



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



In the matter of:)
)
) ISCR Case No. 07-11826
)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esq., Department Counsel
Paul DeLaney, Esq., Department Counsel
For Applicant: *Pro Se*

May 14, 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 January 16, 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 February 8, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on April 1, 2008. DOHA issued a notice of hearing on April 2, 2008. I convened the hearing as scheduled

on April 24, 2008. The Government offered Exhibits (GE) 1 through 5, which were received without objection. Department Counsel also submitted a graph summarizing the debts in the SOR and which exhibits support each allegation. Applicant did not object and the summarization was accepted as Hearing Exhibit (HE) I. Applicant testified on her own behalf, called three witnesses, and submitted Exhibits (AE) A through D, which were received without objection. I granted Applicant's request to keep the record open until May 8, 2008, to submit additional matters through Department Counsel. Applicant submitted six pages of documents which were marked AE E through I, and admitted without objection. Department Counsel's memo is marked HE II. The record closed on May 8, 2008. DOHA received the transcript of the hearing (Tr.) on May 1, 2008.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b, 1.c, 1.g, 1.j, 1.k, 1.n, and 1.r. She denied the remaining allegations.

Applicant is 33 years old. She is on unpaid leave from her defense contractor employer pending the outcome of her security clearance determination. She is attending college. She is married with two children, ages ten and four, and she has a 19-year-old stepdaughter.¹

Applicant and two younger siblings were raised by a struggling single parent. Her mother started putting utility bills in Applicant's name before she was an adult. Applicant served in the U.S. Army from 1993 through 2000. She was honorably discharged on the basis of parenthood. The father of her child paid Applicant \$300 per month without a court order. She finally obtained a court order in March 2007, directing the father to pay \$513 per month and an additional \$25 per month against arrears of \$2,289. Between about 1997 and 1999, her mother had a type of breakdown and was unable to care for Applicant's two younger siblings. Applicant began paying her mother's rent payments. Eventually both younger siblings came to live with her. Her mother was a compulsive gambler and would gamble her money away. Her mother continued to put utility accounts in Applicant's name without her permission and then let the bills become delinquent. Her mother was eventually incarcerated for theft. Applicant helped pay her mother's bail and legal bills. She chose not to prosecute her mother for identity theft.²

Applicant has been unemployed a number of times over the last seven years. She also helped pay her stepdaughter's college tuition. She and her husband were married in the fall of 2007. Her husband took out loans of about \$6,000 to pay for the wedding and he had about \$4,000 saved which paid for the honeymoon.³

¹ Tr. at 7, 75-79; GE 1.

² Tr. at 41, 75-79; GE 1, 5; AE A-D.

³ Tr. at 88-89; GE 1, 5.

The SOR lists 25 delinquent debts totaling about \$38,600. Applicant admitted to owing seven debts totaling approximately \$20,600. Individual debts are discussed below.

SOR ¶¶ 1.a and 1b list judgments of \$5,980 and \$6,801 to the same financial institution, awarded against Applicant in about September 2006. SOR ¶ 1.q lists a debt of \$5,105 to the same financial institution for a car voluntarily repossessed in 2002. Applicant admits the judgment of \$6,801, but denies the other two allegations stating they all represent the same debt. Applicant stated the car was a lemon and she asked the finance company to repossess it. After considering all the evidence, I am satisfied that the three allegations represent one debt.⁴

Applicant admitted owing the medical debt of \$212 as alleged in SOR ¶ 1.c. This debt was incurred when Applicant was in a car accident and signed for the medical care of her husband's daughter. The accident occurred in January 2005, before Applicant married the girl's father. The stepdaughter received \$700 from the insurance company. The money was used to pay for the girl's prom and fees for her senior year in high school. She told Applicant that she would pay her the money back once she started working. She is no longer living with Applicant and her husband. She did not pay Applicant and Applicant has not paid the debt.⁵

Applicant admitted owing the debt alleged in SOR ¶ 1.d of \$145 to a company collecting on behalf of the university where Applicant attends college, but she stated it is not delinquent because the debt is in forbearance. She submitted a forbearance request which was dated December 13, 2007.⁶

SOR ¶ 1.e alleges a debt of \$181 to a company collecting on behalf of a telephone company. Applicant denied owing the debt. She stated she paid a deposit of \$250 on her telephone account and it was used to pay her final bill. She submitted no documentation on this debt at the hearing. She was asked to contact the creditor and submit a copy of her final bill from the creditor. She did not address this debt in her post-hearing submission. She admitted owing the debt of \$338, as alleged in SOR ¶ 1.g, to a different collection company collecting on behalf of the same telephone company. She has not made any payments on this debt. She denied owing the debt alleged in SOR ¶ 1.u of \$71, to the same collection company collecting on behalf of the same telephone company. She stated this debt is the same account as that listed in SOR ¶ 1.g. A debt of \$72 to a different collection company collecting on behalf of the same telephone company is alleged in SOR ¶ 1.y. Applicant testified this was an account from her mother's state and was opened by her mother without her authorization. The \$71 and \$72 debts do not appear on the two most recent credit reports in evidence.⁷

⁴ Tr. at 24-25, 33, 42-45; Applicant's Answer to SOR; GE 1-5.

⁵ Tr. at 45-49; Applicant's Answer to SOR; GE 3, 4; AE G.

⁶ Tr. at 25-26, 49-50; Applicant's Answer to SOR; GE 3, 4; AE H.

⁷ Tr. at 51, 54, 60, 67; Applicant's Answer to SOR; GE 2-4.

Applicant denied owing the medical debt of \$74, as alleged in SOR ¶ 1.f. The name of the creditor is not listed in the SOR, or on the credit reports submitted in evidence. Applicant stated she has no idea who the debt is owed to or what it is for.⁸

Applicant stated that the debt of \$242 to a company collecting on behalf of a check cashing company, as alleged in SOR ¶ 1.h, was paid by a friend. Her friend testified that she paid this debt in about 2002, and Applicant repaid her.⁹

SOR ¶ 1.i lists a medical debt of \$934, assigned to a collection company. Applicant testified this debt occurred when she was in the Army and she was injured in training in 1994, and taken to the hospital in an ambulance. The military would be required to pay her medical bills while she was on active duty. She stated she attempted to have this resolved for more than a decade and that her credit counseling company will work on having it removed from her credit report. Applicant testified that the debt of \$196 to the same collection company, as alleged in SOR ¶ 1.l represents the same debt with tacked on fees. She further testified that the medical debt of \$772, as alleged in SOR ¶ 1.o also represents the same debt. The name of the creditor is not listed in the SOR, or on the credit reports submitted in evidence. The credit report of February 1, 2007, states the debt is for “dentists.” Applicant submitted no documentation on these debts. She admitted that she owed the \$36 medical debt alleged in SOR ¶ 1.k.¹⁰

Applicant admitted owing the debt of \$336 to a department store, as alleged in SOR ¶ 1.j. She stated payments on this debt are coming out of her account. She was asked to provide documentation of the payments after the hearing. She did not address this debt in her post-hearing submission. She also admitted that she owed the \$428 debt to a telephone company as alleged in SOR ¶ 1.n.¹¹

The debt of \$239, as alleged in SOR ¶ 1.m is to a gas utility in the city in which Applicant’s mother lives. The city is in a different state than where Applicant resides. Applicant stated this is one of the utilities that her mother put in her name without her permission.¹²

SOR ¶ 1.p is a debt of \$2,197 owed to the Department of Veterans Affairs. The debt was paid in February 2008, by a withholding from Applicant’s federal income tax refund.¹³

⁸ Tr. at 52-54; Applicant’s Answer to SOR; GE 3, 4.

⁹ Tr. at 26-27, 96-98; Applicant’s Answer to SOR; GE 2-4.

¹⁰ Tr. at 27-31, 56-57; Applicant’s Answer to SOR; GE 2-5.

¹¹ Tr. at 55-56; Applicant’s Answer to SOR; GE 2-4.

¹² Tr. at 31, 57-59; Applicant’s Answer to SOR; GE 1-5.

¹³ Tr. at 31-33; Applicant’s Answer to SOR; GE 2-4; AE I.

Applicant admitted owing the debt of \$12,466 to a financial institution after an automobile repossession, as alleged in SOR ¶ 1.r. She stated she signed the car loan in the initial amount of about \$24,000, which included financing costs, for her mother's car. Her mother paid on the loan with her Social Security payments until she was arrested and could not make the payments. Applicant stated she thought if her mother had a car that she might not have the need to shoplift, which is how her mother funded her gambling.¹⁴

SOR ¶¶ 1.s and 1.t list debts of \$270 and \$194 to a company collecting on behalf of a cable provider. Applicant disputed owing these debts. She stated the debts were for a cable box that was returned to the cable provider. The debts are listed on the credit report of February 1, 2007, but not the more recent credit reports in evidence. SOR ¶ 1.x lists a debt of \$428 to the same cable provider through a different collection company. This debt is listed on the credit report of September 14, 2004, submitted by Applicant with her response to Interrogatories, and on the credit report of February 1, 2007. It is not listed on the two recent credit reports in evidence.¹⁵

SOR ¶ 1.v lists a debt of \$238 to a financial institution. SOR ¶ 1.w lists a debt of \$654 to a different financial institution. Applicant denied owing these two debts. She stated that these were government loans that were recouped from her federal income tax refunds. When questioned further, Applicant stated they were not government loans, but they were loans that were provided only to military members and the service members sign authorizations for the companies to debit their accounts. Applicant was provided the opportunity to submit documentary proof that these debts were paid through her income tax refunds. She submitted a document from the Department of the Treasury showing offsets of \$319 and \$187 in 2004 and 2005. The document references the Defense Finance and Accounting Service (DFAS). The credit report of September 14, 2004, submitted by Applicant with her response to Interrogatories, lists a delinquent debt of \$157 to DFAS. There is nothing to show that the offsets were for private commercial loans, as opposed to a government obligation. The debts do not appear on the two recent credit reports in evidence. The debts are old and would not be expected to continue to be reported after seven years. Applicant's testimony that the debts were paid from her income tax refunds is not credible. There was no credible evidence presented that these debts were paid.¹⁶

Applicant met with an individual in 2004, who described himself as a "credit counselor." His fee was \$2,500. She could not afford that much. She consulted with another individual who presented himself as a bankruptcy attorney. She paid him \$250 to start the process of declaring bankruptcy. He was not an attorney and she eventually received part of her money back. She recently contacted a credit counseling service that will assist Applicant in removing items from her credit report. They also provide

¹⁴ Tr. at 34-39; Applicant's Answer to SOR; GE 2-4.

¹⁵ Tr. at 60-62, 66-67; Applicant's Answer to SOR; GE 2-5.

¹⁶ Tr. at 62-66; Applicant's Answer to SOR; GE 2-4; AE I.

counseling services. She paid \$600 to this company. She is unable to do anything while she is unemployed, but her plan is to consolidate any debts not removed from her credit report and pay \$600 per month to the company to pay her debts.¹⁷

Applicant's witnesses testified that they have never known her to do anything illegal or immoral. She is described as frugal and not someone living beyond her means. She is very willing to help others. They believe she is trustworthy and a good person.¹⁸

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, 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

¹⁷ Tr. at 23-24, 41-42, 69-72, 80, 103-106; GE 5.

¹⁸ Tr. at 82-86, 95-96, 99.

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 a large amount of delinquent debt. This continues to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Much of Applicant's financial problems are related to her mother, who is a compulsive gambler and a thief. Applicant was forced to care for her two younger siblings. She has gone through periods of unemployment. These conditions were beyond her control. She signed for a loan for about \$24,000 for a car for her mother, while knowing that her mother was a compulsive gambler. She has also made no attempt to pay even the smallest of the debts in the SOR. She did not act responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has received financial counseling. There are not clear indications that her financial problems are being resolved or under control. AG ¶ 20(c) does not require both; it only requires one or the other. AG ¶ 20(c) is applicable.

The only debt that was paid by Applicant was the debt owed to the Department of Veterans Affairs, which was involuntarily withheld from Applicant's federal income tax refund. Her friend paid one debt in 2002, and then was repaid by Applicant. That is insufficient information to establish that Applicant showed good faith in the resolution of her debts. AG ¶ 20(d) is not applicable.

Applicant submitted sufficient evidence that her mother opened accounts in her name without her permission. AG ¶ 20(e) is applicable to the debts in SOR ¶¶ 1.m and 1.y. She stated that several medical debts were related to when she was on active duty in the military in 1994, and some were duplicates. She did not provide any documentation to substantiate her claim. I will credit Applicant with the potential duplicates, but I am unable to find AG ¶ 20(e) applicable to all her medical debts. The name of the creditor for the medical debt in SOR ¶ 1.f. is not listed in the SOR, or on the credit reports submitted in evidence. Applicant disputed owing that debt stating she had no idea who the debt was supposedly owed to. AG ¶ 20(e) is applicable to that medical debt. Applicant disputed owing a cable provider for the return of a cable box. The debts

to that cable provider are not listed on the two most recent credit reports in evidence. AG ¶ 20(e) is applicable to the debts in SOR ¶¶ 1.s, 1.t, and 1.x.

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's difficulties started even before she became an adult. Her mother is a compulsive gambler and a thief, leaving Applicant to take care of her two younger siblings. She also paid many of her mother's legal fees associated with her various arrests. Additionally, she has been unemployed on several occasions. I also considered her honorable service in the U.S. Army and her very favorable character evidence. However, she made some questionable decisions such as signing for the loan of \$24,000 for a car for her mother and she has made no real effort to repay even her small debts.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial issues.

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:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant

Subparagraphs 1.d-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraphs 1.o-1.q:	For Applicant
Subparagraph 1.r:	Against Applicant
Subparagraphs 1.s-1.u:	For Applicant
Subparagraphs 1.v-1.w:	Against Applicant
Subparagraphs 1.x-1.y:	For 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