



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



In the matter of: )  
)  
) ISCR Case No. 07-05597  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 12, 2008

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government's security concerns raised under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. Her eligibility for a security clearance is denied.

On November 6, 2006, Applicant submitted a Security Clearance Application (SF 86). On July 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for 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 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.

On August 13, 2007, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On December 6, 2007,

Department Counsel prepared a File of Relevant Material (FORM) containing nine Items, and mailed Applicant a complete copy on December 11, 2007. Applicant received the FORM on December 17, 2007, and had 30 days from its receipt to file objections and submit additional information. Applicant timely submitted additional information. On January 28, 2008, DOHA assigned the case to me.

### **Procedural Issues**

Within the FORM, Department Counsel filed a Motion to Amend the SOR to change all references to July 10, 2007 in the subparagraphs concerning debts alleged under Guideline F to November 30, 2006, to conform to the record evidence. Applicant did not file an objection to said Motion. The Motion to Amend is granted.

The FORM also notes that this is a Co-Subject Case that was processed under DISCR Operating Instruction No. 5. The Co-subject is Applicant's husband. The cases were assigned to the same Department Counsel.

### **Findings of Fact**

In her Answer to the SOR, dated August 13, 2007, Applicant admitted the factual allegations in SOR ¶¶ 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.l., and 1.m. She denied the remaining allegations under Guideline F. She admitted the allegation under Guideline E.

Applicant is a 36 years old, married and has three children. Since September 2004, she has worked for a defense contractor. Prior to her current position, she worked for private companies, with periods of unemployment between positions. (Item 4). Previously, she submitted a Public Trust Position Application in November 2004. (Item 8).

In October 1997, Applicant filed a Petition for Bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. In February 1998, the Bankruptcy Court granted the petition and discharged her debts, the amount of which is not included in this file.

The SOR alleged that eleven debts, totaling approximately \$16,094, are more than 180 days delinquent. Applicant admitted owing \$13,454 of that amount. She denied owing three medical debts, totaling \$983, and asserted that a debt for \$1,657 was her husband's obligation.

In May 2007, Applicant consulted a credit counselor about her debts, who indicated that there were many discrepancies on her credit bureau reports, which he was investigating. None of those discrepancies were disclosed or noted to relate to the SOR allegations.

Applicant's monthly budget notes a net monthly income of \$3,711 and monthly expenses of \$2,776. In addition, the budget indicates that she owes \$5,047 in financial obligations on which she is making monthly payments of \$572. She also submitted a list

of her husband's financial obligations that totaled \$6,567 on which he is making monthly payments of \$752. Together, their monthly debt reduction payment is \$1,324, leaving a monthly shortage of approximately \$400. (Item 5). None of the delinquent debts listed in the SOR are included in those monthly payments, nor is there any evidence documenting that any of the SOR debts, dating back to 2002, have been paid or resolved. (Item 7).

### **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 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.

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.” 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.

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 his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon 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 her finances in such a way as to meet her financial obligations.

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 admitted that she filed a bankruptcy in 1997, indicating that her financial problems began prior to 1997. According to the November 2006 credit bureau report, Applicant’s subsequent debts began accumulating in 2002. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The Government produced substantial evidence of those two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation. Four Financial Considerations Mitigating Conditions under AG ¶ 20 may be applicable. Under AG ¶ 20(a), the 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." Based on the 1997 bankruptcy petition and subsequent accumulation of significant debt, Applicant's problems cannot be considered isolated; hence, the evidence does not support this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating 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." There is no evidence in the record related to this condition. I find this potentially mitigating condition is not applicable.

Although Applicant submitted a letter from a credit counselor that she contacted one in May 2007, she did not provide any documentation noting what steps are being taken to address the specific debts listed in the SOR, other than mentioning that there are inaccuracies on her credit bureau reports. Thus, there is insufficient evidence to fully apply AG ¶ 20(c) that requires a showing that she "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."

Evidence that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" is potentially mitigating under AG ¶ 20(d). However, Applicant did not provide any evidence that she paid or resolved any of the eleven debts listed in the SOR. I conclude this potentially mitigating condition does not apply.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

One Personal Conduct Disqualifying Condition is particularly relevant in this case. AG ¶ 16(a) provides that the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" may raise a security concern. Based on Applicant's admission

to SOR ¶ 2.a, alleging that she falsified her SF 86 because she failed to disclose debts more than 180 days delinquent, the Government raised this disqualification.

The Applicant did not provide any explanation or documentation addressing the falsification allegation. Hence, none of the applicable mitigating conditions under AG ¶ 17 apply.

### **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) 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 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 36 years old, sufficiently mature to be fully responsible for her financial obligations. Additionally, she should have had enough familiarity with the significance of delinquent financial obligations as related to the security clearance application, having gone through the process previously. Although she sought financial counseling in May 2007, she did not present any evidence that she addressed the specific delinquent debts listed in the SOR. Until she establishes a budget a plan to manage all of her financial obligations and provides proof of a track record of consistent financial management, I am concerned that she will continue having financial difficulties.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial considerations and personal conduct.

### **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

Subparagraphs 1.a through 1.m:           Against Applicant  
Paragraph 2, Guideline E:                AGAINST APPLICANT  
Subparagraph 2.a:                         Against Applicant

**Conclusion**

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

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SHARI DAM  
Administrative Judge