



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



In the matter of:)	
)	
)	ISCR Case No. 07-04861
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

March 6, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns pertaining to Financial Considerations. Clearance is denied.

Applicant submitted her Security Clearance Application (SF 86), on November 7, 2005. On September 27, 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, 1990), 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 2, 2007, which was received at DOHA on October 7, 2007. She answered the SOR in writing on October 22, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on October 29, 2007. Department Counsel was prepared to proceed on

November 30, 2007, and I received the case assignment on December 6, 2007. DOHA issued a notice of hearing on December 17, 2007, scheduling the hearing on January 10, 2008. Subsequent to that notice of hearing being issued, Applicant requested additional time to prepare for her hearing. I granted Applicant's request for a delay, and scheduled the hearing for January 24, 2008.

On the day of her hearing, Applicant telephonically informed me that she had been selected for jury duty and was summoned for service that same day. I convened the hearing as scheduled. Applicant was not present. Over Department Counsel's objection, I continued the hearing to a later date. See transcript of hearing for the January 24, 2008 session, which DOHA received on January 30, 2008. On January 28, 2008, Applicant submitted documentation from the court clerk indicating her jury duty summons included service from January 22, 2008 through January 25, 2008. Exhibit I. On January 25, 2008, DOHA issued a third notice of hearing scheduling the hearing for February 14, 2008. The hearing was held as rescheduled.

The government offered Government Exhibits (GE) 1 through 6, which were received without objection. Applicant offered Applicant Exhibits (AE) A through D, which were received without objection, and she testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on February 27, 2008.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c., 1.e., 1.f., 1.g., and 1.h. She denied the factual allegations in ¶¶ 1.b., 1.d., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., and 1.p. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 46-year-old administrative assistant, who has been employed by a federal contractor since January 2004. She is a first-time applicant for a security clearance. She attended secretarial school from September 1981 to June 1982, and was awarded a Certificate of Completion and her GED in June 1982. Tr. 85-86.

Applicant was married from December 1982 to October 2003. Her marriage ended by divorce. She has three children, a 24-year-old daughter, a 16-year-old son, and a six-year-old daughter. She has been a single mother since her divorce and is not receiving child support for her two minor children.

Applicant has a history of unresolved financial problems, which are ongoing. The SOR alleges sixteen separate debts, ranging from \$25 to \$3,672 for a total of about \$13,221. The Government established by substantial evidence the ten debts that she denied. Applicant's adverse financial history was clearly established by a judgment filed in July 2001 and four separate credit reports from June 2006, April 2007, June 2007, and November 2007. GE 2 through 6.

Applicant was laid off from her job in September 2001 and remained unemployed until January 2004, when she started her present job.

Applicant recently sought the services of a bankruptcy attorney. She submitted a copy of her attorney retainer agreement, dated February 12, 2007, and accompanying documentation that reflects she made a down payment of \$400 towards her attorney fee of \$1,000. AE A through D. The bankruptcy process has not had time to evolve to resolve any of Applicant's financial problems. Applicant stated she earns approximately \$42k a year, and at the end of the month she has a net remainder of "[n]ormally, at least about 100-200 dollars." Tr. 91-95.

Applicant has been unable to repay any of the debts alleged in the SOR or otherwise resolve her indebtedness. Nine of the debts were for medical bills and most of the remaining debts were for credit cards. Applicant incurred most of her debts during her period of unemployment. Since Applicant began her current job in January 2004, she has not resolved any of her debts. Other than the attorney retainer agreement and accompanying documentation, Applicant presented no documentary information of efforts taken to pay or otherwise resolve her debts. At her hearing, she stated that she intended to initiate the required pre-bankruptcy counseling "next week." Tr. 80.

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(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 over \$13k of delinquent debt and has been unable to pay or resolve those debts since 2000. The record evidence is more than sufficient to establish these two disqualifying conditions. Also, the record evidence supports a conclusion of financial irresponsibility.

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." Applicant's financial troubles began about 2000 and are ongoing. They are primarily attributable to her period of unemployment, however, that unemployment ended four years ago. Also, her lack of child support is a factor, and some of her delinquent debts are unreimbursed medical bills. She claims her medical bills were covered by health care insurance; however, she has not followed up on these medical bills.

Considering the record evidence as a whole,¹ I conclude that none of the mitigating conditions apply. Applicant presented little evidence of efforts taken to contact creditors, or to resolve any of the debts since she acquired them. Nor is there any evidence that she has participated in any financial counseling. I specifically considered Financial Considerations Mitigating Condition (FC MC) Guidelines ¶ 20(b): *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, and conclude it applies, but only to a limited extent.*

Applicant's uncorroborated testimony fails to establish mitigating factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts. She was unemployed from September 2001 until January 2004, she received sporadic child support, and the father of her child provided limited financial contributions to the household. These claims demonstrate circumstances beyond her control; however, Applicant's evidence is not sufficient to show she has dealt responsibly with her financial obligations. She presented little evidence to show she dealt responsibly with her financial obligations before, or especially after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, payment plans, budgets, financial assistance/counseling). Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility, or that she has taken control of his financial situation. Based on the available evidence, her financial problems are likely to be a concern in the future. Moreover, her financial problems are recent, not isolated, and ongoing.

Applicant presented little in the way of favorable information, and her good intentions and future plans are not sufficient evidence to overcome the security concern raised by the Government's evidence. At this point, it is likely that her history of financial problems will continue.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does not support a favorable decision.

¹ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

