



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-09233

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

April 22, 2008

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On September 21, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on November 15, 2007, and requested a hearing. The case was assigned to me on January 2, 2008, and was scheduled for hearing on February 21, 2008. A hearing was held on February 21, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on one witness (herself)

and one exhibit. The transcript (R.T.) was received on February 29, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Appellant requested leave to supplement the record with documentation of the status of her disputed debts (including payment history on those debts she claims to have paid). For good cause shown, Applicant was granted 14 days to supplement the record. Within the time permitted, Applicant supplemented the record with a letter to Department Counsel covering a number of the listed debts and documentation of payments on her creditor 1.h debt (an identified utility debt). Her post-hearing exhibits were admitted and considered.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 12 debts exceeding \$35,000.00. In her response to the SOR, Applicant admitted three of the alleged debts, and denied the remaining three debts.

Findings of Fact

Applicant is a 53-year-old engineering analyst for a defense contractor who seeks a security clearance. As a result of her employer's recent downsizing, she doesn't believe she requires a security clearance anymore (R.T., at 37-38). Still, she signs for packages that could contain classified materials, and to date, her company has not withdrawn its request for her security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant was married for 11 years before divorcing her husband (H) in January 1988 (ex. 1). She has one child (albeit, not from her marriage); a daughter (age 20) who lives at home. Her daughter currently works part time for a doctor and attends a local community college. She hopes to enroll in a four-year college in Fall 2008 (R.T., at 35-36). Applicant has provided financial support for her daughter, who lives at home, and will continue to do so while she attends college.

Applicant struggled financially as a single parent following her divorce in 1988. With little financial support from her daughter's biological father, she filed for disability in 1995 and briefly considered filing for bankruptcy (R.T., at 84-85). The bankruptcy lawyer she consulted with at the time suggested she would be better off addressing her bills individually. She accepted his advice. Over the course of the ensuing 10 years, she accumulated a number of delinquent debts, some during an eight-month period of unemployment following a lay-off in 2003 (R.T., at 36-37).

Applicant incurred seven major debts between 1999 and 2005 that collectively exceed \$14,000.00. She opened a furniture account with creditor 1.b in 2004 and made furniture purchases on this account in the same year. Credit records report a \$757.00 outstanding balance (ex. 2), which Applicant does not dispute (R.T., at 42-43). In 1999, she leased an apartment, which she later vacated. The lessor (creditor 1.c) charged her two months of rent for breaking the lease and reports \$2,398.00 still owing on her 2007 credit report (see exs. 2 and 3). She became indebted, too, to a local bank in 2003 for an overdraft debt, which her credit report lists as unsatisfied in the amount of \$1,066.00, as of August 2007 (creditor 1.a). She acknowledges, too, another overdraft account (creditor 1.e). While she disputes this debt (claiming it was resolved in 2006), it continues to be carried in her 2007 credit report as an outstanding debt (albeit charged off). Afforded an opportunity to supplement the record with payment records, Applicant provides no documentary payment proof (such as payment histories, bank correspondence, canceled checks, and/or deposit slips) to support her payment claims covering either of these overdraft accounts.

Besides her aforementioned debts, Applicant incurred a significant auto loan (creditor 1.j) in connection with a new Mitsubishi vehicle she purchased in August 2000 for \$17,676.00 (see exs. 2 and 3; R.T., at 66-73). Records report that Applicant purchased the vehicle in April 2000 for \$20,377.00 (see ex. 2). She made monthly payments of \$324.00 for about three years; her collective payments exceeded \$12,000.00 (R.T., at 71). Experiencing prolonged unemployment in 2003-2004, she was unable to continue making her payments. Before she returned to work in May 2004 (with her current employer), the lender (creditor 1.j) repossessed the Mitsubishi and sold it at public auction. After crediting her account with the proceeds from the sale of the vehicle, the lender claimed a deficiency balance. This deficiency was reportedly assigned to a collection agent (creditor 1.k) who claims a deficiency balance owing of \$8,775.00 (see ex. 3; R.T., at 73-81). Presumably, the deficiency includes accumulated interest and fees. Applicant did make several unsuccessful attempts to forestall the repossession with a payment arrangement, but the company refused (R.T., at 70). At this time, the deficiency debt remains unsatisfied.

Applicant claims to have paid several of her listed creditors: specifically, her creditor 1.a debt, an overdraft account with \$1,066.00 still owing according to her most recent credit report, (see exs. 2 and 3; R.T., at 42), her lease account with creditor 1.c (see ex. 3; R.T., at 44-48), her listed \$970.00 phone bill with creditor 1.d covering an account opened in 2002 (R.T., at 48-52), her overdraft account with creditor 1.e that she reportedly opened in June 2005, and her utility account with creditor 1.h/1.i.

Afforded an opportunity to supplement the record, Applicant provided very limited documentary support of payment histories with these four contested accounts (e.g., payment histories, bank correspondence, canceled checks, and/or deposit slips). Her post-hearing payment corroboration (see ex. A) covered only her utility debt with creditor 1.h/1.i (accepted as a single account). Without some documented payment of her other accounts (i.e., creditors 1.a, 1.c, 1.d, and 1.e), her payment assurances lack important corroboration.

Addressing the remaining four debts, Applicant admits to two of them: creditor 1.b, reportedly opened in December 2004, and creditor 1.f, reportedly opened 2006. But she offers no plan for resolving either of these debts (R.T., at 42-43, 52-56). With respect to the two remaining listed debts (*i.e.*, creditor 1.g, reportedly opened in 2001, and creditor 1.i, reportedly opened in 2003), she expresses no familiarity with these debts, and for this reason denies any liability for them (R.T., at 54, 66). These creditors are listed, though, in both of her credit reports and reflect collection debts of two unidentified former accounts in her name (see exs. 2 and 3). Afforded an opportunity to provide documented proof of her identification efforts with the credit reporting agencies and/or the creditors themselves, she provided no supplementary proofs.

Applicant nets about \$3,000.00 a month from her work (R.T., at 86-87). Her monthly expenses total \$2,177.00, which leaves her with a net monthly remainder of about \$723.00 (R.T., at 90-91). Applicant assures she is an honest person who has made some bad financial choices, most of them unavoidable, in the past that are hurting her reputation (see ex. A). She provides no budget or other road map, though, to show how she can address any of her unresolved debts with the resources she currently has available to her.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision-making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial, common-sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

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.” See Adjudicative Guidelines (AG), ¶ 18.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common-sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing on the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take into account cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is an engineering analyst for a defense contractor who accumulated a number of delinquent debts over a six-year period spanning 1999 and 2005. Considered together, and without resolution, they raise security significant concerns.

Applicant's finances

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to “indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information” and place the person “at risk of having to engage in illegal acts to generate funds.” See AG, ¶ 18. Applicant's accumulation of delinquent debts and her past failure to address most of them warrant the application of two of the disqualifying conditions (DC) of the

Guidelines for financial considerations: DC 19(a) “inability or unwillingness to satisfy debts” and DC 19©), “a history of not meeting financial obligations.”

Applicant’s debts are attributable in part to her difficult financial circumstances as a struggling single parent and, in particular, an especially difficult stretch for her during a lengthy period of unemployment in 2003-2004. Since she returned to full time employment in 2004, she has been able to demonstrate only minimal progress in resolving her delinquent debts. Several of the debts she disputes; some she claims to have paid, and others she cannot identify.

Despite an opportunity to supplement the record, she has been able to document just one creditor (creditor 1.h/1.l) that she has successfully addressed (in this case, with payment). She provides no documentation to corroborate her disputes, payments, and identity claims with respect to the remaining 11 debts covered in the SOR. Afforded an opportunity to do so, Applicant has not provided any documented proofs of payments, dispute exchanges, or plans for addressing any of her still unresolved debts. Nor has she sought financial counseling to explore other ways of discharging her remaining debts.

Applicant’s explanations for her debts are plausible and reasonable to a degree. They certainly demonstrate financial strains in her household following her divorce, and later during a period of unemployment. Extenuating circumstances sufficient to warrant application of MC 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,” of AG ¶ 18 are sufficiently shown to warrant some application of MC 20(b) of AG ¶ 20.

Applicant seriously disputes most of her listed debts: some for prior payment, and others for lack of familiarity. While claim documentation is lacking with respect to all but her utility debt (*i.e.*, creditor 1.h/1.l), several of her disputed debts are very old and show no activity in the accounts since 2003. For these accounts, regardless of whether they reflect otherwise valid debts owing on Applicant’s credit reports, they may no longer be enforceable under the State’s applicable statute of limitations for written contracts. Debts that appear to be covered by the State’s statute of limitations comprise creditors 1.c (last reported activity in March 2001), creditor 1.d (last reported activity in November 2002), creditor 1.g (last reported activity in May 2001), and creditor 1.l (last reported activity in March 2003).

The state statute of limitations in Applicant’s state for claims based on a written contract is four years See 16.004(a)(3) of T Civ. Prac. and Rem. Code, §§ 16.051 (statute of limitations for contracts and claims not otherwise provided for) and 16.004(a)(3) (statute of limitations for debts). Applicant’s listed debts with creditors 1.c, 1.d, 1.q and 1.l all appear to covered by the State’s statute of limitations, and are treated, as such, as debts that are limitations barred.

While potentially applicable statutes of limitation have not been recognized by our Appeal Board to absorb security risks associated with unresolved delinquent debts. Statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation. They have never been equated with good-faith efforts, though, to repay overdue creditors. See, e.g., ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001)).

Weight, if any, to be assigned to potentially applicable statutes of limitations under the new Guidelines should be considered in light of all the circumstances surrounding the existing debts, and must take account of the Applicant's entire history of demonstrated trust and responsibility. Viewed in this whole person light, the controlling state statute of limitations for written contracts and debts are entitled to be accorded significant mitigation weight in evaluating Applicant's overall financial risk with respect to these specifically covered debts.

Based on Applicant's afforded reliance on her State's four-year statute of limitation to avert enforcement risk with respect to her accorded limitation-barred debts, mitigation credit is available to Applicant. By virtue of the age and non-enforcement status of the debts, MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," has applicability to these specific limitation-barred debts.

With respect to Applicant's remaining unresolved debts, mitigation credit is only partially available based on her proofs. Without any documentation of her payment efforts and disputes concerning these debts, important corroboration is lacking. And while the Appeal Board has never held the lack of corroboration to be dispositive when assessing debt disputes (see ISCR Case No. 02-03186 (App. Bd. Feb. 2006)), it has certainly considered it an important factor in evaluating the intrinsic reliability or weight of evidence. See ISCR Case No. 01 -02677 (App. Bd. October 2002). Not helpful either to Applicant's mitigation efforts is her lack of any demonstrable steps to seek financial counseling. Without more information to demonstrate she is addressing her listed debts and making use of financial counseling, she cannot safely mitigate all of the Government's financial concerns.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Use of a whole person assessment that takes into account all of the facts and circumstances surrounding Applicant's debt accumulations is insufficient to enable

Applicant to surmount security concerns independent of the express disqualifying conditions covered by AG¶ 18. Although many of her debts were accumulated under extenuating circumstances, she has not been able to demonstrate any headway with most of her debts even after she returned to work in 2004. Documented efforts to address her unresolved debts, endorsements, employment history, and other evidence of extenuating circumstances all could have had a bearing on Applicant's demonstrated reliability and trustworthiness. However, the record contains very little probative support of either ongoing extenuating conditions, or efforts to address her remaining debts (excluding creditor 1.h/1.i). Without more, it is difficult to draw convincing conclusions about Applicant's overall trustworthiness based on factors not covered in the mitigation conditions of the guideline for financial considerations.

Taking into account all of the facts and circumstances surrounding Applicant's accumulated debts, Applicant does not mitigate security concerns related to many of her covered debts. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a and 1.b, and sub-paragraphs 1.e, 1.f, 1.j and 1.k of the SOR. Applicant is entitled to favorable conclusions with respect to sub-paragraphs 1.c, 1.d, 1.g through 1.i, and 1.l.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Sub-para. 1.a:	AGAINST APPLICANT
Sub-para. 1.b:	AGAINST APPLICANT
Sub-para. 1.c:	FOR APPLICANT
Sub-para. 1.d:	FOR APPLICANT
Sub-para. 1.e:	AGAINST APPLICANT
Sub-para. 1.f:	AGAINST APPLICANT
Sub-para. 1.g:	FOR APPLICANT
Sub-para. 1.h	FOR APPLICANT
Sub-para. 1.i:	FOR APPLICANT
Sub-para. 1.j:	AGAINST APPLICANT
Sub-para. 1.k:	AGAINST APPLICANT
Sub-para. 1.l:	FOR APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge