



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



In the matter of:)	
)	
)	ISCR Case No. 07-12195
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

July 24, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted her electronic Questionnaire for Investigations Processing (e-QIP), on February 6, 2006. (Item 4) On March 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for financial considerations under Guideline F. (Item 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 in writing on April 15, 2008, admitting all of the allegations. She elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 6, 2008. Applicant received a complete file of relevant material (FORM) on May 15, 2008, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM or provide additional material. The case was assigned to me on July 7, 2008.

Based on a review of the case file and pleadings, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 56 years old and has been a senior administrative secretary for a defense contractor for over three years. She has been divorced for over 14 years after 24 years of marriage. She has three children, none living at home. A personal financial statement of November 12, 2007, provided by Applicant in response to Interrogatories, shows a monthly income of \$3,123, monthly expenses of \$2,358, leaving a monthly remainder of \$765. Applicant's pay statement shows that she earned over \$60,000 in 2007. (Item 6)

The SOR lists 13 delinquent debts totaling approximately \$22,325. These debts include a medical collection account for \$149 (SOR 1.a); a collection account for a credit card for \$2,547 (SOR 1.b); a collection account for \$1,103 (SOR 1.c); a telephone account in collection for \$100 (SOR 1.d); a telephone collection account for \$207 (SOR 1.e); a credit card debt in collection for approximately \$3,000 (SOR 1.f); another credit card account charged off for \$1,733 (SOR 1.g); a charged off credit card account to the same creditor for \$1,873 (SOR 1.h); a charged off credit card debt for \$2,089 (SOR 1.i); a car repossession debt charged off for \$7,801 (SOR 1.j); a charged off credit card account for \$982 (SOR 1.k); a utility account charged off for \$96 (SOR 1.l); and a state tax lien for \$645 (SOR 1.m). Applicant filed for Chapter 13 bankruptcy in May 1996 (SOR 1.n), which was dismissed in April 1997 (SOR 1.o). (See, Item 7, Credit Report, dated February 27, 2008; Item 8, Credit Report, dated October 14, 2007; and Item 9, Credit Report, dated March 7, 2006)

In response to interrogatories, Appellant noted that she was not actively engage in her bankruptcy action. She just wanted to resolve her debts and followed the advice of her attorney. Her state tax lien was to be included in the bankruptcy but was not included. In any event, the debts were not discharged in bankruptcy because the petition was dismissed. Applicant also noted when she moved in November 2001, she took a 15% pay cut. There is no information on why Applicant moved or why she had to take a pay cut. There is no information how the pay cut caused her financial problems. She also was unemployed for nine months in 2004. Applicant did not make the required car payment and the car was repossessed. She did not make payments on her credit cards accounts. She stated she would try to make some payments on some of the smaller debts.

In response to the SOR, Applicant noted that the SOR reflects problems with her past finances and she has a responsibility to satisfy her obligations. She had no documentation or information to present that would be useful or show payment of debts. (Item 3) However, there is information that the telephone debt listed at SOR 1.d was paid. Some of her creditors also offered her settlement agreements but she did not indicate she took advantage of the offers. (Item 6) Applicant provided no other information.

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 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 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 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.

Analysis

Financial Consideration:

Under financial considerations, 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) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An Applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶19(a) (inability or unwillingness to satisfy debts); FC DC ¶ 19(b) (indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt); FC DC ¶ 19(c) (a history of not meeting financial obligations); and FC DC ¶19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis). Applicant accumulated delinquent debts because of an unwillingness to pay her financial obligations. The debt total has risen over the years with no indication of any attempt to pay the debts. The debts appear to be for normal consumer items which indicate she may be spending beyond her means.

I considered Financial Considerations Mitigating Conditions (FC MC) ¶ 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) and it does not apply. Almost all of the delinquent debts have not been addressed by Applicant, and they have not been paid so they are current debts. There are a number of delinquent debts from various sources so they are not infrequent. The debts seem to be ordinary credit card debts, telephone bills, department store accounts, or loans. There is no evidence they were incurred under unusual circumstances. Since the debts are current and not paid, they cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

I considered FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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). Applicant claims a nine month period of unemployment as well as a pay cut when she moved. However, she presented no information on how or why these events impacted her ability to pay her debts. In fact, since she has been gainfully employed by her present contractor for almost four years, there has been no attempt to pay past due obligations indicating that she is not trying to resolve her indebtedness. She did not establish she acted responsibly under the circumstances, so the mitigating condition does not apply.

I considered FC MC ¶ 20(a) (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). Applicant presented no information of financial counseling, so this mitigating condition does not apply.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant presented no information to show she has a plan to pay the debts or any action that she has taken to pay her debts. Applicant has sufficient income to pay her delinquent debts but has not attempted to do so. Her salary for 2007 was over \$60,000, and she has a net remainder each month of over \$756 that could be used for debt reduction. The only indication of any debt being paid is the one telephone debt which seems to be resolved. Bankruptcy is a legal and permissible means of resolving indebtedness. However, the circumstances of the bankruptcy action can be examined to determine any security significance. The filing of the bankruptcy action in itself does not create a security concern. However, the fact Applicant did not participate in the process, and did not complete the action and it was dismissed is another indication of her irresponsible and indifferent attitude towards her finances. There is no indication Applicant acted responsibly towards her debts or that the situation is under control. In fact, the opposite seems to be true, her finances are not under control and she has not acted responsibly. The indication is that she just did not pay her debts, and the debts continued to accumulate. There is no indication of a good faith effort to pay creditors or resolve debts. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

“Whole Person” Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant has not taken action to resolve her past due debts. Her indifferent attitude and lack of actions shows she is not trustworthy, responsible, or exercises good judgment. Applicant has been irresponsible towards her delinquent debts and financial obligations. This is an indication that she might be irresponsible towards the protection and handling of classified information. I conclude Applicant has not mitigated the security concerns arising from her finances and personal conduct. Clearance is denied.

Formal Findings

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge