



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 04-00356
)	
Applicant for Security Clearance)	

Appearances

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

April 2, 2008

Decision

HENRY, Mary E., Administrative Judge:

Applicant submitted her Security Clearance Application (SF-86), on February 7, 2005. On October 22, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F 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.

Applicant acknowledged receipt of the SOR on October 30, 2007. She submitted a notarized, written response to the SOR allegations on November 16, 2007, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on January 17, 2008. Applicant received the FORM on

January 23, 2008. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response, dated January 20, 2008, which included additional documentation.¹ The hearing office assigned this case to me on March 5, 2008. The government submitted 23 exhibits, which have been marked as Items 1-23 and admitted into the record. Based upon a review of the case file, pleadings, and exhibits, I concluded that Applicant's eligibility for access to classified information must be denied.

Findings of Fact

In her Answer to the SOR, dated November 16, 2007, Applicant admitted the factual allegations in ¶¶ 1.a.-1.j. of the SOR, with explanations. She denied the factual allegation in ¶ 1.k of the SOR. She also provided additional information to support her request for eligibility for a security clearance.²

Applicant, who is 51 years old, works for a Department of Defense contractor. She began her position as an operations co-ordinator in January 2007. She completed her security application in February 2005, while working for another Department of Defense contractor.³

Applicant has a daughter, aged 34. In 1976, Applicant married her first husband. Two sons, ages 30 and 23, were born during this marriage. Although she does not indicate when she and her first husband separated, they divorced in 1985. Applicant married her second husband in 1985 and they divorced in 1997. Applicant is currently single.⁴

In 1982, Applicant filed a petition for Chapter 7 bankruptcy because of her debts. The bankruptcy petition identifies numerous debts, including unpaid taxes, and several judgments. The bankruptcy court discharged her debts on July 9, 1982. Applicant states that she incurred these debts because her former husband did not help with child support.⁵

At the time Applicant and her second husband divorced in 1997, physicians diagnosed Applicant's mother with terminal cancer. Applicant became her sole care taker and financial provider until she died. By so doing, Applicant stretched her financial resources beyond her abilities to pay. Her unpaid debts, including medical bills, disputed

¹Given the date she received the FORM, the month of January is incorrect and should be February.

²Item 4 (Response to SOR, dated November 16, 2007).

³Item 6 (Applicant's security clearance application, dated February 7, 2005) at 1- 2; Item 7 (2007 Bankruptcy Petition) at 10.

⁴Item 6, *supra* note 3, at 3-4.

⁵Item 4, *supra* note 2, at 3; Item 9 (Applicant's 1982 bankruptcy petition and order).

medical bills, and utility bills but no credit card debts, accumulated. She filed a second Chapter 7 bankruptcy petition. This petition reflected \$56,000 in child support arrearage as personal property. The creditors listed in allegations 1.h. and 1.k. of the SOR are listed as creditors in this bankruptcy petition. The court discharged her debts on March 9, 2003, which included the creditors listed in allegations 1.h. and 1.k.⁶

In January 2006, Applicant's then employer terminated her employment because of a reduction in force. She received severance pay which she used to pay living expenses. She used her unemployment income to pay her mortgage, until she exhausted this benefit. In November 2006 when she could not make her mortgage payments, she submitted information to her mortgage company and requested hardship assistance.⁷

Applicant began her current position in January 2007. She again contacted her mortgage company to determine the status of her request for assistance to resolve her overdue payments and to prevent foreclosure on her home. With the assistance of the mortgage company, Applicant developed a resolution plan. Despite this plan, the mortgage company started the foreclosure process. Applicant then contacted the mortgage company, which stopped the foreclosure. Applicant's mortgage resolution plan required her to make a balloon payment of \$8,740 in June 2007, which she could not and did not make.⁸

In July 2007, Applicant filed for Chapter 13 bankruptcy protection to prevent foreclosure on her home. About this same time, she missed approximately two months from work for medical reasons. Much of this time, she received no pay. She has developed and presented to the bankruptcy trustee a repayment plan, which requires her to pay \$500 a month for 18 months beginning September 2007 and then, starting in February 2009, \$840 a month for 42 months. Her bankruptcy repayment plan includes payment on all existing debts, including debts she had been timely paying and IRS taxes for 2006, when she received unemployment benefits. The bankruptcy court approved her repayment plan on February 5, 2008.⁹

Applicant prepared a financial statement as part of her bankruptcy plan. The statement includes her mortgage payment and a car payment, which are now part of her bankruptcy repayment plan. She has sufficient income to pay the initial \$500 a month payment. She has not submitted a revised financial statement indicating her new monthly expenses or how she intends to make the \$840 a month payments beginning in

⁶Item 4, *supra* note 2, at 2, 6, 10, 16-19; Item 8 (2002 Bankruptcy petition) at 4, 6, 8.

⁷Item 4, *supra* note 2 at 1; Item 5 (Supplemental response to SOR with attachments, dated November 19, 2007) at 5-8.

⁸Item 4, *supra* note 2 at 4; Item 5, *supra* note 7, 6-10.

⁹Item 4, *supra* note 2 at 1-2; Item 5 *supra* note 7, at 3; Item 7 (2007 bankruptcy petition); response to FORM, dated February 20, 2008, at 3-4.

February 2009. In addition, she has not submitted any evidence that she made any payments under her Chapter 13 bankruptcy repayment plan.¹⁰

Applicant's credit reports dated August 2007, June 2007, and April 2005 do not show excessive spending and over-use of credit cards by Applicant. The reports show three unidentified medical bills (Applicant tentatively identified these debts in her answer) and three judgments, which are listed in the SOR. The judgment for \$282 relates to a medical bill included as a debt in her 2002 bankruptcy petition and discharged by the court on March 9, 2003. Outside of her overdue mortgage payments, Applicant's remaining debts listed in the SOR total \$1,111. The judgments and previously discharged debts are also listed in her Chapter 13 repayment plan.¹¹

Applicant previously submitted requests for security clearances. The record contains four signed, sworn statements from Applicant, which indicate financial problems and unpaid debt from the 1970s until June 2002. At least once, her earlier financial problems resulted from unemployment, but any other causes of her debts are unknown. After her security clearance was revoke in 2002, her then employer requested a waiver because the company viewed her as a valuable employee.¹²

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©, 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

¹⁰Item 7, *supra* note 9, at 10-11.

¹¹Item 10 (Credit report, dated August 16, 2007); Item 11 (Credit report, dated June 21, 2007); Item 12 (Credit report, dated April 27, 2005); Item 8, *supra* note 6.

¹²Item 5, *supra* note 6, at 15; Item 13 (Applicant's statement, dated February 27, 1986); Item 14 (Applicant's statement, dated June 21, 1989); Item 15 (Applicant's statement, dated November 19, 2001); Item 16 (Applicant's statement, dated June 26, 2002).

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.

The guideline notes several conditions that could raise security concerns. AG ¶ 19(a), an “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations” are the relevant potentially disqualifying conditions in this case and may raise security concerns. For many years, Applicant incurred, at times, significant delinquent debt. The evidence is sufficient to apply these disqualifying conditions in this case.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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.” Because Applicant has a long history financial problems, spanning more than 25 years, this mitigating condition is not relevant in this case.

Under AG ¶ 20(b), mitigation may exist when “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’s most recent financial difficulties occurred when she lost her job in January 2006 because of a reduction-in-force. She paid her mortgage for many months, but since she did not obtain employment for a year and her unemployment benefits expired, she could not continue making her monthly payments. I find this potentially mitigating condition is a factor for consideration in this case.

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 AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant contacted the mortgage company for assistance in resolving her overdue debt. She worked out a resolution plan, but could not make the balloon payment in June 2007. To prevent foreclosure on her home, she filed for Chapter 13 bankruptcy protection. The court has approved her repayment plan. These are potentially mitigating factors to be considered in this case. The remaining mitigating conditions, AG ¶¶ 20(e) and 20 (f), are not applicable.

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 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. When these problems first began, Applicant was a young woman, married with young children. (See AG ¶ 2(a)(4).) Her 1982 bankruptcy documents indicate that she accumulated unpaid debt due to excessive spending and living beyond her financial means. Although she claims that her debts were the result of her first husband's failure to pay child support, the evidence reflects that she and he did not divorce until 1985, three years after her bankruptcy filing (See AG ¶ 2(a)(1).) Since that time, Applicant has continued to experience significant financial problems. She does not spend money in the same manner as she did when she was young; however, she continues to incur unpaid debts on a regular basis. She provided financial support for her ailing mother in 1997 and lost her job in 2006. Both of these events impacted her finances negatively. She plans to repay her latest debts through the repayment plan she developed under the auspices of the bankruptcy trustee. She has not provided sufficient evidence to show that she has complied with or can comply with her repayment plan, nor has she shown any real change in her financial management. (See AG ¶¶ 2(a)(3), 2(a)(6).) Her continuous debt issues raise concerns about pressure, coercion, exploitation, or duress. (See AG ¶ 2(a)(8).) Given her inability to manage her income and expenses, there is a likelihood that she will incur debts in the future, and will not be able to pay them.

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 because of 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:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	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.

MARY E. HENRY
Administrative Judge