



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 07-13788
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esq., Department Counsel
For Applicant: *Pro se*

September 26, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns pertaining to Financial Considerations. Clearance is denied.

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-Qip), on September 21, 2006. On April 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) for Applicant. 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 29, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on June 2, 2008, and I received the case assignment on June 10, 2008. DOHA issued a

notice of hearing on June 18, 2008, scheduling the hearing for July 16, 2008. On July 10, 2008, Applicant requested a continuance for medical reasons. On July 15, 2008, DOHA issued an amended notice of hearing, rescheduling the hearing for August 20, 2008. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 3, which were received without objection. The Government also submitted a Government's Exhibit List, which was marked as Exhibit (Ex.) I. Applicant did not offer any exhibits, and testified on her own behalf. I held the record open until August 29, 2008 to afford the Applicant an opportunity to submit additional material. The Applicant did not submit any post-hearing materials. DOHA received the hearing transcript (Tr.) on September 2, 2008.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a., 1.d., 1.f., 1.h., 1.j. – 1.o., and 1.q. She denied SOR ¶¶ 1.b., 1.c., 1.e., 1.g., 1.i., and 1.p. She claimed the debt listed in SOR ¶ 1.g. was the same debt as listed in SOR ¶ 1.a. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 30-year-old contract analyst, who has worked for her defense contractor employer since October 2004. She is a first time applicant for a security clearance. GE 1, Tr. 12-14.

Applicant finished the 10th grade, and was awarded a GED in October 1998. She estimates she has earned 20 college credit hours, and hopes to earn a bachelor of science degree in business. GE 1, Tr. 15-16. Applicant has never married and has a 15-year-old son. She is the sole source of support for her son. Her son's father is in prison and is not eligible for parole until 2031. GE 1, Tr. 12-13, 23.

Applicant's background investigation addressed her financial situation and included among other things the review of her September 2006 e-QIP, her November 2007 Signed Response to Interrogatories and Attachments, and her April 2008 Credit Bureau Report. GE 1 – 3.

Applicant's SOR listed 17 different line items, consisting of ten collection accounts, three charged off accounts, two judgments, an allegation of failing to file her 2004 federal income tax return and being assessed \$3,180 in delinquent taxes, and an allegation of being financially incapable of paying her debts as evidenced by a personal financial statement showing a net monthly remainder of -\$29.42. The total amount for 16 debts alleged is approximately \$25,228.

Applicant stated she paid, does not owe, or otherwise resolved the debts she denied, identified *supra*. Applicant stated that she has filed her income returns since 2005 and that the Internal Revenue Service has been recouping her 2004 tax liability

through subsequent refunds owed her. GE 2, Tr. 42-46, 56-58. Applicant did not provide any documentation during her hearing or post-hearing supporting her position that the debts she denied have been resolved.

In Applicant's November 2007 Response to Interrogatories and Attachments, she stated in part:

As far as my financial status I am currently still in the red. Last year my cousin [name of cousin] passed away and we are in the process of selling her house, it has been sold but we are still wrapped up in the final steps before we receive the actual payment, you may wonder why I am even telling you this . . . but once we (my grandmother) has received the check she is giving a substantial amount to me. With this money I will be able to pay ALL of my DEBT!!! This is very exciting to me because I hate owing money to anyone. I currently work and pay the bills that are more important for my day to day living taking care of my family which are; rent, car, electric, phone, water things of that nature, not including putting gas in the car (which continues to rise, God Bless our Economy) and not to mention buying groceries! I do the best I can with what I have and sometimes it is just like the saying . . . rob Peter to pay Paul! I know that on paper I probably don't shine in the best light but having bad credit doesn't make me a bad person it is just the situation that I am in. GE 2.

In response to Department Counsel's query how she got into debt, Applicant stated:

Okay. I have always worked. I had my son at a really young age, and from the time that he was probably two I have worked to take care of him the best that I can. And there is usually not a lot of services for working parents. If you make too much, you don't get assistance, so I have always held a job down.

But my main concern has always been to pay the bills that are necessary, like rent and electric and day care. If I had a debt, when I got extra money, as like taxes or something, I got a gift, I would always try to take care of things that weren't like a monthly bill to me.

When I was 18, I stupidly accepted a lot of credit cards that weren't – I shouldn't have taken. They were \$200 credit cards, but now I owe thousands – you know, \$1,000 on a credit card I never should have taken. I honestly didn't – I didn't understand, at that point in my life, what I was getting into. And because of my education, I never really had a good job.

I moved from [state A] to [state B], and I got a job at the [state agency in state B], and that was my first professional job. In that job, I started at \$6.37, but it was a job, and it was the right thing to do. And I moved up,

and when I left there I didn't make a lot of money. Even to this day, I'm making \$39,000, and that's not a lot of money after taxes and everything else. You figure you have – gas costs \$50, \$60 a week, and to me that is a lot of money.

So I look at – I look at today, and I say I need to pay rent, so I have a roof to give – to put over my son's head, and make sure there is food in the house for him to eat, electric for him to, you know, turn on, water is running. Those are the necessity bills to me. If I ever get an opportunity to have extra money, I would pay those things off. But right now, that's just not in a situation or a position that I'm in.

I recently decided that I was going to file bankruptcy and have paid for that, to file in September, because I feel that's the only way that I'm going to actually get a fair start, a fresh start, to give myself a better chance.

At the job that I have now, I recently got a promotion, which was very nice, and it put me at \$39,000 a year. It has the potential to go further. And with a security clearance, it will give my boss the trust that she already has in me, but she'll have the Government backing – saying that I'm a trustworthy person, and she'll be able to teach me more things, so that I can advance.

And the way I look at that is my salary won't decrease, it will increase in year from now. And after – not that I don't – I don't want to seem like I'm skipping out on not paying bills, but if I just get a chance to actually get a fair start that I feel like I never really had in my life, then I'll have a place to start from.

And now that I know what I'm supposed to do, and how to do it correctly, I'll have that chance. And this is how I feel I can get it. Tr. 24-26.

Applicant's strategy to resolve her indebtedness is to file Chapter 7 bankruptcy. She stated she has retained a bankruptcy attorney, paid his retainer fee, but still had to pay the \$199 filing fee, which she planned to do by September 10, 2008. She stated her bankruptcy attorney was going to file her bankruptcy petition on September 15, 2008. Tr. 28-29. Applicant also stated she signed up to meet with a financial planner on September 30, 2008 to learn how to make a budget and assist her in financial planning. Tr. 47.

Applicant did not submit any employee performance evaluations, reference letters or character evidence.

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.

Section 7 of Executive Order 10865 provides that 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

Under AG ¶ 18, the Government's concern is that an Applicant's "[f]ailure 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."

Applicant has a history of failing to meet her financial obligations that has been ongoing since she was 18 years old, a period of approximately 12 years. Although she claims six of her debts have been resolved, she failed to submit any documentation supporting her assertions. Even if what Applicant claims is completely accurate, she has ten unpaid debts. She failed to file her 2004 federal income tax return, and has a negative net monthly remainder.

Applicant hopes to include the majority of her debts in a Chapter 7 Bankruptcy yet to be filed. For these debts, her financial recovery plan is prospective in nature. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; FC DC ¶ 19(c): *a history of not meeting financial obligations*; and FC DC ¶ 19(g) *failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*; apply in this case.

Considering the record evidence as a whole,¹ I conclude that Applicant is unable to receive credit under any of the potential Financial Considerations Mitigating Conditions (FC MC), which would include FC 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*; FC MC 20(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*, and FC MC 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.

Applicant's financial problems have been ongoing. She has either not paid or been unable to pay her debts. For those debts she claims have been resolved, she has not provided documentation substantiating her claims. Applicant presented minimal or no evidence documenting efforts taken to contact or resolve debts with her unpaid creditors. Although she stated she has financial counseling scheduled, it as well as her pending bankruptcy, are prospective in nature. Assuming Applicant successfully

¹ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

completes the bankruptcy process, time will tell whether she will reach a state of financial stability.

She presented no evidence to show she has dealt responsibly with her financial obligations before, or especially after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, credible payment plans). Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility, or that she has taken control of her financial situation. Based on her past performance, her prospective assurances ring hollow. Her financial problems are likely to be a concern in the future. Moreover, her financial problems are recent, not isolated, and ongoing.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does not support a favorable decision.

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 difficulties.

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. – 1.q.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge