



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



In the matter of:)	
)	
)	ISCR Case No. 06-26496
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

January 17, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

On July 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 September 11, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on November 1, 2007, and I received the case assignment on November 16, 2007. DOHA issued a notice of hearing on November 20, 2007, and I convened the hearing as scheduled on December 13, 2007. The government offered Exhibits (GE) 1 through 8, which were received without objection. Applicant testified on her own behalf and submitted Exhibit (AE) A, without objection. DOHA received the transcript of the hearing (Tr.) on

December 20, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by changing the account number listed in ¶ 1.b, from “acct 6341” to “acct 6541.” There was no objection from Applicant and the motion was granted.

Findings of Fact

Applicant’s admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 43-year-old cost analyst for a federal contractor. She has a college degree in business administration. She married in 2003 and her husband has four children from a previous marriage. Three children are emancipated and he pays approximately \$800 in child support for the remaining child. Only \$300 of that amount is court ordered.¹

In 1999, Applicant and her boyfriend (later husband) started a communications retail business. The business was set up as a sole proprietorship. They thought they could handle the business. She continued to work full time at another job and her husband worked full time at the business. Some of their clients were truck drivers that crossed over the border from Mexico. The business had customers and cash flow, but there were large operating expenses. Applicant stated that the changing market and the economic turmoil after the terrorist attack of September 11, 2001, were reasons why the business declined. To keep the business afloat, Applicant used credit cards to buy inventory, pay bills and finance the business.² She also used them for personal expenses. She had good credit at the time and estimated she had approximately 20-30 credit cards.³ She would only make minimum monthly payments on the credit cards. During this same period of time she was unable to pay all of her taxes, including federal, state and some taxes associated with the business, and accumulated approximately \$30,000 in tax debt.⁴ Her pay was garnished and she completed the payments in November 2007. She has caught up with some of her taxes, but is still making installment payments for her 2005 and 2006 taxes. She owes approximately \$2,000 on

¹ Tr. 82.

² Tr. 64-67.

³ Tr. 55-56.

⁴ Tr. 24-25.

her 2005 taxes and \$6,000 on her 2006 taxes. She attributes this to not having enough withholding taxes taken from her income.⁵ The business closed in December 2003.

In December 2003 Applicant was notified that she was being laid off. She officially stopped work in January 2004 and remained unemployed until May 2004. Her husband was working odd jobs, but did not have a good paying job. Applicant cashed out her 401k retirement account to pay her mortgage.⁶ In June 2004 she began work with her current employer as a cost analyst. She earns approximately \$68,000. Her husband got a job in March 2005. He earns approximately \$400 a month in salary and \$1,900 in tips.⁷

In December 2006, Applicant was diagnosed with operable lung cancer. She was operated on in April 2007 and was on medical leave from her job. After the surgery she went through 12 weeks of chemotherapy. While she was going through her treatment she received disability pay for four months. The amount she received was less than her salary, thereby causing additional financial strain. All of her medical bills were paid for by her insurance. She admitted her illness did not contribute to her delinquencies, but delayed her ability to repay her debts.⁸

Applicant filed bankruptcy on January 28, 2005. The petition was dismissed on April 7, 2005. Applicant owns land that is worth approximately \$26,000. The land has been in her family and she was concerned that she would lose the property if the bankruptcy proceeded.⁹

Applicant admitted she owes all of the delinquent debts listed in the SOR. In addition, she had other delinquent debts. She has paid approximately \$15,000 of some delinquent debts that are not listed on the SOR.¹⁰ She has paid the debt listed in SOR ¶ 1.q.¹¹ Applicant refinanced her home and cashed in her 401K pension plan to pay some of her debts. Applicant did not calculate the total amount of her delinquent debts because it was too overwhelming and intimidating.¹² The listed delinquent debts in the

⁵ Tr. 25-42.

⁶ Tr. 68.

⁷ Tr. 70, 79-81.

⁸ Tr. 70-72, 76, 88.

⁹ Tr. 42-43, 77.

¹⁰ Tr. 24-25.

¹¹ Tr. 52-53, 57-59; AE A at p. 12.

¹² Tr. 74.

SOR to which Applicant admitted she owes is more than \$140,000. None except the one in SOR ¶1. q has been paid.¹³

Applicant and her husband gamble approximately \$100 a week at the local casinos. Although she stated they do not go to the casino every week, she also stated that some weeks they gamble more, but used the amount of \$100 as an average. She considers this their form of entertainment and she stated their gambling has not caused them to incur additional debts.¹⁴

Applicant believes she has the ability to repay her debts and stated she intends on repaying all of her delinquent debts. She believes with pay increases from her job and merit awards that she will be able to save \$8,000 that can be used to pay some of her debts.¹⁵ She has not sought financial counseling and does not know how long it will take to repay all of her debts. She has a settlement offer from one creditor, but does not have the money at this time to accept it. She anticipates she will be able to pay the settlement offer in early 2008. She hopes to negotiate settlements with other creditors to reduce her delinquencies.

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.

¹³ Tr. 45-55.

¹⁴ Tr. 78, 84-85.

¹⁵ Tr. 60.

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them and especially considered AG ¶ 19(a) (inability or unwillingness to satisfy debts), (c) (a history of not meeting financial obligations), and (e) (consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis). Applicant has approximately \$140,000 in primarily credit card debt. Her income to debt ratio is very high. Most of the debt has been delinquent for several years. Applicant has a history of not meeting her financial obligations and she is unable to significantly reduce the debt. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions and especially considered 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), (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) and (d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

Applicant has approximately \$140,000 in delinquent debts that remain unpaid and therefore are still current. Her financial problems began when she and her husband started a business and used credit cards to fund it when it was not making money to meet expenses. She attributes this failure to a business downturn and that may have contributed to it, they also organized it as a sole proprietorship that made them personally responsible for all the debts. To keep the business afloat she used credit cards to pay for the expenses. The business downturn was beyond their control, but she did not act responsibly under the circumstances. She used 20-30 credit cards to get money and then paid the minimum payment. This was a bad business decision that caused her to go further into debt. The loss of her job after the business closed exacerbated the situation, but was not the initial cause of it. Also her medical condition several years later and her reduced income thwarted her ability to start paying her debts, but again it was not the cause of her financial problems. Under the circumstances I find AG ¶ 20(a) does not apply. I also find that AG ¶ 20(b) partially applies because some of the events that were beyond her control contributed to her inability to pay her debts, but were not the initial cause of the debts.

Applicant does not want to file bankruptcy because she wants to protect real estate that she owns. She has not sought financial counseling and has never calculated her total debt because the amount was too intimidating. Although she testified that she intends to repay all of her delinquent debt she does not have a realistic viable plan to pay the large amount that she owes. Her intent to repay her debt may be genuine, but it is not a substitute for a realistic plan. She and her husband continue to gamble money that could be used to repay some of their debt. She chooses not to file for bankruptcy because she does not want to lose her real estate. It appears Applicant is unwilling to make the hard financial decisions associated with paying delinquent debts. I find AG ¶ 20(c) and (d) do not 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 has substantial delinquent debts. She and her husband made poor financial decisions associated with their business. She lost her job and had serious medical issues, which reduced her ability to pay her debts for a period of time. However, they were not the initial cause of the problems. Applicant simply has too much debt and not enough income to pay it. She has not sought financial counseling and despite her good intentions she does not have a viable plan of action to pay the debt. She does not want to file for bankruptcy or sell her property, and continues to gamble as a form of entertainment. Considering the overall record of evidence, I conclude Applicant failed to mitigate 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 through p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r through v:	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.

CAROL G. RICCIARDELLO
Administrative Judge