



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 07-09304  
)  
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Applicant for Security Clearance )

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 19, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

On December 5, 2005, Applicant submitted her Security Clearance Application (SF 86). On February 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing 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 February 22, 2008, and requested a hearing before an administrative judge. On April 22, 2008, DOHA assigned the case to

me. A Notice of Hearing was issued the same day and the case was heard on May 15, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified and offered Exhibit (AE) A into evidence without objection. At the conclusions of the hearing, I left the record open until May 29, 2008, to give Applicant an opportunity to submit additional information. On that day, Applicant submitted exhibits that I marked as AE B through E and admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on May 27, 2008.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted all factual allegations contained in ¶¶ 1.a through 1.y of the SOR. Those admissions are incorporated into the following findings.

Applicant is 32 years old. She is married, but currently separated. She has a 12-year-old child from a former relationship and a six-month year old child from her marriage. Since August 2004, she has worked for a federal contractor. She is a security officer in a building that contains classified information. Prior to this job, she worked for other security firms beginning in October 2002. From February 1996 to October 2002, she was a pre-board screener at an airport for a security company.

Over the course of her years as a security officer, Applicant has experienced periods of unemployment and under-employment. In 2002, she was off work for three to four months; in 2003, she was out of work for a month and a half; and in 2007, she was unemployed for six weeks after her baby was born. During those times, she received unemployment compensation of about \$200 every two weeks, which was significantly less than her salary. (Tr. 64).

In 2001, Applicant received credit cards from five department stores and two credit card companies that she used for holiday presents and some expenses. (Tr. 50-51). Initially, she was able to manage the credit card bills on her net monthly salary of \$1,900. However, after she was laid off for three of four months in 2002, her debts began to accumulate. In her next position, she had a net monthly income of \$1,450.<sup>1</sup> (Tr. 64-65). That reduced salary, coupled with another month of unemployment in 2003, exacerbated her financial difficulties. She admitted that from 2003 to 2006, she was spending more money that she was earning, having not adjusted her expenses to her reduced salary. She tried to obtain a loan to pay off her debts, but was unable due to a poor credit rating. (Tr. 63).

In October 2007, Applicant completed a set of Interrogatories inquiring about 26 delinquent debts. She acknowledged all of the debts and in response to the status of each debt stated that she “cannot afford to pay off debt due to financial problem will try

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<sup>1</sup>In her previous position, Applicant earned \$15 per hour; in her next position, she earned \$8-9 per hour. Currently, she earns \$11.89 per hour. (Tr. 71).

to resolve the debt in the near future.” [Sic]. She honestly answered those questions, to the best of her ability, because she did not want to lie. (Tr. 79). On February 29, 2008, she sought financial help with a credit-counseling firm, in order to establish a repayment plan. (Tr. 80; AE A). On March 12, 2008, she paid the company \$276, as an initial down payment to begin work on the plan. (Tr. 84). The plan includes 17 creditors that will be paid monthly. The account balance for those creditors is \$15,178. (AE E). She is not certain when all of the debts will be paid, because the company intends to contact the creditors to negotiate further settlements. (Tr. 85). Her monthly payment will be \$539. (AE E).

Based on credit bureau reports (CRB) from January 2006, July 2007 and October 2007, the SOR alleged 25 delinquent debts, totaling \$16,416.<sup>2</sup> (GE 3, 4 & 5). Twelve debts are included in a repayment plan: ¶¶ 1.e, 1.f, 1.i, 1.j, 1.l, 1.m, 1.o, 1.p, 1.q, 1.s, 1.u and w, and 1.v. They total \$10,702. Five debts have been deleted from her CRB after she inquired about them: ¶¶ 1.k, 1.n., 1.r, 1.x, and 1.y. (Tr. 45-49). They total \$3,452. Seven debts are unresolved: ¶¶ 1.a, 1.b, 1.c, 1.d, 1.g, 1.h, and 1.t. They total \$2,262 and include four medical bills.<sup>3</sup>

Today, Applicant does not believe that she is living beyond her financial means. (Tr. 70). According to her budget, she has a net monthly income of \$1,566 from her job, and receives \$1,200 per months in child support from her husband and former boyfriend, increasing her total net monthly income to \$2,766.<sup>4</sup> Her monthly expenses are approximately \$2,146. After paying those expenses, she has \$725 remaining, of which \$539 will be used for her repayment plan. She admitted that she has not made a payment on any of the debts for the past six months or on the debt reduction plan, as of the date of this hearing. None of the creditors have contacted her since she began working with the credit-counseling firm. (Tr. 89).

Applicant submitted her 2007/2008 Annual Performance Appraisal & Planning Form. According to her supervisor, she is performing, over-all, satisfactorily. She received a “Solid Performance” rating in half of the performance categories, and a “Needs Improvement” in the other half. (AE E). At the time of the hearing, she did not believe she had received a previous evaluation from her employer, and may not have, given the fact that she signed said appraisal on May 29, 2008, which was subsequent to the hearing.

Applicant is aware of the employment problems created by her delinquent debts. In her closing argument, she stated, “All I can say, I’m going to try to pay off my debts.” (Tr. 114). I believe her.

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<sup>2</sup>SOR ¶ 1.u and ¶ 1.w are duplicate debts.

<sup>3</sup> Applicant claimed she disputed some of the seven debts, but did not supply any documentation verifying her assertion.

<sup>4</sup> At the hearing, it was apparent from Applicant’s testimony that she did not realize that she should include all child support payments as income in her budget. (AE E).

## 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 useful 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 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion to obtain a favorable security decision. Section 7 of Executive Order 10865 provides that 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."

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.

## 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, three of which may be applicable in this case. 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 began accumulating delinquent debt in 2002 that she did not begin resolving until recently, due to a lack of finances or ability to pay them. The evidence is sufficient to raise those two potentially disqualifying conditions. She also admitted that from 2003 to 2006, she was "consistently spending beyond one's means" due to a reduced income, which potentially raises a disqualification under AG ¶ 19(e).

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 includes six conditions that could mitigate security concerns arising from 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;

(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; and.

(f) the affluence resulted from a legal source of income.

Applicant's financial worries arose around 2002 and continue into 2008. Because the problems have been ongoing for at least six years, AG ¶ 20(a) cannot apply.

Applicant's debts began accumulating as a result of a period of unemployment, followed by under-employment, and then additional short periods of unemployment. Those circumstances were outside of her control. She asserted that she attempted to manage some debts by obtaining a loan, but did not present any documentary evidence to corroborate her statement. I find AG ¶ 20(b) has partial application in this case.

On February 6, 2008, DOHA issued the SOR, notifying Applicant of the delinquent debts that were a concern. On February 29, 2008, Applicant sought professional assistance to manage her debts. She also called various creditors to investigate their claims, which resulted in the deletion of six debts from her credit file. In March 2008, she entered into an agreement with a debt consolidation company that will initiate resolution and repayment of twelve of the debts listed on the SOR, and made a down payment on that plan. She submitted a copy of her budget that indicates she has sufficient funds to make payments on her outstanding financial obligations. These actions are sufficient to trigger partial application of AG ¶ 20(c) and AG ¶ 20(d), indicating that she has taken some affirmative action to resolve her debts and bring them under control. As she has not documented payments on the plan, full application is not warranted.

There is no evidence to support the application of AG ¶ 20(e) and AG ¶ 20(f).

### **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). They include the following:

- (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) 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include 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. Applicant is a 32-year-old woman, who has experienced financial difficulties as a result of unemployment, underemployment, in addition to an acknowledged mismanagement of her finances, as well as an over-all lack of financial sophistication or understanding. After learning of the Government's specific concerns, she promptly initiated steps to resolve them, indicating that she assumed responsibility for the debts. She intends to repay them and has not contemplated filing bankruptcy as a means of resolution. The SOR alleged delinquent debts totaling approximately \$16,400, of which the debt repayment plan will resolve \$10,700. She resolved about \$3,400 of the debt after disputing them. (The plan also includes other debts and estimates an account balance of \$15,000.) In summary, she has resolved all but \$2,200 of the SOR listed debts, which is sufficient at this time.

I recognize that as of May 29, 2008, Applicant has not made a payment on the plan other than the service fee. However, after listening to her testimony and observing her demeanor, I am convinced that she will pay her debts. She gave candid answers during the hearing about her debts. She is now very aware of the importance of resolving them, in view of the problems they have created for her employment. In addition, I do not find that she, in her position as a security officer, would be susceptible to engaging in illegal acts that would compromise classified information in order generate money. Given her awareness of the problem, along with a budget that can accommodate her repayment plan, I do not believe similar financial problems will recur. There is no other evidence in her background to indicate that her financial delinquencies may create a security risk.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under financial considerations.

### **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 through 1.y:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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SHARI DAM  
Administrative Judge