



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-09815  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: *Pro Se*

November 24, 2008

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On March 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines E and F. 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 April 9, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on April 29, 2008. Applicant filed a response to the FORM on June 26, 2008.<sup>1</sup> The case was assigned to me on July 23, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

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<sup>1</sup>The assignment letter states applicant did not respond to the FORM. However, the case file has a response from applicant signed by her on June 26, 2008. I considered her response in reaching this decision.

## Findings of Fact

Applicant is a 32 year old employee of a defense contractor.

Applicant admits that as of August or September 2007, she was indebted to the following creditors in the following approximate amounts: Alliance One \$705.00; CCA/VERIZON WIRELESS \$1,253.00; Gulf Power \$1,027.00; Ugly Duckling/Midland \$8,393.00; MRS Associates \$783.00; Tyndall Federal Credit Union \$3,827.00; Credit Management/Time Warner Cable \$228.00; High Desert Creditors \$99.00; Paragon Way, Inc. \$320.00; Regency Credit/Tahiti Village \$780.00; Verizon CA \$90.00; AES \$61.00; AES \$444.00; and AES \$382.00. Some of these debts are the result of a judgment. All of them are past-due. At least half of them have either been placed for collection or charged off.

Applicant admits that as of December 2005, she was indebted to the following creditors in the following approximate amounts: Medical Payment Data \$113.00; Medical Payment Data \$245.00; Desert Com \$495.00. All three debts were placed for collection.

It appears from the evidence that the debts alleged in SOR Paragraphs 1i, 1j and 1x are duplicates of other alleged debts. The evidence is insufficient to prove applicant is indebted as alleged in SOR Paragraphs 1g, 1h, 1k, 1o, 1u, 1v, 1z, 1aa, and 1cc.

In September 2007, applicant signed up with a credit agency (CESI) that helped her set up a debt management plan. The paperwork regarding the plan that is in evidence is somewhat confusing as it is unclear if applicant's monthly payments to the agency, which are then broken down and distributed to her various creditors, are in the amount of \$350.00 or \$577.00. Further, although many of her creditors are listed in the plan (e.g., Alliance One, CCA/Verizon Wireless, Gulf Power, Ugly Duckling/Midland, MRS Associates, and Tyndall Federal Credit Union), it is unclear if they are all getting paid from applicant's monthly check.

In her response to the FORM, applicant stated, "I do not disagree with the argument that I have been financially irresponsible, but I do argue that I have been making an honest attempt in correcting my mistakes and irresponsibilities. Unfortunately, I can only afford make these corrections slowly but surely."

In 1997, applicant received a General Discharge Under Honorable Conditions from the U.S. Air Force after serving about three years. Prior to her discharge, she had been reprimanded for her work performance. The Government failed to prove applicant received 11 letters of reprimand for failing to go to her appointed place of duty or for dereliction of duty as alleged in the SOR.

In 1998, applicant was fired from a job for failing to appear for work.

In December 2003, she was fired from her job for poor work performance. In her response to the FORM, applicant implies her termination was the result of a personality conflict she had with her manager.

Applicant has been with her current employer since March 2004. Letters from two of her military supervisors were attached to her response to the FORM. The authors of these letters strongly recommend that applicant be allowed to retain her security clearance.

## **Policies**

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## **Analysis**

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

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an "inability or unwillingness to satisfy debts" is potentially disqualifying. Under Paragraph 19.c., "a history of not meeting financial obligations" may raise security concerns. The evidence shows applicant has a history of an inability or unwillingness to pay her debts. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply 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." Applicant has numerous delinquent debts that are still outstanding. This mitigation condition is not applicable.

Under Paragraph 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." Applicant failed to provide evidence to support a finding that her present financial delinquencies were caused by factors largely beyond her control. This mitigating condition is not applicable.

Evidence that "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" is potentially mitigating under Paragraph 20. c. There is no credible evidence that applicant received counseling from CESI, which is listed as a separate "for fee" service in the agreement applicant signed with them. And, it is not clear that her financial problems are actually being resolved or that they are under control. Accordingly, this mitigation condition does not apply.

Paragraph 20.d. applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has made efforts to address most of her past-due indebtedness both on her own and by utilizing the services of the CESI. She has therefore initiated "a good faith effort to repay overdue creditors." This mitigating condition is applicable.

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

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is as follows:

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.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 16.d., "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information" may be disqualifying. Applicant's less than stellar military career, ending with an administrative discharge, together with her termination from two jobs, requires application of this disqualifying condition.

Paragraph 17 sets forth conditions that could mitigate security concerns. Under Paragraph 17.c., it may be mitigating if "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Applicant's administrative discharge and first termination occurred about ten years ago, when applicant was young and immature. Her termination from her job in 2003, although more recent, occurred almost five years ago. Because she has performed well at her current job since early 2004, I conclude this old derogatory employment information does not cast doubt on applicant's current reliability, trustworthiness or good judgment. Accordingly, this mitigation condition is applicable.

### **"Whole Person" Analysis**

Under the whole person concept, the AJ must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant 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 a mature woman who has a history of not meeting her financial obligations. Although she has made serious

efforts to address her indebtedness, including initiating a debt consolidation plan with CESI, the fact is the evidence does not establish she has made much of a dent in her overall past-due indebtedness. Nor does the evidence establish that she is unlikely to experience additional financial difficulties as she continues to address her past-due indebtedness, a process that will last, at best, several more years. Under the circumstances, I have no choice but to conclude applicant failed to mitigate the security concerns arising from Guideline F.

### **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

Paragraph 2, Guideline E: FOR 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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JOSEPH TESTAN  
Administrative Judge