



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



In the matter of:)
)
-----) ISCR Case No. 06-22217
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

April 22, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

Applicant submitted her Security Clearance Application (e-QIP SF 86), on August 2, 2005. On October 3, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial) 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 answered the SOR in writing, which was received by DOHA on November 26, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on December 14, 2007, and I received the case assignment on December 20, 2007. DOHA issued a notice of hearing on

January 14, 2008, for a hearing on January 30, 2008, and I convened the hearing as scheduled.

At the hearing, the government offered six exhibits (Exh.) which were admitted in evidence without objection. Three were interrogatories and the answers spread over a period from January to September 2007 (Exhs. 2, 3, and 4). Applicant submitted three exhibits which were admitted without objection. She and one witness testified on her behalf. DOHA received the transcript of the hearing (Tr.) on February 11, 2008. I granted Applicant's request to keep the record open until March 3, 2008, to submit additional evidence. Two additional documents were received on February 20, 2008, and admitted without objection.

Procedural and Evidentiary Rulings

Notice

The hearing notice was dated 16 days before the hearing date. I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to the 15 days notice and indicated she was ready to proceed.

Findings of Fact

In her Answer to the SOR, Applicant admitted ten of the eleven allegations in the SOR relating to approximately \$23,000 in delinquent debts. She offered explanations for the admitted debts and denied the other one.

Applicant is a 29-year-old employee of a major government contractor working as a security official since November 2004. She served on active duty in the Army for two years and was honorably discharged as an E-4 in November 1998 because of a health problem related to weight. She had hoped to stay for a full tour so joined the reserves after discharge and performed occasional duty tours for a few days until April 2002 when she went back on active duty. During that three and a half year period she was unemployed for approximately half of the time and under-employed for the other half in five different jobs in several cities and states (Exh. 1). She went on a two year active duty tour in April 2002 at a headquarters office working on security issues. The tour ended in March 2004.

She was married in 1997 while in the Army and divorced in 2000. She married a second time in 2001 and was divorced on July 28, 2004 (Exh. 2). The divorce decree refers to a property settlement which was not in evidence. She had no children from either marriage. Many of her present financial difficulties arose as a result of the unemployment periods low income between her two military service tours. Her two marriages and divorces were also contributory factors since charges were made on credit cards that were in her name for which she is legally responsible.

Applicant is well regarded by her employer and her supervisor who testified for her (Tr. 50-53). Her job is to provide assistance from her three person office to members of her company in processing security clearance applications.

The delinquent debts at issue arose from an automobile repossession, credit cards used for household expenses, and service providers. A summary of the debts and their status based on testimony reveals the following (Tr. 23-35):

1. SOR ¶ 1.a. This debt for \$565 is for clothing and consumer items purchased before 1997. Applicant has tried to find out about paying the delinquent debt but the store has no record of the transactions.
2. SOR ¶ 1.b. This debt for \$812 is from a credit card with a federal agency credit union. It was consolidated with SOR ¶ 1.d. which is with the same credit union.
3. SOR ¶ 1.c. Credit card debt for \$934 which has not been paid.
4. SOR ¶ 1.d. A debt to a federal credit union for \$8,929 based on a loan of \$10,000 sometime during her first active duty in the Army. She took out the loan to help her parents buy a home with \$2,000 and purchase an auto for \$3,200 (Tr. 27-28). The remainder was used to consolidate other debts. Some payments were made and the balance was the subject of a judgment against Applicant in 2000. She became aware of the judgment in 2006 when negotiating to buy a home which she could not do because the judgment was outstanding.
5. SOR ¶ 1.e. She denied a cell phone debt of \$139 to the same company with which she currently has a cell phone.
6. SOR ¶ 1.f. Cable service debt of \$246 taken out by her second husband which has not been resolved. Another cable bill to a second company not on the SOR was paid by Applicant.
7. SOR ¶ 1.g. Credit card debt of \$417 incurred while on active duty and she could not pay it while unemployed.
8. SOR ¶ 1.h. Debt of \$678 which she does not recognize but assumes it is valid but has not investigated.
9. SOR ¶ 1.i. Sears card debt for \$618 which was not paid when she became unemployed and it has not been paid.
10. SOR ¶ 1.j. Capital One credit card debt for \$1,441 solely in Applicant's name that is unpaid.
11. SOR ¶ 1.k. Auto repossession debt of \$9,061 on a 2003 Mitsubishi purchased for over \$20,000 while on active duty on the second tour of duty. She

voluntarily returned the auto to the dealer in March 2004 when her tour of duty ended. She has had no contact from the creditor since moving to her present home.

In 2006 Applicant recognized that her financial problems needed to be resolved if she was to keep her employment and contacted a credit counseling agency. They advised her that they would not take her case since her debts were too old (Exh. 2). She then went to another counseling and debt management group and entered into an agreement beginning November 2006 to pay them \$347 per month to resolve the outstanding delinquent debts (Exh. 2). She paid them for seven months and then withdrew from the program when she could not get an accounting she requested. She then decided to seek bankruptcy protection and advised DOHA investigators in September 2007 (Exh. 4). During the past three months Applicant has received the required credit counseling to seek bankruptcy protection under Chapter 7 (Exhs. D and E). She retained counsel for \$1,300 for legal services in filing of the petition (Tr. 46 and Exhs. B and C).

Applicant's financial situation is now stable and she is current on expenses but cannot resolve the delinquent debts and continue to pay current debts. She purchased a new 2007 automobile in August 2006 for \$14,000 with monthly payments of \$486 (Tr. 42). She decided to purchase a new car on the advice of her father to avoid auto breakdowns which had occurred in the past causing her to have problems commuting to work. She co-signed for the auto with her brother since her credit rating was too low to qualify. In December 2007 she had an auto accident which caused a financial loss of approximately \$500 which was her insurance deductible and she was at fault.

Applicant's annual income is \$45,000 and her net pay is \$1,200 bi-weekly. She has received several pay increases during her three years of employment. In November 2007 she took a second job in a retail store to improve her financial situation. She is paid \$230 bi-weekly in the second job (Tr. 43). In an effort to cut expenses she moved from a \$950 per month apartment in December 2006 (Exh. 2) to another apartment for which she pays \$750 per month (Tr. 44). She has no family members to support.

Policies

When evaluating 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 eligibility for access for an applicant 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.

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 accumulated a significant number of debts including those cited in the SOR and was unable or unwilling to pay the obligations for several years. The evidence shows that she has been able to pay some, but not many, of the debts during the past three years yet she has not contacted many of the creditors. Thus, the evidence clearly raises these potentially disqualifying conditions.

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.” Most of Applicant’s financial problems arose six to ten years ago. She now has a job which she has held over three years and pays a reasonable salary. Despite having held this position for over three years, there has been little progress in paying the accounts or investigating their status.

One of Applicant’s debts resulted in a judgment in 2000 in favor of a federal agency credit union. While her many changes of address (Exh. 1) may have contributed to her lack of actual knowledge of the judgment, she was well aware of the debt and the location of the account. However, nothing was done to settle the debt which had an adverse effect on her credit rating which she learned when attempting to buy a home. She also learned the effect on her credit rating when she attempted to purchase an automobile in 2006. Her employment as a security specialist working with others who seek security clearances should have been a red flag to her own problems and the need for her to address them earlier.

Under AG ¶ 20(b), the security concern 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.” As noted above, many of the financial problems arose from periods of unemployment and reduced income. However, there is little evidence that the two divorces had any significant impact on her financial situation as most of the debts were hers alone.

Applicant has been employed with improved income for over three years and, while the cause of the debts might be a mitigating factor, her actions since her present employment have not been sufficiently responsible to mitigate the security concerns. She has purchased a new car since her financial problems became clear. Now her solution of choice is to file for Chapter 7 bankruptcy which will, if successful, completely eliminate the debts providing no relief to her creditors. While this may have been done on the advice of her bankruptcy counsel as she testified, it does not meet the requisite standard of responsible behavior in view of her status of employment the past three years to fully mitigate the security concerns.

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 a potentially mitigating condition under AG ¶ 20(c). Applicant sought counseling and entered into a program from which she voluntarily withdrew after making payments for several months. She recently started counseling with the intent to file for bankruptcy, but this occurred after the hearing in this matter. She chose a path of complete elimination of the debts with no payment to creditors. (Exh. D and E).

While it not necessary for mitigation to apply that all of the delinquent debts be resolved, it is necessary that some portion of the delinquent debts be settled or paid. That test has not been met. Not a single debt listed in the SOR has been paid. Several have not been investigated. Of particular concern is the largest debt to the federal agency credit union, a debt she certainly knew of and knew of their whereabouts. Thus, I conclude that the mitigating conditions do not fully 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. When these problems first began, Applicant was only 19 years old and was discharged from the Army before she expected to be. (See AG ¶ 2(a)(4)). She accumulated debt during periods of unemployment and low income from several jobs in different locations which contributed to her financial difficulties. Since that time she obtained a better paying job but has not resolved the delinquent debts.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance at this time. I recognize her interest to resolve these financial issues to restore her credit rating and that she took some steps to try to resolve them. However, she withdrew from a program that might have been successful and did not enter another one. She has cut her living expenses and taken a

second job which has increased her ability to resolve the debts. The lack of effective action to resolve these delinquent debts over the past three years when she had extra income from her employment yet did not resolve any of the delinquent debts, prompts me to conclude that she has not mitigated the security concerns arising from the financial considerations and that it is premature at this time to grant a security clearance.

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.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	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. Access to classified information is denied.

Charles D. Ablard
Administrative Judge