



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 06-20062
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: Pro Se

April 7, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on October 29, 2004. On August 22, 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, 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 29, 2007, and elected to have her case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on January 2, 2008. Applicant received a complete file of relevant material (FORM) on January 8, 2008, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the

Government's case.¹ Applicant submitted additional information. The case was assigned to me on March 27, 2008. Based upon a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, dated October 12, 2007, Applicant admitted the factual allegations in ¶¶ 1.c-1.e, 1.g-1.i, and 1.n-1.q of the SOR.² She denied the other factual allegations with explanations.

Applicant is a 51-year-old employee of a defense contractor. She is single with one adopted child. She has worked for her current employer since 1984.³ Applicant has held a security clearance during her entire employment period. Applicant had no issues at work with handling secure items.

In March 2001, Applicant's father died. Shortly thereafter, in June 2002, her mother died. Applicant and her son lived in her mother's home. The home was sold as part of the inheritance.⁴ Thus, she and her son had to move. Applicant purchased a home in September 2002. However, she could not afford the mortgage due to the additional expenses associated with owning a home, such as utility bills. She used her credit cards to supplement her income.⁵ Thus, the accounts soon became delinquent. Applicant managed to sell her home in February 2004. The proceeds paid the home mortgage and an equity loan. She had no money to pay the delinquent credit accounts.⁶

In February 2004, Applicant's son was involved in an at-fault automobile accident.⁷ Applicant's insurance company did not pay the claim. Applicant arranged an installment agreement with a subrogation firm. She paid \$100 a month until July 2004. It does not appear that she made any more payments. The balance is now \$2,178.⁸

Applicant was interviewed in 2006 by Office of Personnel Management (OPM) investigators. She stated her intention was to reach payment plans by March 2006 to

¹The Government submitted nine items in support of its contentions.

²Item 4 (Applicant's answer to SOR, dated October 12, 2007).

³Item 5 (Security Clearance Questionnaire, dated October 29, 2004).

⁴Item 4 *supra* at note 2.

⁵*Id.*

⁶*Id.*

⁷Item 7 (Response to Interrogatories, dated May 29, 2007).

⁸*Id.*

resolve her debts with her two major creditors.⁹ This has not occurred. Her intent is to reestablish her credit worthiness. She did not want to file for bankruptcy.

Applicant admits to several small debts but has not resolved them. She will not pay her past debts but will pay her current debts. She states her credit has improved and now she feels no action is required. They will disappear from her credit report.

The SOR alleges 17 delinquent debts. The total amount of debt is approximately \$55,416.¹⁰ Applicant admits to debts totaling approximately \$29,822. She submitted paperwork showing that she has recently visited a Consumer Credit Counseling Service (February 2008).¹¹ Applicant reports that the counselor reviewed the financial difficulties and incidents in 2002-2004 and determined that the issues in the past are not hindering Applicant's current financial situation.

Applicant disputes the debts to a credit card company in allegations 1.a and 1.b. In 2007, she requested an investigation with the credit bureau. She maintains she never had ownership of the collection account.

Allegations 1.c-1.e are not in dispute. Applicant admits them. They are rather small debts (\$185, \$370, and \$411). However, Applicant reported in 2007 since they are in collection or charged off that "no further action is required". Allegation 1.f appears to be a duplicate of 1.d and has been disputed.

Applicant admits debts alleged in 1.g through 1.i. She again states that since they are charged off or in collection that "no further action is required." She states that they will eventually fall off her credit report.

Applicant denies the debt in allegation 1.m because she tried to resolve this after her son's accident. She did pay \$100 a month until July 2004.

The remaining delinquent debts in 1.n-1.q are not denied or disputed. However, again Applicant repeats her resolve not to take any further action.

Applicant's monthly net income was \$4,956. Her total monthly expenses were \$3,150. Her net remainder was approximately \$1,095.¹² She has assets and a retirement account. These figures were current as of February 2006. Applicant was paying a monthly total of \$711 for debt. This amount did not include payments for the delinquent debts in the SOR.

⁹Item 7 at 3.

¹⁰Item 9 (Credit Bureau Report, dated March 2007).

¹¹Item 4 at 5-7.

¹²Item 7 (Interview dated, dated February 2006).

Applicant in her 2007 interrogatories listed the accounts in collection and on all of them noted “no further action.” She emphasized that the charged off/closed accounts cannot be removed from her credit report and her only option is to rebuild her credit. She is current on her other obligations.

Applicant provided more detailed information in response to the FORM. In her letter of March 2008, Applicant affirmed that she has made efforts to pay her two largest creditors in late 2006. She contacted them to see if she could make payments directly to them. She was told since the accounts had been closed that they no longer make payment arrangements.

Applicant is embarrassed about her previous financial difficulties. She is extremely proud of her efforts to improve her financial responsibilities. Her credit score has increased from 480 in June 2006 to 689 in October 2007. She has two car loans in current status. She also helped her sister through a difficult time. She now owns a new credit card.

Applicant’s professional career has been outstanding. She has various achievement awards. In 2005, she earned the a very prestigious award from her employer. She is praised for her creative and timely approach in developing a new product. Her negotiation skills are praised as well. Her performance evaluations are outstanding. She has received many promotions within the company.¹³

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 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

¹³Applicant’s submission to FORM.

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. Under AG & 19(a), an inability or unwillingness to satisfy debts^o is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debt and was unable to pay some obligations for a period of time. Her credit reports confirm that she has not paid the charged off collection accounts. She admits approximately \$29,130 in delinquent debt. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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.¹³ Applicant's major financial worries arose in 2002. She accumulated some delinquent debt due to her mother's death and son's automobile accident. She had to relocate and had more financial expenses than she could handle. While these events may have precipitated the debt, the inquiry does not end at that point. Applicant has not resolved the debts. Her decision to take no further action and wait until the delinquent accounts fall off the credit report raise concerns about her current reliability, trustworthiness, or good judgment. This potentially mitigating condition does not apply.

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.¹⁴ As noted above, some of the financial problems arose from her mother's death and her son's accident. However, she did not act responsibly in resolving her delinquent debts. I find this potentially mitigating condition does not fully apply.

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 control¹⁵ 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.¹⁶ Applicant has only recently (November 2008) contacted a counseling firm. She still has no intention to begin a repayment plan because she is convinced that her past financial difficulties do not hinder her current or future financial health. She is financially sound and has a steady income. There is insufficient information to establish that Applicant showed good faith in the resolution of her debt.¹⁴ I conclude these potentially mitigating conditions do not apply.

The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an order to Claim the benefit of [the "good faith mitigating condition].applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the debts. The Directive does not define the term 'good faith.' However, the Board has indicated that the concept of good-faith requires a showing the a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.'Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) (Internal citation and footnote omitted).

ISCR Case No. 02-30304 at 3. (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

AG ¶ 20(e) applies where the evidence shows “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.” In this case, Applicant acknowledged the delinquent debts were hers. I conclude this potentially mitigating condition does 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 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 has held a security clearance for more than 20 years. She has a stellar employment record with outstanding evaluations. She has had no problems at work with handling secure information. She had financial difficulties in 2003-2004 due to her mother’s death in June 2002. She and her son were living in her mother’s home. After her mother’s death they had to relocate. She took on more financial responsibility than she could afford by purchasing a home. She decided not to file for bankruptcy. She had a son to provide for. These circumstances beyond her control exacerbated her difficulties but she did not act reasonably. Failure to pay debts is not prudent or responsible. She has been on notice since 2006 that her security clearance was under investigation. She did state at that time that she would start a repayment plan. She did not follow through. She did not enroll in a debt resolution plan for the debts. Her attempt to pay the two largest creditors ended because she noted they were in collection and she would maintain her current credit and improve her credit score rather than pay the older debts. Even an applicant with a stellar employment record could have security concerns that raise doubts about her good judgment. She has not met her burden of proof in this case to overcome the government’s case.

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 from 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:	AGAINST APPLICANT
Subparagraph 1.a-e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g-q:	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.

NOREEN A. LYNCH
Administrative Judge