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Applicant for Security Clearance

ISCR Case No. 07-03126

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel

For Applicant: *Pro se*

July 1, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On July 7, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). 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 adjudicative guidelines (AG).

In an August 24, 2009, response, Applicant admitted the five allegations set forth in the SOR and requested a hearing. DOHA assigned the case to me on February 5, 2010. The parties agreed to a hearing date of March 16, 2010. DOHA issued as notice of hearing to that effect on February 18, 2010. The hearing was convened as scheduled. Department Counsel introduced 15 documents, which were admitted into the record without objection as exhibits (Exs.) 1-15. Department Counsel stipulated that the debt noted at SOR allegation ¶ 1.e was settled in August 2009.¹ He also moved to

¹ Tr. 8.

amend the SOR to include the following sentence as allegation ¶ 1.f: “You are indebted to [a creditor] for a judgment filed in April 2009. It remains unpaid.”² No objection was given and the motion was granted. Applicant gave testimony and offered eight documents, which were admitted without objection as Ex. A-H.

Applicant was given until April 21, 2010, to supplement the record with any additional documents. The transcript (Tr.) of the proceeding was received on March 24, 2010. On April 21, 2010, Department Counsel forwarded six additional documents which were submitted by Applicant between March 23, 2010, and April 21, 2010. Absent any objection to their inclusion, they were accepted into the record as Exs. I-N. The record was then closed. Based on a thorough review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden regarding the financial considerations security concerns raised. Security clearance denied.

Findings of Fact

Applicant is a 54-year-old employee of a defense contractor and works in administrative services. She has worked for the same employer since 1983. Applicant earned a high school diploma. She is married and has five children. Appellant’s oldest son and his three children currently live with Applicant.

Over the years, Applicant put forth great effort and expense to make sure her children had the opportunity to attend college and have a secure future. As a result, one credit card balance became unwieldy after she provided one son with what he needed to start college.³ She also co-signed student loans for her oldest son. She made payments on those loans until that son completed school and found work, at which point she turned over the responsibility for the loan balance to her son. He defaulted on those loans in 2003, leaving her with an adverse entry on her credit report.⁴ That son is now 35 years old. He and his three children moved in with Applicant in 2009 because they needed a place to live.⁵ These additions to her household have provided additional strain on Applicant’s finances.

Further jeopardizing Applicant’s household income is her husband’s declining health. He began feeling ill in 2008. While ill and undergoing examination, he failed to make timely mortgage payments, as discussed below.⁶ He was diagnosed with an advanced case of adult onset diabetes and now requires both medical treatment and a liver transplant. He used his vacation and sick leave time until he was put on a leave of

² Tr. 64.

³ SOR allegation ¶ 1.f.

⁴ SOR allegations ¶¶ 1.b-1.c.

⁵ Tr. 33, 35-36.

⁶ SOR allegation ¶ 1.d.

absence in February 2009. He ultimately received disability benefits amounting to a little less than half of his usual pay.⁷ He returned to work around July 2009.⁸

The accounts at issue in the SOR are as follows:

1.a – Collection account (\$1,220) – *Satisfied*. Applicant offered an August 28, 2009, letter showing that the collection agent for this account filed a stipulation discontinuing action on her behalf in a lawsuit brought against Applicant.⁹ Because Department Counsel found this letter deficient as evidence, Applicant later submitted a March 19, 2010, letter from the collection agent explicitly confirming that her debt was settled in full.¹⁰

1.b – 1.c – Collection accounts (\$6,217 and \$9,015) – *Unresolved*. Applicant is the co-signer on her 35-year-old son's student loans. She made payments on the loans until her son finished his studies in 1982 and was able to make the payments himself. He eventually lost his job and the loans became delinquent in 2003.¹¹ Applicant holds her son responsible for the loan balances. Applicant was previously unaware of the process through which a co-signer can be removed from a child's student loan. She is currently seeking to have her name removed from his loans.¹²

1.d – Foreclosure Related Debt (\$31,000) – *Debt reduced/current status unclear* – Applicant's home loan fell behind when her husband became ill and he neglected to pay their mortgage.¹³ Applicant was unaware of this failure. When she learned of the debt incurred, she entered a loan modification agreement with her lender pursuant to a standard loan modification.¹⁴ Under the terms of the agreement, Applicant was to make an initial payment of \$4,560 on or before August 10, 2009, and two equal monthly payments of \$1,520.99 beginning on September 1, 2009. The result of this schedule of payments was a significant modification of her home loan terms. The Government asked Applicant for "evidence of that initial \$4,560 and the subsequent payments of the \$1,520.99. . . ." ¹⁵ As requested, Applicant provided evidence of her initial payment and the two subsequent payments, as well as one additional payment. In sum, she showed

⁷ Tr. 39.

⁸ Tr. 36.

⁹ Ex. A (Law firm letter, dated Aug. 28, 2010).

¹⁰ Tr. 15; Ex. J (Law firm letter, dated Mar. 19, 2010).

¹¹ See also Tr. 58-59. Applicant's 35 year old son, who is currently employed and earning about \$20,000 a year in a receiving department, believes he made some payments on the loans "maybe two years ago."

¹² Ex. N (Applicant letter, dated Apr. 21, 2010); Tr. 52, 57.

¹³ Tr. 24.

¹⁴ Ex. B (Loan Modification Agreement, undated).

¹⁵ Tr. 24.

payments of \$4,560 and three payments of \$2,292.94. These payments should have brought her substantially current through January 2010.¹⁶ It is unclear if Applicant failed to pay the balance owed on her January 2010 loan payment and her February 2010 payment, forgot to submit proof of more recent payments,¹⁷ or simply complied with the Government's stated request.

1.e – Telecommunications Debt (\$567) – *Satisfied*. The Government stipulated that this matter was settled.¹⁸

1.f – Judgment (\$7,838) – *In repayment* – A creditor obtained a judgment against Applicant for \$7,838. The debt arose due to Applicant's use of a credit card to pay for costs related to a son's entry into college.¹⁹ Applicant is satisfying the judgment through monthly payments of \$100.²⁰ As of March 16, 2010, Applicant had made \$800 in payments toward the debt.²¹

Applicant has a net income of approximately \$2,240 per month. Her husband currently earns about \$1,200 each month. Under the home loan modification agreement, their monthly mortgage payment is \$1,520.99, which is paid primarily through her husband's salary. With six individuals currently in her home, Applicant spends nearly \$1,000 a month on groceries. Combined with their other monthly expenses, their everyday needs and bills exceed Applicant's income.²² She has borrowed against her retirement fund to meet her obligations. At work, Applicant is a valued employee who received superior ratings.²³

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with

¹⁶ Ex. M (Money Order Records, Aug. - Nov. 2009).

¹⁷ Applicant's testimony, however, implies that regular payments have been made to date, although she concedes that she thinks her husband may have been late on one or more payments in the preceding six months. Tr. 41-42.

¹⁸ Tr. 8, 9; Ex. C (Proof of Settlement, dated Oct. 1, 2009).

¹⁹ Tr. 33.

²⁰ Tr. 31-32; Ex. E (Worksheet).

²¹ Tr. 30; Ex. L (Letter, dated Mar. 16, 2010). See *also* Ex. D (Letter, dated Jun. 22, 2009).

²² Tr. 46.

²³ Ex. H (Performance Review).

the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this 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.

The government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ²⁴ The burden of proof is something less than a preponderance of evidence. ²⁵ The ultimate burden of persuasion is on the applicant. ²⁶

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 an applicant may deliberately or inadvertently fail to 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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁸

²⁴ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁷ *Id.*

²⁸ *Id.*

Based upon my consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Disqualifying and mitigating conditions pertaining to this adjudicative guideline are set forth and discussed below.

Analysis

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.”²⁹ The guideline sets out several potentially disqualifying conditions. Here, Applicant has acquired six obligations, most of which became delinquent in the past few years. To date, her eldest son’s two student loans remain delinquent, a judgment is in repayment, and the status of her home loan is unclear. While she has satisfied two of the debts at issue, such facts are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations) apply. With such conditions raised, the burden shifts to Applicant to overcome the case against her and mitigate security concerns.

Applicant has had financial struggles for some time. First, she put her children through school, then she took in her oldest son and his children. Adding to the strain on her family finances, her husband has a serious physical problem and is awaiting a liver transplant. Two of the debts at issue were successfully resolved and two have been put into repayment. The regularity and status of Applicant’s home loan payments are unclear, however, and her son’s student loans remain unaddressed. Applicant understandably expects her 35-year-old son to take responsibility for the student loans that helped her send him to college. Despite her expectations, her son, now a father of three, living with his parents, and making a modest salary, shows no inclination to help alleviate his mother’s financial troubles. Meanwhile, Applicant simply does not have the funds to continue paying for his delinquent student loans. Indeed, her present finances are insufficient to meet her currently large household’s immediate needs. Consequently, FC MC 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) does not apply.

Applicant’s attempts to provide for her family during her husband’s illness, period of unemployment, and reliance on disability benefits are sufficient to give rise to FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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). However, there is no evidence she has received financial

²⁹ AG ¶ 18, which also notes, “An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

counseling, obviating application of FC MC ¶ 20(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).

Applicant satisfied the debts cited at SOR allegations ¶¶ 1.a and 1.e, and negotiated repayment plans on those cited at ¶¶ 1.d and 1.f. The home loan payments regarding the debt at SOR allegation ¶ 1.d, however, were sometimes late and there is no evidence of the most recent payments. Further, the student loans cited at SOR allegations ¶¶ 1.b and 1.c continue to be neglected by both Applicant and her son, although Applicant expressed her intention to have her name removed as a co-signer. Regardless, efforts have been made and FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies to all the debts noted except those cited at SOR allegations ¶¶ 1.b and 1.c.

Applicant has done her best with the income she and her husband currently earn to address their daily needs and her delinquent debts. Lacking any significant financial help from two of her adult sons, however, she is struggling to make payments on a credit card that helped one child go to college. She is waiting for her eldest son to take responsibility for his student loans. Meanwhile, her finances are highly strained by the return of her eldest son with his children to her household. Consequently, there is insufficient income at present to manage Applicant's monthly accounts and no assurance how the student loans will be resolved. Applicant has failed to provide evidence of current financial stability and some indication that her eldest son is capable of taking responsibility for his student loans. Financial considerations security concerns remain unmitigated.

Whole-Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An 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 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, as well as the “whole-person” factors. Applicant is a mature, credible, and nurturing woman who has gone to tremendous lengths to care for her family and educate her children. Indeed, her patience with her son and both his neglect of his student loans and his return to her household have, unfortunately, only added to her financial problems. At the same time, she has helped, and continues to help, her husband through his current health issues.

While Applicant has paid two of the debts at issue and negotiated two repayment plans, more detailed evidence is needed to establish a consistent track record of home loan payments. Moreover, her recounting of her income and expenses plainly shows that she is financially ill-prepared to meet both her eldest son’s family’s needs and her own debts. Until these situations are resolved and Applicant receives sound financial counseling to help her and her husband adapt to their current income, financial considerations security concerns remain unmitigated. Clearance is denied.

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	For Applicant
Subparagraph 1.b	Against Applicant
Subparagraph 1.c	Against Applicant
Subparagraph 1.d	Against Applicant
Subparagraph 1.e	For Applicant
Subparagraph 1.f	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge