



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



In the matter of:

ISCR Case No. 07-06729

Applicant for Security Clearance

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: William L. Mickey, Personal Representative

March 24, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the security concerns arising from her financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) (GE 1) on January 17, 2006. On October 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline F (Financial Considerations).¹

¹ 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 on November 14, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on January 16, 2008. DOHA issued a Notice of Hearing that same day. I convened the hearing as scheduled on February 5, 2008. The government offered exhibits (GE) 1 through 4, which were received without objection. Applicant testified on her own behalf and submitted exhibits (AE) 1 through 6, which were received without objection. DOHA received the transcript of the hearing (Tr.) on February 11, 2008.

Findings of Fact

In her Answer to the SOR, Applicant admitted all SOR allegations. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence, including Applicant's demeanor, I make the following additional findings of fact.

Applicant is a 46-year-old assembly line worker employed by a government contractor. She is a high school graduate. She married her spouse 1984, and they were divorced in 1996. She has two daughters from this marriage, ages 22 and 20 (GE 1). Applicant received support for her daughters until each reached the age of 18. Both of her daughters have had babies out of wedlock, ages two and one. Applicant's daughters and their babies live with and are supported by Applicant. The oldest daughter receives some child support, works part time, and provides sporadic financial contributions to her mother's household.

From 1991 to 2006, Applicant worked at a retail store, and achieved an assistant manager position (Tr. 37-38). During this period, she had some financial problems, but she claimed she was able to resolve them (Tr.68-69). She left her assistant manager job because she was tired of the shift schedule, and working weekends and holidays (Tr. 38).

Applicant began working for her current employer, a defense contractor, in January 2006 (Tr. 8). She was granted interim access to classified information from around the time of her employment to October 2007. Her access was withdrawn pending adjudication of the current SOR. Applicant's job does not require her to handle classified information, but she needs access to secured working areas to perform her job. There is no evidence that Applicant has compromised classified information or that she has failed to comply with rules and regulations concerning the protection of classified information.

Applicant's background investigation addressed her financial situation and included her August 2007 response to DOHA interrogatories (GE 2), and the review of credit bureau reports (CBRs) from January 2006 (GE 3), and June 2007 (GE 4). The SOR alleges 16 delinquent/charged off accounts totaling approximately \$37,750. The alleged debts are supported by the government's evidence. At her hearing, consistent with her answers to the SOR and DOHA interrogatories, Applicant confirmed these are her debts and they are still outstanding.

Applicant presented little evidence of efforts taken to pay or otherwise resolve her debts since the day she acquired them. With the exception of the debt alleged in SOR ¶ 1.a, for which she entered into a judgment payment agreement, Applicant presented no documentary evidence of payments made to any creditors. As of the hearing date, she had not made her judgment agreement payment for January. She did not have the money to make the \$125 payment because of the higher cost of utilities during winter (Tr. 44).

Applicant raised numerous factors that could be considered mitigating circumstances that prevented her from paying her debts, i.e., being a single mother of two, inadequate or lack of child support, changing jobs, medical and health problems (10 surgeries from 2000-2007), having to support her two adult daughters and their babies, and her daughter's lack of financial contributions to the household. Applicant was receiving food coupons from her state welfare services, but with the overtime she was making she no longer qualifies for assistance (Tr. 63). Both of her daughters also received assistance from the state. Applicant plans to move back in with her parents, because she is losing her eyesight and will not be able to take care of her home alone (Tr. 61). She presented little or no evidence, other than her testimony, to corroborate her claims.

Applicant claimed her financial problems started in January 2006, when she left her assistant manager job for her current job (GE 2, Tr. 56). However, the CBRs reflect many of her delinquent accounts were open in the early 2000s (GE 3-4). Concerning her medical/health problems, Applicant testified she has lost a total of approximately seven weeks of work as a result of all her surgeries. She received her full salary while on sick leave, and her health care insurance paid for 80% of the medical bills. She did not establish how her health/medical problems affected her ability to pay her debts. Ultimately, she attributed her financial problems to the higher cost of living.

Over 90% of Applicant's delinquent debts alleged in the SOR are for credit card accounts. Approximately 6% of the debts are related to medical bills. Seven of the delinquent debts listed could be considered small debts because the total owed per debt is less than \$1,000. During the last year, Applicant has paid many of her delinquent medical bills by making payments to a collection agency (GEs 3-4). Her plan is to pay her medical bills first, and then pay the remaining delinquent debts using her 2008 income tax refund, and by possibly consolidating the debts (Tr. 54). She claimed she attempted to consolidate her debts once, but she did not have the money to make the payments.

Applicant stated her willingness to pay her delinquent debts, however, at the present she cannot afford to do so (Tr. 59). She also claimed she considered filing for bankruptcy protection, but was afraid doing so would adversely affect her ability to obtain a security clearance (Tr. 60). She presented no evidence, other than her testimony to support her claims. Most of Applicant's delinquent debts are for overdue credit cards she used to buy clothes and household appliances (Tr. 45).

Applicant's supervisor considers her behavior and performance exemplary. She is honest and professional, and has a good disposition. Her supervisor considers her dependable and trustworthy. Because of her performance, Applicant will be entitled to future pay raises that could assist her to overcome her financial problems. Notwithstanding, at the present, her monthly expenses far exceed her monthly income. Applicant is not earning enough to pay for her day-to-day living expenses and her debts.

Applicant presented no evidence of any measures she has taken to avoid future financial difficulties. She did not seek financial counseling because she believes she does not need it (Tr. 77).

Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.²

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 controlling 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."³ 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

² See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ *Egan*, *supra*, at 528, 531.

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

Under Guideline F, the security concern is that an Applicant’s

“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.” AG ¶ 18.

Applicant has 16 delinquent debts, including a judgment, that have been charged off or in collection for many years, totaling approximately \$37,750. AG ¶ 19(a) (“inability or unwillingness to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(c) (“consistent spending beyond one’s means . . .”), apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns. After considering all the mitigating conditions (MC), and the record evidence as a whole,⁴ 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.

⁴ 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.

I specifically considered AG ¶ 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 AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”), and conclude that they apply, but only to a limited extent.

Applicant’s testimony raised mitigating factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts, i.e., she was a single mother of two, received inadequate or no child support, changed jobs, had medical and health problems (10 surgeries from 2000-2007), provided financial support her two adult daughters and their babies, and her daughter’s do not contributed to the household finances.

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 paid debts, settlement agreements, documented negotiations, payment plans, budgets, financial assistance/counseling before, or after receipt of the SOR.

Regarding AG ¶ 20(d), I considered Applicant is paying a judgment, and that she has been paying another debt collector for some of her medical delinquent debts. Notwithstanding, Applicant’s financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility. She failed to establish that circumstances beyond her control contributed to her inability to pay her debts, that she received financial counseling, and that the problem is being resolved or is under control (AG ¶ 20(c)). She also failed to show that she properly disputed the legitimacy of any of the debts (AG ¶ 20(e)). Based on the available evidence, her financial problems are recent, not isolated, ongoing, and are likely to be a concern in the future.

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 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. Applicant is a mature, hard-working woman. She has been successful working as a retail business assistant manager and for a defense contractor. She received a solid recommendation from his current supervisor as a trustworthy and dependable employee. She is a dedicated mother who takes care of her daughters and grandchildren. She has had significant health problems.

Overall, the record evidence fails to convince me of Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial considerations.

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
Subparagraphs 1.a – 1.p:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant’s security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge