



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



In the matter of:)	
)	
)	ISCR Case No. 07-10514
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro Se*

July 30, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by her financial history. Eligibility for access to classified information is denied.

On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the 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 April 25, 2008, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on May 9, 2008. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file

objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 16, 2008. She responded with an undated letter. Department Counsel did not object to her response. I received the case assignment on July 21, 2008. I have marked Applicant's response as Exhibit (Ex.) A, and it is admitted.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. She has worked for the same company since 2002. She worked for the company at one location from 2002 through 2004. She was unemployed for a month and then was rehired by the company at a different location in 2004. She has worked there since. Applicant was married, but divorced in 1997. She has not remarried. She has three children, ages 26, 22, and 19.¹

Applicant incurred a substantial amount of debts, including unpaid accounts, judgments, and a tax lien. The SOR alleges 16 delinquent debts. Applicant admitted to eight of the debts. She stated that four of the debts were duplicates of other alleged debts. She indicated that three of the debts were paid. She stated that she did not recognize nor have an account with the creditor listed in one allegation.²

Applicant admitted owing the debts in SOR ¶¶ 1.a through 1.f, 1.i, and 1.p. The debts total \$44,841, which include a judgment against her by a credit card company for \$7,083. There is no evidence that any of these debts have been paid.³

Applicant stated that the debts alleged in SOR ¶¶ 1.g and 1.h reflect the same debts as alleged in SOR ¶¶ 1.c and 1.d. After reviewing the evidence, I find that Applicant is correct and ¶¶ 1.g and 1.h are duplicates of ¶¶ 1.c and 1.d.⁴

Applicant further stated that the debts alleged in SOR ¶¶ 1.j and 1.k are the same debts as alleged in SOR ¶ 1.b. SOR ¶¶ 1.j and 1.k both reflect a credit card debt of the same amount, \$6,365. The credit report of January 9, 2007, which lists the debt to this creditor, only lists this debt once. Clearly ¶¶ 1.j and 1.k are duplicates. The debt alleged in SOR ¶ 1.b is to a collection agency, collecting on behalf of the bank that issued the credit card as alleged in ¶¶ 1.j and 1.k. After reviewing the evidence, I find that ¶¶ 1.j and 1.k are duplicates of each other and of ¶ 1.b.⁵

Applicant denied owing the debt alleged in SOR ¶ 1.l for \$2,809. She did not recognize the collection company named in the allegation. A review of the credit report of January 9, 2007, shows this collection company collecting for the bank that obtained

¹ Ex. 4.

² Ex. 3.

³ *Id.*

⁴ Ex. 3, 5-8.

⁵ *Id.*

a judgment against Applicant, as alleged in SOR ¶ 1.o. I find that ¶ 1.l is a duplicate of 1.o.⁶

SOR ¶ 1.m alleges a state tax lien filed against Applicant for \$3,206. She denied owing this debt and stated the lien was released in 1997. She provided detailed information, including the book and page number where the lien release is recorded. She further stated: "If you need to see a copy of the lien release, please let me know and I will leave work early one day and retrieve a copy." I am satisfied that this tax debt was paid and the lien released.⁷

Applicant stated that the judgment against her for \$6,374, as alleged in SOR ¶ 1.n, was paid through a garnishment of her wages. Her documents establish that this judgment was paid through a garnishment, with the last payment in July 2005.⁸

Applicant also stated that the judgment against her for \$2,839, as alleged in SOR ¶ 1.o, was paid through a garnishment of her wages. The documents she submitted show that a separate judgment for a different bank was paid through garnishment. There was no documentation that the judgment in ¶ 1.o was paid.⁹

Applicant attributed her financial problems to "a horrible divorce where [her] ex-husband put [her] through hell for years and [she] was left to raise three beautiful children." She stated that she incurred "huge lawyer and accountant fees that pushed [her] to this level of debt." She also stated on her security clearance application, "I was very irresponsible with my money and have learned a valuable lesson." She has ruled out bankruptcy because she wants to pay her debts. She stated that she was "seeking debt management options on how to pay this debt back," and that she plans "to slowly pay everything back that [she owes]."¹⁰

Applicant has a clean criminal record. She stated that she has received only one speeding ticket in her life, and that was 30 years ago.¹¹

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

⁶ Ex. 3, 6.

⁷ Ex. 3.

⁸ Ex. 3, 5-8.

⁹ *Id.*

¹⁰ Ex. 3, 4, A.

¹¹ Ex. 4, A.

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, Administrative Judges apply the guidelines 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.

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 under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay her obligations for a period of time. The evidence is sufficient to raise both of these potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant still owes most of the debts alleged in the SOR. AG ¶ 20(a) is not applicable. She went through a bad divorce, raised three children, and had some periods of unemployment. However the divorce was final in 1997, and she has been

steadily employed since 2004. She also admitted that she was very irresponsible with her money. Applicant did not submit sufficient information to warrant the full benefit of AG ¶ 20(b).

There is no evidence that Applicant received counseling for her financial problems. Other than the tax lien that was paid and released in 1997, the only debts that have been paid have been through garnishment of her wages. Based upon all the evidence, I am unable to make an affirmative finding that those payments are sufficient to constitute a “good-faith effort” to repay her overdue creditors or otherwise resolve her debts. I also do not find that there are clear indications that her problem is being resolved or is under control. AG ¶¶ 20(c) and 20(d) are not applicable. AG ¶ 20(e) is applicable to the debts that are duplicates, as discussed in the Findings of Fact.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a clean criminal record, but she has a substantial amount of delinquent debt. She owes more than \$46,000 in consumer debt and unpaid judgments. She wants to pay her debts, but at this time she has no clear plan on how that would be accomplished.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the Financial Considerations security concerns.

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.f:	Against Applicant
Subparagraphs 1.g-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j-1.m:	For Applicant
Subparagraphs 1.o-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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge