DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 07-04248
SSN:	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro se*

June 26, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA), on July 13, 2006. On December 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted her answer to the SOR on February 15, 2008. DOHA issued a notice of hearing on April 2, 2008, and the hearing was held on April 30, 2008. At the hearing, six exhibits (GE 1 through 6) were admitted in evidence without objection to support the government's case. Applicant's five exhibits (AE A through AE E) were received in evidence without objection. She also testified. In the time allowed for

Applicant to submit additional documentation, she submitted AE F (original and a copy) containing documentation of payments to the SOR 1.a. and 1.e. creditors. DOHA received the transcript on May 14, 2008.

Findings of Fact

Applicant admitted the eight allegations under the financial considerations guideline of the SOR. She also admitted the personal conduct allegation. She is 34 years old, married since 2002, with four children. She began employment with her current employer in May 2005 as a library assistant. As a result of a promotion, she is now an Administrative Assistant. She seeks a security clearance.

Financial Considerations

In 2001 and 2002, Applicant received $10,711.00 in unemployment compensation that she was not entitled to because she was working part-time. In 2002, a demand was made by State X (SOR 1e.) for repayment at $200.00 a month. Applicant declined the offer because she did not have the money. In an interview in October 2006, she stated her intention to reimburse State X, but she did not know when.[1] Even though she worked out a plan to repay State X in July 2007 (GE 4), she has made only two $100.00 payments for a total of $200.00.[2]

In addition to SOR 1.e., there are seven other accounts that became past due between 2002 and September 2005. The total amount of overdue debt is $20,985.00.[3] In October 2006, GE 6 contains entries that establish she paid the collection agency $132.00 to resolve SOR 1.h. In July 2007 (GE 4), she provided proof she paid $62.00 to satisfy the SOR 1.a. account, along with an account belonging to an unlisted creditor.

The cable account (SOR 1b.) of $1,041.00 was opened in August 2003. Applicant indicated that she could not negotiate a settlement with the cable company because they believe she has two pieces of cable equipment in her possession. She claims she returned the equipment to the cable company.

Applicant opened the physical fitness account (SOR 1.c.) in October 2003.[4] According to GE 5, she stopped paying on the contract after two months. The creditor advised her she breached the termination provisions of the contract. On February 19, 2008, she entered in a settlement agreement with the creditor where she would pay $50.00 a month until the account was paid. Though the settlement letter is unsigned,

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[1] Applicant's interview was taken in October 2006. (GE 5) At the hearing, Applicant claimed the demand was not made until 2006. (Tr. 51)

[2] (AE F).

[3] As of December 31, 2007, the publication date of the SOR.

[4] GE 1 reflects Applicant was unemployed from march 2003 to January 2004.

Applicant provided proof the three payments referred to in the letter, were paid.[5] The $50.00 payment is taken directly from her checking account every month.

The collection agency account pertains to a car she purchased in 2000 (SOR 1.d.) for $3,500.00 to $4,500.00. When she could not make the payments, the car was repossessed in October 2002. The deficiency balance on the car is $6,100.00. No action has been taken on this account.

SOR 1.e. is the unemployment compensation Applicant owes State X. She indicated that taking the money was a mistake, although she knew that taking the money was wrong. The $100.00 repayments are taken directly from her checking account.

In GE 5, Applicant opened the utility account (SOR 1.f.) in September 2002. She forgot to pay the account when she moved. She disputed the amount owed. No action has been taken on this account.

The account in SOR 1.g. belongs to a bank. Applicant made an order for deferred payment through her regular check card. When the deferred payment was due, Applicant did not have sufficient funds in her checking account to cover the amount of the deferred payment. In AE F, Applicant submitted a one-page demand for payment from the SOR 1.g. collection agency dated May 2003. Applicant wrote on the top of the document "Exhibit 1g [] $10 a month until pd" At the bottom of the document, Applicant wrote the address to send the payment, the contact person (unit manager), and the date. There is no documentation to show that a payment was actually made on the date referred to in the document.[6]

The telecommunications account in SOR 1.h. was settled by Applicant in October 2006. Though the documentation does not appear in GE 5, GE 6, the credit bureau report dated March 2008, reflects the past due debt was settled.

Applicant provided budgets for March and April 2008 reflecting her earnings and expenses. In March 2008, her net monthly remainder after expenses was a minus $355.00. In April 2008, her net monthly remainder after expenses was a minus $1004.00

Personal Conduct

Applicant's receipt of unemployment compensation from State X while she was employed part-time represents an intentional omission of relevant facts from an official form used by State X to evaluate how unemployment compensation is allocated. Applicant testified that her decision to take the money was partially due to the fact that

[5] AE F contains copies of the three checks referred to in AE B.

[6] I am unable to give the same favorable weight to the handwritten notes as I do to the documents Applicant provided in support of her testimony that she made payments to SOR 1.c. and SOR 1.e.

other individuals were also involved in the same behavior. When she was receiving the unemployment compensation in 2001 and 2002, Applicant was 27 and 28 years old.

Character Evidence

Applicant provided information indicating that after expenses, she currently has no take home pay.[7] She receives approximately $170.00 in food stamps to supplement her income. The take home pay in the first week of April 2008 for Applicant's husband was about $26.00, and about $32.00 for the second week of April 2008.[8] In AE E, Applicant provided documentation from a debt management program she was ineligible for because she did not earn enough money.

As noted at the outset of this section, Applicant was promoted to Administrative Assistant. She provided no other character evidence concerning her job performance or character away from the job.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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

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[7] (AE C).

[8] (*Id*).

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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Analysis

Financial Considerations (FC)

18. *The Concern*. “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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

The record evidence indicates the Government has established its case under the financial considerations guideline. Applicant defrauded State X by failing to report her part-time income in 2001 and 2002. She has taken no documented action to satisfy the debt until March 2008, more than five years after a demand was made by State X for her to return the money under a repayment plan. Since 2002, she opened seven additional accounts that have become delinquent. As of the date of the SOR, Applicant owed $20,985.00 to eight creditors. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history of not meeting financial obligations*) apply. Applicant’s history of not meeting financial obligations began in 2001 and 2002 when she was accepting unemployment compensation she was not entitled to. Until recently, Applicant was unable to satisfy that debt, as well as most of her other debts.

There are five mitigating conditions (MC) that are potentially applicable to the circumstances. They are: FC MC 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*); FC MC 20.b. (*the conditions that resulted in the financial problems were largely beyond the* *person's control, and the individual acted reasonably under the circumstances*); 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 resolved or under control*); FC MC 20.d. (*the individual initiated a good-faith effort to repay creditors or otherwise resolve debts*); and, FC MC 20.e. (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause or of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*). FC MC 20.a. does not apply. While the unlawful receipt of state funds occurred over five years ago, Applicant collected seven more recent delinquent debts. Though she has incurred no new debt delinquencies after September 2005 (SOR 1.f.), she has presented insufficient evidence to show that her ongoing financial problems will not persist in the future.

Applicant gains some benefit from FC 20.b. Although she did not supply much detail for why she took the money, it is reasonable to conclude that unemployment or underemployment were motivating factors. The mitigating condition allows for loss of employment as an extenuating reason if the person acts responsibly following the loss of employment and for a reasonable time thereafter. FC 20.b. also recognizes medical problems can extenuate financial problems if the person acts reasonably during the medical problem and for a reasonable period of time thereafter. Applicant's husband suffered a back injury in 2005 that has prevented him from working in jobs that require heavy lifting. Between 2001 and September 2005, Applicant opened seven new accounts that fell into delinquency. Though Applicant's husband has difficulty finding employment, Applicant has been continuously employed since May 2005. Aside from the SOR 1.a. and SOR 1.h. debts, Applicant did not take any action to resolve the other debts until after she received the SOR. The limited mitigation Applicant receives under FC 20.b. is inadequate to overcome the adverse financial evidence.

FC 20.c. does not apply as there is no evidence Applicant participated in financial counseling or reorganized her financial obligations so that her indebtedness is under control. The disparity between the monthly remainders in March and April 2008 provides a substantial basis to conclude her financial problems are not under control.

The fact that Applicant paid two of the debts in 2006 and 2007 weighs in her favor under FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) Conversely, Applicant's action taken in repaying the other creditors did not materialize until after she received the SOR. In sum, Applicant receives little mitigation under FC MC 20.d.

FC MC 20.e. would apply to Applicant's dispute with the cable company. However, Applicant's failure to provide proof of the dispute and actions taken to resolve the dispute removes FC MC 20.e. from consideration. The extenuating reasons for her indebtedness are insufficient to find the financial guideline in her favor. Under the circumstances, it remains to be seen whether Applicant will be successful in following through with the repayment of her remaining debt.

Personal Conduct (PC)

Applicant's failure to report her part-time employment while receiving unemployment compensation constitutes intentional conduct within the scope of PC DC 16.a. (*deliberate omission or falsification of relevant facts from a personnel security questionnaire or similar form used to conduct investigations or award benefits or status*) In order to receive the unemployment compensation, she had to complete a form(s) requiring her to report any kind of income. She knew that any income would reduce her unemployment compensation by the amount of money she earned. She did not report her part-time earnings, and is therefore obligated to reimburse State X. Applicant has not satisfied her burden of persuasion under the personal conduct guideline.

Whole Person Concept (WPC)

The AG indicates the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and whole person concept. The WPC is made of nine general policy factors:

> (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 the participation is voluntary; (6) the presence or absence of rehabilitation and other 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.

At the age of 27, Applicant dishonestly received unemployment compensation she was not entitled to. In the period since 2002, she opened seven additional accounts that have fallen delinquent in the amount of an additional $10,000.00. I have carefully considered her employment problems since 2002, along with her husband's medical problems. However, she has had continuous employment since May 2005, and has been promoted. Though Applicant has made a start in trying repay her creditors, most of her debt is still outstanding, and her monthly expenses exceed her earnings as indicated by her budget in April 2008. In sum, it is likely that Applicant's current financial difficulties will continue. Her evidence does not overcome the negative evidence adduced under the FC and PC guidelines.

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 (Financial Considerations, 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.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	For Applicant.
Paragraph 2 (Personal Conduct, Guideline E):	AGAINST APPLICANT
Subparagraph 2.a.	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.

Paul J. Mason
Administrative Judge