



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-13685
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Edmunds, Esq., Department Counsel
For Applicant: *Pro se*

July 24, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her security clearance application on May 3, 2007. On April 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline F. 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 acknowledged receipt of the SOR on April 9, 2008; answered it on April 10, 2008; and requested a decision on the record without a hearing. Department Counsel submitted the government's written case on April 29, 2008. On April 30, 2008, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's evidence. Applicant received the FORM on May 8, 2008. She did not respond. The case was assigned to me on July 7, 2008.

Findings of Fact

In her answer to the SOR, Applicant admitted all the allegations in the SOR. Her admissions in her answer to the SOR are incorporated in my findings of fact.

Applicant is a 41-year-old switchboard operator working at a U.S. Air Force base as an employee of a defense contractor. She is married and has a 16-year-old son. She was a self-employed cosmetologist from February 1985 to September 2006, and an employee of a federal contractor from September 2006 until April 2007, when she began her current position. She has never held a security clearance.

After Applicant was involved in an automobile accident, she began accumulating numerous delinquent medical bills. The record does not indicate the date of the accident, the severity of her injuries, the extent of her medical insurance coverage, or the impact on her ability to work. The credit reports reflect that the medical bills were reported between August 2002 and August 2005, when she was self-employed. In her answer to the SOR, Applicant attributed all her delinquent accounts to being overwhelmed with medical bills. However, the record does not reflect the relationship, if any, between her medical bills and other delinquent debts such as the bad check (SOR ¶ 1.j), satellite TV account (SOR ¶ 1.l), credit card account (SOR ¶ 1.m), cable TV bill (SOR ¶ 1.q), and the various collection accounts and judgments alleged in the SOR.

Applicant filed a petition for Chapter 13 bankruptcy in December 2007, solely in her name. She had made three payments to the bankruptcy trustee at the time the SOR was issued. The record does not reflect what actions, if any, Applicant took to resolve her debts before filing for bankruptcy. It does reflect, however, that she received the counseling required by the bankruptcy court on November 7, 2007 (GX 6 at 5).

In her bankruptcy petition, Applicant reported her net monthly income as \$3,210.33 and her spouse's as \$1,917.29, totaling \$5,127.62 (GX 6 at 27). She reported total monthly expenses of \$4,916.95 for the family, leaving a net remainder of \$210.67. The family expenses include a "Spouse's Monthly Chapter 13 Payment" of \$469.95 (GX 6 at 28). Applicant is required to pay \$210 per month to the bankruptcy trustee (GX 6 at 1). As of April 18, 2008, she had made three \$210 payments to the trustee, the last on March 31, 2008, a few days before the SOR was issued (GX 7 at 2).

The evidence concerning the debts alleged in the SOR is summarized in the table below.

SOR	Debt	Amount	Status	Evidence
1.a	Medical	\$1,782	Included in bankruptcy	GX 5 at 1; GX 6 at 24
1.b	Medical	\$559	Included in bankruptcy	GX 5 at 1-2; GX 6 at 24
1.c	Medical	\$836	Included in bankruptcy	GX 5 at 2; GX 6 at 24
1.d	Medical	\$1,682	Same debt as 1.a	GX 5 at 3; GX 6 at 24
1.e	Medical	\$806	Same debt as 1.c	GX 5 at 3; GX 6 at 24
1.f	Medical	\$530	Same debt as 1.b	GX 5 at 3; GX 6 at 24
1.g	Medical	\$432	Included in bankruptcy	GX 5 at 3; GX 6 at 23
1.h	Medical	\$100	Included in bankruptcy	GX 5 at 3; GX 6 at 23
1.i	Medical	\$263	Not in bankruptcy petition	GX 5 at 3
1.j	Bad check	\$372	Included in bankruptcy	GX 5 at 1; GX 6 at 24
1.k	Collection	\$127	Included in bankruptcy	GX 5 at 3; GX 6 at 23
1.l	Satellite TV	\$110	Included in bankruptcy	GX 5 at 3; GX 6 at 22
1.m	Credit card	\$1,290	Included in bankruptcy	GX 5 at 4; GX 6 at 22
1.n	Collection	\$210	Included in bankruptcy	GX 8 at 6; GX 6 at 23
1.o	Collection	\$1,632	Same debt as 1.d	Department Counsel's Submission
1.p	Collection	\$558	Included in bankruptcy	GX 8 at 11; GX 6 at 24
1.q	Cable TV	\$325	Included in bankruptcy	GX 8 at 12; GX 6 at 22
1.r	Judgment	\$4,735	Included in bankruptcy	GX 8 at 4; GX 6 at 23
1.s	Judgment	\$547	Included in bankruptcy	GX 8 at 4; GX 6 at 23

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The SOR alleges 17 delinquent debts and two unpaid judgments totaling about \$16,835. Nine debts are identified as medical bills. Only one debt, the medical bill alleged in SOR ¶ 1.i, is not listed in Applicant’s Chapter 13 bankruptcy petition.

The evidence indicates that the debts alleged in SOR ¶¶ 1.d, 1.e, 1.f, and 1.o are duplicates of other debts alleged in the SOR. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at

3 (same debt alleged twice). Accordingly, I resolve SOR ¶¶ 1.d, 1.e, 1.f, and 1.o in Applicant's favor.

The concern under this guideline is set out in AG ¶ 18 as follows:

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.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. AG ¶ 19(a) is raised where there is an "inability or unwillingness to satisfy debts." AG ¶ 19(b) is a two-pronged condition that is raised where there is "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." AG ¶ 19(c) is raised when there is "a history of not meeting financial obligations." AG ¶ 19(e) is raised when there is "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's financial history raises AG ¶¶ 19(a), (c), and (e); however, AG ¶ 19(b) is not raised because there is no evidence of "frivolous or irresponsible spending."

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), 19(c) and 19(e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that "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." AG ¶ 20(a). This is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was "so long ago," or "so infrequent," or "occurred under such circumstances that it is unlikely to recur." If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct "does not cast doubt on the individual's current reliability, trustworthiness, or good judgment."

The first two prongs ("so long ago" and "so infrequent") are not established because Applicant's delinquent debts are ongoing and numerous. The evidence is too sparse to show the debts occurred under such circumstances that they are unlikely to

recur. The record reflects that Applicant incurred medical bills as a result of a car accident while she was self-employed, but it does not reflect whether she had insurance in her own right or through her spouse's employment. It does not reflect Applicant's overall financial situation at the time the bills were incurred, the impact of the car accident on her ability to work, the attempts she made to resolve the medical bills, and the relationship between her medical bills and the other debts alleged in the SOR. Similarly, the absence of evidence showing her response to her medical debts makes it impossible to determine whether her conduct casts doubt on her currently reliability, trustworthiness, or good judgment. Applicant has not carried her burden of establishing AG ¶ 20(a).

Security concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(b). Both prongs, i.e, conditions beyond the persons's control and responsible conduct, must be established. While the car accident and resulting medical bills were a condition beyond Applicant's control, there is no evidence on the issue whether she responded to that condition responsibly. Applicant has not carried her burden of establishing this mitigating condition

Security concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(c). This mitigating condition also has two prongs that may be either disjunctive or conjunctive. If the person has received counseling, it must also be shown that there are clear indications the problem is being resolved or under control. However, if the person has not received counseling, this mitigating condition may still apply if there are clear indications that the problem is being resolved or under control.

The only counseling reflected in the record was required by the bankruptcy court. It is too soon to determine whether Applicant will adhere to the required payment plan and resolve her financial problems. I conclude she has not carried her burden of establishing this mitigating condition.

Security concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Bankruptcy is a legally permissible means of resolving financial problems, but it does not necessarily establish the "good-faith effort" contemplated by AG ¶ 20(d). See, e.g., ISCR Case No. 03-25086 at 3 (App. Bd. Jun. 22, 2005); ISCR Case No. 01-26675

at 3 (App. Bd. Jun. 13, 2003; ISCR Case No. 98-0445 at 3 (App. Bd. Apr. 2, 1999). A Chapter 13 plan for repaying debts, instead of a Chapter 7 petition for discharge of those debts, tends to show good faith. In this case, however, there is an absence of evidence showing Applicant's efforts, if any to resolve the debts before filing for bankruptcy, or relationship between her medical debts and the non-medical debts alleged in the SOR. Too little time has elapsed to establish a track record of complying with the Chapter 13 payment schedule. Applicant has not carried her burden of establishing this mitigating condition.

Whole Person Concept

Under the whole person concept, an 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. 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) 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.

The record in this case is very sparse. It reveals little about Applicant's background and reputation, the circumstances leading to her financial difficulties, and her responses to those difficulties. The responsibility for the absence of evidence falls largely on Applicant, who has the burden of demonstrating her suitability for a security clearance. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1. Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant
Subparagraphs 1.g-1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p-1.s:	Against Applicant

Conclusion

In light of all of the circumstances, 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.

LeRoy F. Foreman
Administrative Judge