



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



In the matter of:)	
)	
)	
SSN:)	ISCR Case No. 07-08502
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: *Pro Se*

May 8, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On December 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 19, 2008, and elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on February 8, 2008. The FORM was mailed to Applicant on February 12, 2008, and it was received on February 14, 2008.

Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional evidence. The case was assigned to me on May 2, 2008.

Findings of Fact

Applicant admitted all of allegations in the SOR except 1.c. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is a 33 years old and has been working for a federal contractor since October 2005. She served in the Army from 1996 to 2005 and was honorably discharged. She is divorced, remarried, and has three children.

Applicant has accounts that have been delinquent starting in 2001 and continuing through 2007.¹ Her total delinquent debt is approximately \$32,000.² Applicant stated that, in September 2007, she set up a payment plan with Consumer Credit Counseling Service (CCCS) to begin paying back some of her delinquent debts, and began making payments in October 2007. She provided a document that lists certain debts included in the plan and a copy of the contract with only her signature.³ She did not provide any proof that she has actually made any payments to the plan or reduced the amount of her delinquent debts.

The following debts are listed on Applicant's plan with CCCS: 1.b, 1.d, 1.e, 1.f, 1.g, 1.j, 1.l, and 1.m. Applicant believes the debt listed in 1.a is her ex-husband's debt and that he is paying it. Applicant disputes the debt in 1.c and stated she has had difficulty getting the creditor to provide her with information about the account. Applicant states the debts in 1.h and 1.k are included in her husband's CCCS account.⁴ Applicant states she is making payments on the debt in 1.i. Applicant has not provided any supporting documents to corroborate any of her assertions.

¹ The debt listed in SOR 1.a was placed for collection in September 1999; 1.b was placed for collection in May 2001; 1.c was placed for collection in 2002; 1.d was placed for collection 2002, 1.e was charged off as a bad debt in June 2002; 1.f was placed for collection in November 2002; 1.g was delinquent for at least 120 days in July 2005; 1.h was charged off as a bad debt in March 2006; 1.i was placed for collection in May 2006; 1.j was placed for collection in June 2006; 1.k was placed for collection in June 2006; 1.l was charged off as a bad debt in February 2007; and 1.m was placed for collection in May 2007.

² Applicant disputes the debt in 1.c stating it belongs to her ex-husband. It is listed on her credit report, but even giving her the benefit of the doubt, her delinquent debts are approximately \$22,000.

³ Item 5.at p. 15.

⁴ Apparently Applicant's husband also has an account with CCCS, but no other amplifying information was provided, except she lists it on her financial statement showing that he is making payments of \$350 to the account.

Applicant's personal financial statement shows she and her husband earn approximately \$8,728 a month, and after expenses they have a remainder of \$3,858 a month. She lists she is making a monthly payment of \$185 to CCCS and her husband is making a monthly payment of \$350 to his CCCS account. She does not list any other payments to creditors.

Applicant provided the following statement with regard to her financial situation: "In the past, I was not able to keep up with financial responsibility because of 'overdoing' it. My husband and I, thankfully make enough together to be able to start fixing our past problems and mistakes. I have every intention of paying these items that are my responsibility and moving forward."⁵ No other information was provided.

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 to be used 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 the applicant or proven by Department Counsel." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

⁵ Item 5 at p. 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 adverse 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. I have considered all of them, especially AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Applicant has delinquent debts dating back as far as 1999 and forward. She has not provided any credible proof that she is making consistent payments towards her debts. I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions. I especially considered 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”), (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”), (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”), and (d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”).

Applicant has numerous delinquent debts and has not provided proof that she is paying them. Applicant provided a document with a list of debts and a proposed payment amount, but failed to prove she has actually been making payments on the plan. Her only explanation for her financial situation is that she was “overdoing” it, presumably meaning spending beyond her means. She and her husband have more than \$3,500 in expendable income each month. Despite this fact, these debts have been delinquent for years. Even if Applicant provided proof she is paying \$185 a month to the creditors listed in the plan, she only recently started the plan. In addition, it does not rise to the level of making a good-faith effort to repay her creditors, because it will take years to repay them, and it does not include all of her creditors. With regard to delinquent debts she claimed are being paid by her ex-husband, she failed to provide documents to substantiate her assertion. Even though Applicant contacted CCCS in September 2007 to address her delinquent debts, this does not negate the years of neglecting her obligation to responsibly pay her bills. Therefore, I find mitigating conditions (a), (b), and (d) do not apply. There is evidence Applicant has a proposed plan with CCCS, but no evidence she has received any type of financial counseling. Hence, I find mitigating condition (c) only partially applies.

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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a long history of not fulfilling her financial obligations. Only recently did she contact CCCS for assistance. She and her husband have considerable expendable income, yet even if she

substantiated her payments, they are minimal at best. I am unable to conclude Applicant has successfully mitigated the security concerns raised. Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from 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.m:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge