23-40)

The delinquent debt at SOR 1.a is also duplicated at SOR 1.j. This debt was for a revolving loan started in 2002 that Applicant and her former husband took out while on active duty to assist them in paying household expenses. They would pay the loan, and again borrow against the account. She reached a payment arrangement with the creditor in June 2011 and has been paying \$119.35 monthly on the debt. The balance on the account in July 2012 was \$230. She anticipated paying the debt in full in August 2012. (Tr. 47-50; App. Ex. C, Receipt, dated May 24, 2012)

The debt at SOR 1.b is a bank loan Applicant used to attend her grandmother's funeral. The creditor cancelled the debt and provided Appellant with a debt cancellation tax statement (Form 1099c). Applicant included the amount of the debt cancellation, as required, on her tax return for 2011. (Tr. 51-53, Gov. Ex. 3, Financial Documents, IRS Form 1099, at page. 149; App. Ex. J, tax return 2011)

The loan at SOR 1.c was settled for \$5,700. Applicant will start making payments on this settlement in August 2012 when she completes the payment on the debt at SOR 1.a. (Tr. 53-56; Gov. Ex. 3. Financial Documents, Settlement letter, dated January 20, 2012, at 151)

The debts at SOR 1.d, 1.h. and 1.o are for Applicant's nephew's medical care when he was burned. Applicant is not responsible for the debt. It is the responsibility of Alabama Medicaid. Applicant was taking care of her sister's children and had a Power of Attorney to request medical treatment for them. She was not responsible for the medical bills. (Tr. 56-57; App. Ex. F, Power of Attorney, dated August 31, 2007; App. Ex. I, Alabama Medicaid Eligibility, dated August 1, 2012)

The debt at SOR 1.e is for a vacuum Applicant purchased when she returned from her last deployment. The debt is listed for \$2,196, but she only paid \$700 for the vacuum. The vacuum was from a reputable company that she purchased from the company's door-to-door salesman as a used demonstrator model. When she received the vacuum, it did not work. She never used it and returned it to the salesman within a few days of purchase. She disputes the debt to the company and the credit reporting agency. She has not heard from either the company or the credit reporting agency. (Tr. 57-60)

The debt at SOR 1.f is a credit card debt. Applicant received the card as a promotion item. It had a supposed credit balance of \$300 when she received it. However, because of the fees charged, the available credit was only approximately \$100. The debt is listed at \$673 on the credit report. The creditor agreed to a payment of \$50 a month on the debt. The first payment was due in early August 2012 shortly after the hearing. (Tr. 60-63, Gov. Ex. 3, Financial documents, Settlement offer, dated February 8, 2012, at 153; Gov. ex. 4, Credit Report, Debt, at Page 65)

The credit card debt at SOR 1.g is also duplicated at SOR 1.n. Applicant reached a payment plan with the creditor in June 2012 and pays \$75 monthly on the debt. The payments are current and the debt will be paid in February 2013. (Tr. 63-63.; App. Ex. D, Letter, dated June 8, 2012; App. Ex. E, Payment Schedule, dated June 1, 2012)

Applicant has attempted to gain information on the 2007 medical debt at SOR 1.i. She thought the debt was for her daughter's dental care that was not covered by the military medical system. She contacted the military medical system and the dentist that treated her daughter to learn of the debt. Both indicated that they have no information on the debt. She has not paid the debt since she does not know the reason for the debt. (Tr. 67-68)

The debt listed at SOR 1.k is from Applicant's her former husband's bank account. He believes the debt may be for a late charge after he closed the account. He is attempting to resolve the debt with the bank. It is not her debt. (Tr. 67)

The debt at SOR 1.l was for a book club. Applicant opened the account before she deployed. She does not know if she received the books since she was deployed. She paid the account in full. (Tr. 67-68; App. Ex. B, Letter, dated June 1, 2012)

The debt at SOR 1.m is for another revolving loan Applicant and her former husband used to pay living expenses in approximately 1999-2001. She and her husband paid some of the loan before incurring additional loans. Her husband is responsible for the debt but is not paying the loan. She contacted the creditor to make arrangements for monthly payments on the account. She and the creditor have not yet reached an agreement. (Tr. 68-70)

Applicant's friend and fellow worker testified that she has known Applicant since 2009, and she sees Applicant about five days a week. They are both single parents with similar aged children who have the same problems and financial concerns. Applicant is a help to her to overcome her financial issues. They were laid off by the same defense contractor at the same time, but Applicant was able to find work immediately. She knows that Applicant is working diligently to resolve her financial issues. (Tr. 77-79)

A former military supervisor wrote that he has known Applicant for over eight years both in the military and as a civilian contractor. Applicant is a person of good moral character who works hard, is dedicated, and never leaves a job unfinished. Applicant has integrity so he recommends that she be granted access to classified information. (App. Ex. G, letter, undated). A former fellow soldier wrote that she has known Applicant for over ten years. Applicant has always been a good leader, considerate of others, and dedicated to her work. She has a powerful sense of duty and is committed to her family. She is the one person that the writer trusts. (App. Ex. K, letter, dated July 18, 2012)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 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 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 that the applicant may deliberately or inadvertently fail to 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**

### **Financial Considerations**

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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant’s delinquent debts established by credit reports and Applicant’s admissions 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). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant incurred financial problems from being a single mother raising three children

with little to no child support, helping to raise her sister's children and support her parents, and because some medical expenses that were covered by a state health plan were not paid.

I considered Financial Considerations Mitigating Conditions AG ¶ 20(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) and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions apply.

Applicant's debts were incurred by conditions beyond her control. She does not receive child support for her two oldest children. She divorced her husband but does not receive consistent child support from him for her youngest child. She had periods of unemployment that affected her ability to pay her debts. Some of the medical expenses and other debts are not her responsibility. She has a clear understanding of the status of her finances, and acted responsibly towards her debts. Applicant inquired of creditors about all of her debts. She reached settlements on some debts, and has paid or is paying at least seven of the debts. She disputed another debt, and has no information to initiate payment on another debt. She established that four of the debts are not her responsibility, but the responsibility of either her former husband or a state Medicaid program. She settled one debt and she will start making payments on this debt shortly. She received a tax form from the creditor on another debt that she included in her tax return. She is negotiating a settlement on a debt that is the responsibility of her former husband. She has plans to shortly start making payments on two debts after completing payment on other debts. She has sufficient income to live within her means, and pay delinquent debts as funds become available. She is current with her present debts, has not incurred additional delinquent debts, and does not use credit cards. She is current with her taxes. She has steady and good employment, and is not likely to incur additional debts. Her finances are under control. Applicant established that she acted responsibly towards her debts under the circumstances.

I considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. Applicant is not required to establish that she paid each and every debt listed. All that is required is that Applicant has an established plan to resolve her financial problems, and show she has taken significant actions to implement that plan.

Applicant is resolving her delinquent debts. She settled, paid, or is paying seven of her debts. She paid the taxes on another debt that was forgiven. Her husband is

paying a debt that is his responsibility. Three of the debts are the responsibility of a state Medicaid plan. She is current with her present debts. Her effort to settle and pay her debts is significant and credible information to show a desire to resolve debt. Her payment of debts establishes a meaningful track record of debt payment. These efforts show a reasonable and prudent adherence to financial obligations, and establish a good-faith effort to resolve and pay debts.

I have considered 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 action to resolve the issue). Applicant disputes a debt on a consumer product that was defective. She returned the product to the salesman and notified the creditor of her dispute.

Applicant's past delinquent debts do not reflect adversely on her trustworthiness, honesty, and good judgment. Based on all of the financial information provided by Applicant, she has mitigated security concerns based on financial considerations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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. I considered Applicant's 11 years of honorable active duty Army service and her two deployments to combat theaters. I considered that Applicant's financial problems were caused by circumstances beyond her control. Some of the debts are not her responsibility but that of her former husband or a state Medicaid program. She settled and paid most of her delinquent debts, and has a credible plan to pay the remaining debts. Applicant established a good-faith effort to pay or resolve her delinquent debts. Her actions to resolve her past financial obligations indicate that she will be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me without questions and



doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations. She is granted access to classified information.

**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.o: 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.

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THOMAS M. CREAN  
Administrative Judge