



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



In the matter of:

SSN: -----

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 07-06398

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro Se*

May 27, 2009

Decision

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

Applicant completed Electronic Questionnaires for Investigations Processing (e-QIP) signed on April 5, 2006. On August 20, 2008, 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 revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective for SORs issued after September 1, 2006.

In a response notarized on October 6, 2008, Applicant denied 9 of the 11 allegations noted in the SOR and declined a hearing on the record. Department Counsel submitted a File of Relevant Materials (FORM), including 14 attached items, dated February 19, 2009. Applicant received the FORM on March 9, 2009. She timely submitted additional materials in response to the FORM. On May 15, 2009, the Director, DOHA, forwarded the case for assignment to an administrative judge for

administrative determination. I was assigned the case on May 18, 2009. Based upon a review of the case file, submissions, and exhibits, I find Applicant failed to meet her burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor. She has worked for the same company for over 31 years. She presently serves as an engineering data systems specialist. She earned a high school diploma and completed three years of college. She is married with three grown children.

In 1994, Applicant filed for Chapter 13 bankruptcy protection because she “had a very ‘lazy’ husband and in an effort to try to keep [her] house from being foreclosed on. . . . [She] eventually separated from [her] husband and had to leave the house anyway.”¹ Her case was dismissed in or about September 1995. She again filed for Chapter 13 bankruptcy protection in June 1999 in order to protect her house, but did not include any bills or other obligations in her filing.² That case was dismissed in or about June 1999. In the late 1990s, Appellant failed to file her federal taxes because she did not have the funds to pay her taxes-owed. She was unaware she could file, then pay the amount owed later. She also felt that, after failing to file initially: “I guess I’d better not file this time because ‘I ALREADY OWE THEM.’”³ She ultimately married “a young man that was ‘God’ sent” who helped her get her life back on track.⁴ When she eventually ran into trouble with her federal taxes, he helped her sort out the problem. Meanwhile, her health began to decline. She suffered from extreme hypertension by the end of the 1990s. Six years later, she was diagnosed with diabetes. A thyroid condition followed that diagnosis. Doctors had difficulty adjusting her medications. With her husband’s assistance, she ultimately filed federal income tax returns for the years 1996, 1997, 1998, 2002, and 2003 together.⁵

Ultimately, a tax lien was put in place for around \$7,8883. Applicant states, without documentary evidence, that she took a loan to satisfy the lien. She is currently indebted to the Internal Revenue Service (IRS) for approximately \$12,500. It is being

¹ Applicant’s Answer to the SOR (SOR allegation 1.i).

² Appellant states she filed the bankruptcy because she “had a ‘housefire’ and was trying desperately to save my house from foreclosure.” Response to FORM. There is no indication whether this “housefire” was a genuine conflagration or is a term meant to describe her financial situation. (SOR allegation 1.h).

³ Applicant’s Answer to the SOR.

⁴ *Id.*

⁵ These years are the subject of SOR allegation 1.j. The facts are unclear, but it appears Federal income tax returns for 1982-1984 were filed at that time as well. (SOR allegation 1.k).

repaid through a payment plan under which she pays \$350 a month.⁶ After making payments on this debt for a certain amount of time, Applicant claims the IRS will drop the 1996 and 1997 tax liabilities, lowering the total amount owed to about \$5,000 or less.⁷ Much of the sum now owed is derived from penalties and interest. Otherwise, Applicant has been current on her federal taxes for the past decade.

The SOR also cites to nine negative entries on Applicant's credit report. Applicant initially denied all allegations in her first answer to the SOR. Some of those answers were amended in her response to the FORM. The six delinquent accounts at issue unrelated to her tax situation⁸ are:

MEDICAL PROVIDER (\$46) – *No proof of payment.* Regarding SOR allegation 1.b, Applicant stated she is not indebted to this creditor because “the amount was paid off at or on 2007. In fact, that amount was turned over to a collector before my insurance actually paid that amount back to the doctor.”⁹ In her response to the FORM, Applicant stated she had a receipt showing the bill was paid. What was submitted, however, was a form sent to her from the medical office regarding a request to delete its account from her credit report. The form includes a section indicating the amount due (\$25.00) and a section to be remitted with payment. No evidence of payment by Applicant or any other party is included, nor is evidence that the account is now at zero and in good standing.

MEDICAL PROVIDER (\$25) – *No proof of payment.* Regarding SOR allegation 1.c, Applicant stated she paid this amount in 2007. In her response to the FORM, Applicant stated she had a receipt showing the bill was paid. What she submitted, however, was a form sent to her from the medical office regarding a request to delete its account from her credit report. The form includes a section indicating the amount due (\$46.00) and a section to be remitted with payment. No evidence of actual payment by Applicant or any evidence that the account is now at zero and in good standing is included.

COLLECTIONS (\$157) – *No proof of payment.* Regarding SOR allegation 1.d, Applicant stated in her response to the SOR that she paid this balance “in April/May

⁶ As evidence of this plan, Applicant submitted a single month's “Monthly Statement” from the IRS, indicating her “next payment of \$340,” was due on February 28, 2009. This amount was due on a then-current balance of approximately \$8,000 (including approximately \$3,700 in interest). The statement reflects no prior history of payments toward her obligation for tax years 1997, 1998, and 2001. See Applicant's Response to the FORM.

⁷ Applicant's Answer to the SOR.

⁸ As depicted in SOR allegations 1.a, 1.j, and 1.k. The remaining two allegations (1.h and 1.i) concern bankruptcy petitions which, by themselves, are legal and legitimate methods for resolving financial problems and do not necessarily raise significant security concerns. Here, Applicant sought bankruptcy protection not to satisfy extraneous debts, but to protect her home.

⁹ Applicant's Answer to the SOR.

timeframe (sic) 2007.”¹⁰ She failed, however, to submit any evidence of payment or that the account is now at zero and in good standing.

COLLECTIONS (\$575) – *No proof of payment or repayment plan/debt consolidation.* Regarding allegation 1.e, Applicant initially denied this allegation and stated that she had negotiated a settlement with this entity to pay off the balance by October 31, 2008. In her response to the FORM, Applicant agreed to the allegation, stating that the bill “has been incorporated into the bills for the debt consolidation company.” There is no evidence, however, of an arrangement with a debt consolidation company or other evidence concerning this outstanding account.

CREDITOR (\$466) – *No proof of payment or deletion from credit report.* Regarding allegation 1.f, Applicant initially stated the proper balance owed was \$361, an amount she claimed was paid on October 2, 2008. In her response to the FORM, Applicant wrote: “This debt is showing as paid off as of October 2008. I personally spoke to this collection agency and it was quoted to me (by them) that their bill was paid off last year and I owe them nothing.” No documentary evidence was introduced, however, substantiating this assertion or otherwise showing the account now reflects a zero balance in good standing. Further, Applicant failed to provide any documentary evidence as to how this account was reflected on her credit report on or after October 2008 in order to refute its representation on her June 18, 2008, credit report, included in the FORM at item 6.¹¹

COLLECTIONS/TELECOMMUNICATIONS (\$1,581) – *No proof of payment or other arrangement to settle obligation.* Regarding allegation 1.g, Applicant initially denied this allegation, indicating she had an arrangement to settle her obligation by payment of \$700 by November 14, 2008. In her response to the FORM, however, she agreed to the allegation, stating “[t]his bill is not showing up on my credit report. However, I know that I owed a balance when this account was closed.”

Recently, in 2007, Applicant fractured her arm after falling off a van at work. This caused her to miss “a lot of work” while she sought treatment for her condition.¹² Later, after receiving the SOR, Applicant reviewed her credit report. Looking forward to her retirement, she saw this as an opportunity to clear up her credit. She states she has contacted a “debt solution” company to help her resolve her financial issues and a “tax consultant” for advice on her tax situation, but provided no evidence of her efforts with such professionals. Moreover, there is no evidence establishing she has received financial counseling. As of the date of her response to the FORM, Applicant was “checking . . . to make sure that the debt solution company is legitimate and making a

¹⁰ *Id.*

¹¹ Item 6 (Jun. 18, 2008, credit report), at 2, indicating \$466 past due.

¹² May 7, 2009, Letter in response to the FORM.

decision to go with one of these company's [sic] to get my debt cleared up completely and finally."¹³

Applicant is devoted to her work and has enjoyed her nearly 32 years of service with the company. She has maintained a security clearance previously without incident. She leads a simple life with few unnecessary extras. She states that "the debt that [she has] is no worse than the debt that a lot of people incur in the course of a lifetime that have on-going health issues. I am an hourly employee with very limited 'sick leave' time and after that I am not paid at all for time off from work."¹⁴ She believes she will be "good to go" by the end of 2009 with regard to getting her debt resolved.¹⁵

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. 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Department Counsel. . . .”¹⁶ The burden of proof is something less than a preponderance of evidence.¹⁷ The ultimate burden of persuasion is on the applicant.¹⁸

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁰ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²¹ Nor does it reflect badly on that person’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

\

¹⁶ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Executive Order 10865 § 7.

Analysis

Guideline F – Financial Considerations

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.²² The Directive sets out several potentially disqualifying conditions under this guideline.

Here, Applicant has six delinquent accounts which remain substantially unaddressed after the issuance of the SOR and LOR. She also incurred a liability for failure to timely file her federal taxes for several years. Such facts are sufficient to give rise to Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and FC DC AG ¶ 19(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 incurred tax liability when she failed to file her federal tax returns for a number of years. A couple of those years occurred when she was the sole familial income generator, seeking separation and divorce from a first husband who contributed little to the family coffers. During this time frame, she also instituted bankruptcy proceedings designed not to relieve Applicant of various debts, but to protect her homestead. Further, she has a history of hypertension and diabetes, and she most recently fractured an arm on the job. At least two of the six unaddressed delinquent accounts are medical in nature. To the limited extent these factors contributed to her acquisition of her delinquent debt, Financial Considerations Mitigating Condition (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") applies.

Otherwise, Applicant's efforts toward resolving her delinquent debt are lacking with regard to substantiating evidence. She initially claimed at least two of her delinquent accounts for \$575 and \$1,581 would be resolved in 2008, then later acknowledged they remained outstanding. She claimed an obligation for \$466 was satisfied in 2008 and so reflected on her credit report, but failed to submit a copy of the pertinent section of that more recent credit report to substantiate her claim. Likewise, no evidence was submitted to show a debt of \$157 was previously satisfied. The evidence submitted regarding her medical bills indicates that a dispute action was taken to remove their entry from her credit report, but those same statements include stubs to be submitted with payments for the amounts alleged. Consequently, there is no evidence of actual payment.

²² Revised Adjudicative Guideline (AG) ¶ 18.

Finally, with regard to her tax situation, Applicant's written explanation as to her current repayment status is highly credible. Her explanation reflects the terminology and nuance related to the repayment of past tax liabilities through a repayment plan. Moreover, she has submitted one monthly statement reminding her of her next due payment of \$340. However, there is no documentation indicating that she is in timely repayment on what appears to be a debt of approximately \$8,000, how many other payments have been made, or how she is progressing on her overall obligation. As for her nearly \$8,000 tax lien, which she claims she satisfied by borrowing money from another source, there is no evidence of its satisfaction. Nor is there evidence of either her progress on, or the satisfaction of, the obligation created by that loan. Choosing a decision on the record precludes further inquiry into these matters and the ability to extend additional time for the acquisition of additional documentation. As the record currently reflects, the delinquent debts at issue remain largely unaddressed to date. 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") cannot apply. Moreover, based on the very limited facts presented and in the absence of additional facts (e.g., whether Applicant pursued financial counseling) none of the other available mitigating conditions 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) 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 eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

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 woman who has devoted over three decades to her employer, enjoys the challenges of her employment, and has never been involved in an

adverse security incident. Neither her abilities, qualifications, nor her dedication are at issue.

Applicant's first husband abdicated the role of head of the financial household to her. She struggled to make ends meet and keep their mortgage timely. To that end, she sought bankruptcy protection to save their home, but that action was later dismissed. Her second husband has helped her with her finances, but that help has not compensated for a lack of financial counseling and assistance. Despite her express intentions, debts she hoped to satisfy in 2008 remain outstanding or lack appropriate documentation of payment. Documents submitted to demonstrate payment of a debt or progress on a repayment plan are insufficient as forms of evidence. While there is no basis to doubt Applicant's honesty or sincerity, her proffers do not substantiate her claims of progress on her debts. In light of the fact the ultimate burden is on Applicant, financial considerations security concerns remain unmitigated. Consequently, it is not clearly consistent with national security to grant Applicant a security clearance. 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:	Against 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
Subparagraph 1.i:	For 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 a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge