



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



In the matter of:)	
)	
)	ISCR Case No. 07-15951
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Pro Se

September 22, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance application, Standard Form 86, on May 5, 2005. On May 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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.

On June 6, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 23, 2008. The case was assigned to me on July 28, 2008. On July 31, 2008, a Notice of Hearing was issued, scheduling the hearing for August 21, 2008. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified. She offered ten exhibits which were admitted as Applicant Exhibits (AE) 1-10. The transcript was received on September 2, 2008.

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

Findings of Fact

In her Answer to the SOR, Applicant admits to all of the allegations.

Applicant is a 61-year-old truck driver whose company subcontracts with a Department of Defense contractor seeking a security clearance. She has been employed with her company since 1998. She has a ninth-grade education. She dropped out of school in order to care for her ill father. She is able to read and write English. She is single and has a daughter and two grandchildren, ages 11 and 8. This is her first time applying for a security clearance. (Tr at 6-9, 72-73; Gov 1.)

On May 5, 2005, Applicant completed a security clearance application, Standard Form 86, in order to apply for a security clearance. (Gov 1.) A subsequent background investigation revealed that Applicant had 26 delinquent accounts, an approximate total balance of \$106,049. The delinquent accounts included: a \$7,504 account placed for collection in March 2003 (SOR ¶ 1.a: Gov 3 at 2; Gov 4 at 1, 3; Gov 5 at 16); a \$1,275 medical account placed for collection in October 2001 (SOR ¶ 1.b: Gov 3 at 2; Gov 4 at 1; Gov 5 at 17); a \$2,099 gas credit card account placed for collection in January 2003 (SOR ¶ 1.c: Gov 3 at 2; Gov 4 at 1; Gov 5 at 10); a \$56 cable television account placed for collection in August 2004 (SOR ¶ 1.d: Gov 3 at 2; Gov 4 at 1; Gov 5 at 18); a \$8,419 credit card account placed for collection in March 2003 (SOR ¶ 1.e: Gov 3 at 2; Gov 4 at 1; Gov 5 at 20); a \$58 gas bill placed for collection in November 2004 (SOR ¶ 1.f: Gov 3 at 2; Gov 4 at 1; Gov 5 at 21); a \$2,395 credit card account that was charged off in July 2002 (SOR ¶ 1.g: Gov 3 at 2; Gov 4 at 2; Gov 5 at 9).

Additional delinquent debts include: a \$2,700 account that was charged off in July 2003 (SOR ¶ 1.h: Gov 3 at 2); a \$7,916 credit card account that was charged off in October 2002 (SOR ¶ 1.i: Gov 3 at 2; Gov 4 at 3; Gov 5 at 26); a \$7,504 credit card account that was charged off in April 2003 (SOR ¶ 1.j: Gov 3 at 3; Gov 4 at 3; Gov 5 at 10); a \$9,670 credit card account that was charged off in April 2003 (SOR ¶ 1.k: Gov 3 at 3; Gov 4 at 3; Gov 5 at 10); a \$8,419 credit card account that was charged off in April 2003 (SOR ¶ 1.l: Gov 3 at 3; Gov 4 at 3; Gov 5 at 10); a \$361 gas credit card placed for collection in October 2002 (SOR ¶ 1.m: Gov 3 at 3; Gov 4 at 4; Gov 5 at 22); a \$480 cell phone account placed for collection in December 2002 (SOR ¶ 1.n: Gov 3 at 3; Gov 4 at 3; Gov 5 at 19); a \$2,425 department store credit card account placed for collection in August 2002 (SOR ¶ 1.o: Gov 3 at 3; Gov 4 at 4; Gov 5 at 17).

Additional delinquent debts include: a \$10,854 credit card account placed for collection in December 2001 (SOR ¶ 1.p: Gov 3 at 3; Gov 4 at 4; Gov 5 at 5); a \$559 account placed for collection in January 2003 (SOR ¶ 1.q: Gov 3 at 3; Gov 4 at 3); a \$11,775 credit card account placed for collection in January 2003 (SOR ¶ 1.r: Gov 3 at 3; Gov 4 at 4; Gov 5 at 4, 7); a \$1,672 gas credit card account placed for collection in August 2002 (SOR ¶ 1.s: Gov 3 at 4; Gov 4 at 3; Gov 5 at 5, 7); a \$707 gas credit card

account placed for collection in November 2002 (SOR ¶ 1.t: Gov 3 at 4; Gov 4 at 3; Gov 5 at 4, 7); a \$96 utility account placed for collection in September 2004 (SOR ¶ 1.u: Gov 3 at 4; Gov 4 at 4; Gov 5 at 5, 8); a \$149 cell phone account placed for collection in May 2004 (SOR ¶ 1.v: Gov 3 at 4; Gov 4 at 4; Gov 5 at 4, 7); a \$98 gas credit card account placed for collection in July 2002 (SOR ¶ 1.w: Gov 3 at 4; Gov 4 at 3; Gov 5 at 5, 6); a \$3,011 account placed for collection in September 2002 (SOR ¶ 1.x: Gov 3 at 4; Gov 4 at 4; Gov 5 at 18); and a \$15,487 amount owed as a result of truck repossession in June 2003 (SOR ¶ 1.y: Gov 3 at 4; Gov 4 at 4; Gov 5 at 11).

In 1996, Applicant lost her job as an assistant branch manager when her company closed. She worked there for 30 years. She received \$42,000 when the business closed. She used the money to attend truck driving school and started a truck driving business. She had good credit at the time. She was able to purchase four trucks for her business from 1998 through 2001. (Tr at 24, 45-46; AE C.)

In 2001, Applicant began to have serious health problems. She had severe nerve damage in both arms. A doctor advised her that she may need to have both arms amputated. Applicant worried about who would take care of her. Her brother had cerebral palsy and lived in a home most of his life and did not receive excellent care. Concerned the same thing would happen to her, she became depressed and did not work for 14 months starting in approximately September 2001. She never sought treatment for depression. (Tr at 16, 33, 69-72; Gov 2 at 4-7.)

Around 2002, a friend told Applicant to get a second opinion and referred her to a doctor. Based on the doctor's opinion, Applicant had surgery on her left arm to relieve the nerve damage. She had health insurance at the time. After the surgery, she discovered that her health insurance company went out of business and she was left with a \$30,000 surgery bill in addition to her other debts. (Tr at 15, 42-43; Gov 2 at 4; AE A; AE B.) Applicant still needs surgery on her right arm as well as cataract surgery. The surgery for her right arm will cost approximately \$30,000. She is unable to get health insurance based on her pre-existing condition. (Tr at 25, 63, 68; Gov 2 at Gov 2 at 4-6.)

Applicant admits that she owes a lot of bills. She disputes the debts alleged in SOR ¶¶ 1.d, 1.f, 1.h, 1.m, 1.o, 1.q, 1.u, and 1.x because she does not recognize the creditor. She disputes the debts alleged in SOR ¶¶ 1.s and 1.w because the credit cards were reported as stolen. She did not formally dispute any of the accounts with the credit reporting agencies. (Tr at 47-60.) She claims the following debts are duplicates: SOR ¶¶ 1.a and 1.j, and SOR ¶¶ 1.n and 1.v. Upon review of the credit reports (Gov 3, Gov 4, Gov 5), it appears the debts in SOR ¶¶ 1.a and 1.j, and the debts in SOR ¶¶ 1.e and 1.l are duplicates. Essentially, the debts were sold to a collection agency. For this reason, I find for Applicant with respect to SOR ¶¶ 1.j and 1.l.

Applicant is unable to pay any of her debts. She is focusing on saving money for her surgery. She sought the advice of a credit counselor who advised her to file for

bankruptcy. She claims she does not have enough money to hire a bankruptcy attorney. (Tr at 45, 48-49, 63-64.)

Applicant describes her current financial situation as tough. She begged her doctor to allow her to go back to work because she needed the money. She often borrows money from her boyfriend, who is also her truck driving partner, to pay for her medications. She currently earns approximately \$800 to \$1,000 per month. She lives with her boyfriend. She does not pay rent but shares in buying groceries. She also pays her medical and phone bill. Her medicine costs around \$300 a month. She would love to pay her debts but her focus is on her health issues. Her medical expenses in 2007 totaled \$5,379. Her total income was approximately \$14,283. (Tr at 22; 61-63, 69; AE F.) She is current on her federal and state taxes. (Tr at 73; AE H; AE I; AE J.)

The general manager of the company who loaned Applicant money to purchase four trucks wrote a letter on her behalf. Prior to approving the loans, Applicant's credentials and credit were investigated. It was discovered that she had an excellent credit rating. He has firsthand knowledge of her health problems, having acted as a recovery agent for the lenders. He notes she was unable to find a suitable manager for her business. She voluntarily surrendered the trucks. He states Applicant is "an honest, honorable and caring person that unfortunately had an overwhelming business problem, which marred her otherwise excellent credit and personal ratings." (AE C.)

Applicant's boyfriend and truck driving partner wrote a letter on her behalf. He was also present at the hearing to provide emotional support to Applicant. He has known Applicant for about five years. He finds her to be "an honest, loyal and dedicated worker and partner in life." He states that in an attempt to increase her income she put a team of drivers in her truck and went to work on his truck as a co-driver. The drivers wrecked the truck. He states that they have carried numerous sensitive loads for various companies and government agencies, including DOD. (AE D.)

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.

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

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an

inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. From 2001 to 2007, Applicant has accumulated over \$89,766 in delinquent debt. A substantial amount of the debt relates to her failed truck driving business. She is unable to pay these debts due to her limited income and medical issues.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (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) is not applicable. Applicant's history of financial difficulties is too recent to apply this mitigating condition. All of the delinquent accounts alleged in the SOR remain unresolved.

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) applies, in part. Applicant's health issues contributed to her financial situation. The failure of her health insurance company further aggravated Applicant's financial situation since she found herself responsible for a lot of medical bills. Currently, Applicant suffers from numerous health problems and is unable to get health insurance. There were circumstances beyond her control that adversely affected Applicant's finances. However, Applicant did not work for 14 months because she was depressed about her health situation. While the trauma and anguish she experienced over her health issues is understandable, Applicant's decision to not work for 14 months was a factor within her control and was a major cause in her trucking business' financial problems. It cannot be concluded that Applicant 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) does not apply. While Applicant consulted a credit counseling agency who recommended that she file for bankruptcy, she took no action towards filing for bankruptcy, claiming that she had no money to pay an attorney. Her delinquent accounts remain and it is unlikely that her financial situation will improve in the future. FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has not taken steps towards resolving her delinquent accounts.

Applicant has not mitigated the concerns raised under Guideline F.

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) 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. I considered Applicant’s medical conditions and her inability to obtain health insurance. I considered Applicant’s favorable character reference letters. However, a security risk remains because Applicant has an overwhelming amount of debt which she is incapable of paying. An inability to pay one’s debts remains a security concern under financial considerations. The financial considerations concern is not mitigated.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against 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:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant

Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	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. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge