



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



In the matter of:

ISCR Case No. 07-07764

Applicant for Security Clearance

**Appearances**

For Government: Nichole Noel, Esq., Department Counsel  
For Applicant: *Pro Se*

June 24, 2008

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by her financial history. Eligibility for access to classified information is denied.

On November 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 12, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on March 7, 2008. DOHA issued a notice of hearing on March 21, 2008, scheduling the hearing for April 16, 2008. Applicant requested a continuance on April 4, 2008, which was marked

Hearing Exhibit (HE) I. Department Counsel did not oppose the continuance and it was granted until May 8, 2008. DOHA issued an amended notice of hearing on April 15, 2008. I convened the hearing as scheduled on May 8, 2008. The Government called one witness and offered Exhibits (GE) 1 through 5, which were received without objection. Applicant testified on her own behalf and submitted Exhibits (AE) A through M, which were received without objection. I granted Applicant's request to keep the record open until June 13, 2008, to submit additional matters through Department Counsel. Applicant submitted nine documents which were marked AE N through V, and admitted without objection. Department Counsel's memo is HE II. The record closed on June 13, 2008. DOHA received the transcript of the hearing (Tr.) on May 16, 2008.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor. She has worked for her current employer since early in 2005. She has an Associate's degree and is currently enrolled in college seeking a Bachelor's degree. She served on active duty with the United States Navy from 1983 through 1995, and was honorably discharged as a second class petty officer. She was selected for first class petty officer but was discharged before she was promoted. She enlisted in the Air National Guard in 2004, and has served since. She was married in 1985 and divorced in 1992. She remarried in 1993 and divorced in 1997. She has two adult children.<sup>1</sup>

Applicant has never received child support from the father of her two children. She spent much of her Navy career serving overseas. Her second husband was also in the Navy. Because they were both in critical fields, it was difficult to be stationed together. She chose not to remain in the Navy so they could stay together as a family. After her discharge, she remained where her husband was stationed outside the continental United States (CONUS). She returned to CONUS in 1997, pending the divorce from her second husband. She experienced periods of unemployment then and again in about 2001 or 2002. She attributed her financial difficulties to raising two children on a limited income. She also helped support her four-year-old granddaughter.<sup>2</sup>

Applicant enrolled in a credit service in December 2007. The service works to clear misreported information from Applicant's credit report and negotiates settlements with her creditors. Applicant then pays the creditors directly without going through the credit service. She paid an initial fee of about \$409 to the company, through payments of \$109.95 in December 2007, \$150 in January 2008, and \$149 in February 2008. The company issued her a "credit kit" which included brochures and compact disks on managing her credit. The company also charges a monthly fee of \$12.95. The company advised her not to make payments on her debts until they arrived at settlement agreements with the creditors.<sup>3</sup>

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<sup>1</sup> Tr. at 26-36; GE 1.

<sup>2</sup> Tr. at 29-41; AE K.

<sup>3</sup> Tr. at 48-59; AE A, G, P.

The SOR lists six debts totaling approximately \$12,000. Applicant essentially admitted to owing all the debts, but disputed several of the amounts. Individual debts are discussed below.

SOR ¶ 1.a lists a debt of \$4,513 to a credit union for a loan. Applicant admitted having a loan with the credit union, but stated that she thought she paid the loan. The debt is listed on all the credit reports in evidence. Applicant listed this debt on her security clearance application (SF 86) dated March 7, 2005, and listed the debt as delinquent since October 1998. She wrote that the amount owed was \$4,000; that she made \$3,000 in payments in 2004; and that she was “[c]urrently making arrangements to bring account up to date.” There is no evidence that she did anything to make the account current. When she responded to the SOR, she attached a copy of a billing statement from the credit union. She wrote on the statement that she “attempted to set up monthly payment” and that she was “represented by [credit service] and waiting for their advice/response.” Applicant testified she has an agreement to pay the credit union \$100 per month and that her first \$100 payment was due May 19, 2008. She provided documentation that she made one payment of \$100 on June 5, 2008.<sup>4</sup>

The debt of \$1,314 in SOR ¶ 1.b is for a credit card. Applicant submitted a statement from a different creditor showing a payment of \$61 on July 21, 2007, and a balance of \$952. She hand wrote that this debt was incurred through the creditor in SOR ¶ 1.b. The account numbers for the two debts are different and there is nothing to suggest they represent the same debt, other than Applicant’s statement. Applicant listed the debt in SOR ¶ 1.b on her security clearance application dated March 7, 2005. She listed the debt as delinquent between January 1999 and February 2005. She wrote that the amount owed was \$1,250 and that the debt was current as of February 2005. She submitted a personal financial statement (PFS) when she responded to DOHA interrogatories on September 28, 2007. On the PFS, she listed both the creditor named in SOR ¶ 1.b and the credit card identified with the second creditor. She wrote that she was making monthly payments of \$20 on both debts, and that the debts were “current.” She also listed on the PFS that she has \$3,000 in bank savings. The account number associated with the underlying debt is listed with a different collection company on the credit reports dated November 28, 2006 and November 9, 2007. Both reports show the account as paid. The debt listed in SOR ¶ 1.b has been deleted from Applicant’s credit report. There is insufficient evidence for a finding that this debt remains delinquent. The evidence suggests that it was either paid before November 2006, or was transferred to a different creditor with a balance of \$943 as of November 2007.<sup>5</sup>

Applicant admitted owing the debt of \$250 to a collection company on behalf of a wireless telephone company, as alleged in SOR ¶ 1.c. She testified that the debt was down to \$190, and that she made a payment of \$100 the day before the hearing to reduce the debt further to \$90. She stated that she would not have any documentary evidence to show the payment until her check cleared the bank. She was asked to

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<sup>4</sup> Tr. at 23-25, 41-43, 55; Applicant’s Answer to SOR; GE 3-5; AE B, J, S. T.

<sup>5</sup> Tr. at 43; Applicant’s Answer to SOR; GE 1-5; AE C, J, V.

submit evidence of the payment after the hearing. Applicant did not provide proof of the \$100 payment in her post-hearing submission. Instead she provided a copy of a settlement offer from the collection company, which stated the company would accept \$125 as settlement of their \$250 debt. Applicant circled the amount of \$125 on the settlement letter and wrote “pd.” She also wrote “paid in full 6/12/08 – over the phone” and “[t]his payment made closes this account [and] the receipt is being mailed to me.”<sup>6</sup>

SOR ¶ 1.d lists a delinquent credit card debt of \$4,319. Applicant submitted a credit report when she responded to DOHA interrogatories on September 28, 2007. She hand wrote next to the entry for this debt, “Current arrangement is repay \$50 per month eff[ective] 10/07. They are sending billing info to me soon. Currently I do not have documentation.” There is no evidence that Applicant made any payments on this debt. A collection company offered a settlement of this debt on April 19, 2008, listing three settlement options. Applicant could settle the debt by paying a one-time settlement of \$1,943 by May 9, 2008; two monthly payments of \$1,079, with the first payment due by May 9, 2008; or three monthly payments of \$791, with the first payment due by May 9, 2008. Applicant testified that she planned on taking the third option and would make the first payment the day after the hearing. She stated that she had the funds to make the payment as she had between \$2,000 and \$2,500 in her bank account. Applicant has not made any payments on this account. In her post-hearing submission, she wrote “[t]his back into negotiations as the settlement offer was over \$1,000 that I could not afford at one time.”<sup>7</sup>

The debt of \$1,241, as alleged in SOR ¶ 1.e, is to a collection company on behalf of a telephone company. The debt has been deleted from Applicant’s credit report. She provided no evidence of payment of this debt or that the debt was not her responsibility.<sup>8</sup>

SOR ¶ 1.f lists a delinquent debt of \$384 to the same collection company and telephone company as alleged in SOR ¶ 1.e. The credit reports list two separate account numbers. Applicant paid \$96 on October 1, 2007, to bring the debt down to the listed amount of \$384. She made a payment of \$96 in December 2007. She made an additional payment of \$96 between January and April 2008, as the credit report of April 30, 2008, shows a balance due of \$192. In her post-hearing submission, Applicant provided documentation of a payment of \$97 on May 5, 2008, and a payment of \$98 on June 13, 2008, as payment in full for the debt.<sup>9</sup>

Applicant’s manager described her as a valued and respected employee, who is honest and dependable. He is aware of Applicant’s financial situation and believes she

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<sup>6</sup> Tr. at 43-46, 58; Applicant’s Answer to SOR; GE 3-5; AE I, J, Q. It appears Applicant confused this debt with the debt alleged in SOR ¶ 1.f, discussed below.

<sup>7</sup> Tr. at 46, 58-60, 63-64; Applicant’s Answer to SOR; GE 3-5; AE D, H, J, O.

<sup>8</sup> Tr. at 46-47; Applicant’s Answer to SOR; GE 3-5; AE J, V.

<sup>9</sup> Tr. at 46-47; Applicant’s Answer to SOR; GE 3-5; AE E, F, J, R, T, U, V.

is determined to clean up her credit and pay any outstanding debts. The company supports her. A senior noncommissioned officer in the National Guard wrote that Applicant has demonstrated loyalty, trust, and responsibility in conscientiously carrying out her duties.<sup>10</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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 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, Administrative Judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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. 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." The applicant has the ultimate burden of persuasion as to obtaining 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.

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<sup>10</sup> AE L, M.

Section 7 of Executive Order 10865 provides that adverse 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 several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay her obligations for a period of time. The evidence is sufficient to raise both of these potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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 still owes most of the debts alleged in the SOR. AG ¶ 20(a) is not applicable. She raised her children without financial support from their father. She experienced periods of unemployment. These are conditions that were largely beyond her control. Applicant enrolled in a credit service in December 2007. The company issued her a "credit kit" which included brochures and compact disks on managing her credit. She paid the company \$409 and made several payments on her delinquent debts. The payments to the credit service and her creditors are:

October 1, 2007	\$96	SOR ¶ 1.f
December 2007	\$97	SOR ¶ 1.f
December 2007	\$109.95	Credit Service
January 2008	\$150	Credit Service
February 2008	\$149	Credit Service
January-April 2008	\$96	SOR ¶ 1.f
May 5, 2008	\$97	SOR ¶ 1.f
June 5, 2008	\$100	SOR ¶ 1.a
June 12, 2008	\$125	SOR ¶ 1.c
June 13, 2008	<u>\$98</u>	SOR ¶ 1.f
TOTAL:	\$1,117.95	

Applicant has made payments on her debts. The question remains whether the payments were sufficient to constitute a "good-faith effort" to repay her overdue creditors. Several factors continue to concern me, including the sporadic nature of the payments, and Applicant's failure to follow up on her stated intentions of addressing her debts. She stated in March 2005, that she was making arrangements to bring the account in SOR ¶ 1.a up to date. There is no evidence she took any action on the account for the next several years. She wrote when she responded to the SOR that she attempted to set up monthly payments on the debt. She testified she had an agreement to pay the credit union \$100 per month and that her first \$100 payment was due May 19, 2008. She did not make that payment when due, but made one payment of \$100 on June 5, 2008. She wrote in September 2007, that she made arrangements to pay \$50 per month on the debt in SOR ¶ 1.d, starting in October 2007. She made no payments. She testified that she had between \$2,000 and \$2,500 in her bank account and she planned on paying \$791 to the creditor the next day. She did not make the payment. She wrote that the settlement offer had increased to more than \$1,000 and she could not afford that much at one time. She made payments to three creditors after the hearing, totaling \$323. Based upon all the evidence, I am unable to make an affirmative finding that Applicant's payments are sufficient to constitute a "good-faith effort" to repay her overdue creditors or otherwise resolve her debts. I also do not find that there are

clear indications that her problem is being resolved or is under control or that she acted responsibly under the circumstances. AG ¶¶ 20(b) and 20(d) are partially applicable.

I accept Applicant's participation in the credit service as counseling for the purposes of mitigation and I find that AG ¶ 20(c) is applicable. The debt in SOR ¶ 1.b was either paid before November 2006, or was transferred to a different creditor with a balance of \$943 as of November 2007. In either event, it is not currently delinquent. SOR ¶ 1.b is concluded for 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 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 common sense 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 is well regarded by her current employer and by the personnel in the Air National Guard. I also considered her honorable service in the United States Navy. She raised two children without the benefit of support from their father. They are now adults, but she also helped support her four-year-old granddaughter. She had periods of unemployment, but she has worked for her current employer for more than three years. She has paid some of her debts. The Appeal Board has noted that an applicant is not required to establish that she has paid every debt listed in the SOR. All that is required is that an applicant must demonstrate that she has "established a plan to resolve [her] financial problems and taken significant actions to implement that plan."<sup>11</sup> Applicant has made some payments on her debts and enrolled in a credit service. This meets the minimum requirements to be considered a plan to address her delinquent debts. However her sporadic payments and failed follow-ups do not amount to "significant actions to implement that plan."

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<sup>11</sup> ADP Case No. 06-18900 at 4 (App. Bd. Jun. 6, 2008).



Overall, the record evidence leaves me with 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 issues.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge