



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



In the matter of: ----- SSN: ----- Applicant for Security Clearance))))))	ISCR Case No. 07-16931
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Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: Pro Se

October 30, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on October 27, 2006. On June 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 requested a hearing before an Administrative Judge. I received the case assignment on September 9, 2008. DOHA issued a notice of hearing on September 16, 2008, and I convened the hearing as scheduled on October 15, 2008. The Government offered Exhibits (GE 1-4), which were received without objection. Applicant testified in her own behalf. She submitted Exhibits (AE A-C), without

objection. DOHA received the transcript on October 22, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, dated July 21, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.m, and 1.p through 1.q, of the SOR. She denied the other allegations in the SOR because the debts were paid or she had no knowledge of them. She provided additional information to support her request for eligibility for a security clearance.

Applicant is a 39-year-old employee of a defense contractor. She graduated from high school in 1987. She married in 1998 and divorced in 2001. She has no children (Tr. 25). She has been employed since January 2006 with her current employer (GE 1).

In 2005, Applicant was self-employed as a chef. She has continued with the business on a part time basis (Tr. 113). She worked in various positions since high school. Applicant had a period of unemployment in 2002 and 2003 totaling approximately six months (Tr. 26).

Applicant was in an automobile accident in June 2007. She was not at fault in the accident. She received injuries and lost some time from work (Tr. 23). She is working with the insurance company to settle the medical debts that she has incurred. The medical debts are approximately \$50,000. She is paying \$160 monthly on one of the large medical debts (\$10,000) incurred from the accident. She has not paid the other medical bills (GE 3).

Applicant had an injury to her knee in 2008 due to a fall at a hockey game. She required surgery on her knee after that. She was out of work recuperating for approximately two weeks (Tr. 28). She also received physical therapy.

The SOR alleges 19 delinquent debts/collection accounts including, unpaid medical debt and six collection accounts. The total amount of the delinquent debt is approximately \$37,000.

SOR ¶ 1.a is a collection account in the amount of \$6,262. Applicant admitted that she owed the debt. Applicant explained that she met someone on the internet in 2003 and received two money orders from the person when they were out of the country in 2003. She deposited the money in her bank account and then sent the person cash from her account. The money orders were fraudulent and her bank charged the amount against her account (Tr. 58). She attempted to get her money back from the friend but it was not paid. The amount was sent to collection and is now a garnishment since July 2008 (Tr. 64). She is paying \$112 weekly. The balance is approximately \$3,574 (Tr. 65; AE B).

SOR ¶ 1.b is a collection account (cable) in the amount of \$309. Applicant is paying \$50 a month (AE C).

SOR ¶ 1.c is a medical account for \$27. Applicant's insurance company did not pay for this amount. She has not paid the account.

SOR ¶ 1.d is for a medical account in the amount of \$15. Applicant has not paid the amount.

SOR ¶ 1.e is for a medical account in the amount of \$12. Applicant has not paid this account.

SOR ¶ 1.f is for a medical account in the amount of \$13. Applicant has not paid this account.

SOR ¶ 1.g is for a medical account in the amount of \$12. Applicant has not paid the co-payment because she is waiting for an insurance settlement.

SOR ¶ 1.h. is another medical account in the amount of \$14. Applicant has not paid this account.

SOR ¶ 1.i is a collection account for medical in the amount of \$318. Applicant has not paid this account.

SOR ¶1.j is a charged off medical account in the amount of \$102. Applicant is paying on this debt since June 2008. She pays \$50 a month (AE C).

SOR 1.k is a medical debt of \$270. This account is for a bill that Applicant believed had already been paid. She is not trying to work out a payment plan at this point in time (Tr. 73).

SOR 1.l is for a collection account for a mortgage in the amount of \$31,481. Applicant explained that she and her ex-husband purchased a home. She left the home when they separated. He continued to live in the home. She believed he was paying the mortgage. In 2002, she learned that she was also responsible for the mortgage (Tr. 76). The house was auctioned and she owed \$17,000. She contacted the mortgage company but does not have the money to pay at this point in time (Tr. 40). After speaking to the lawyer for the mortgage company, Applicant has decided that she would file bankruptcy in the future (Tr. 40).

SOR 1.m is for a medical account \$672. This account is the same account as mentioned in the above SOR 1.j. Applicant is paying on this account.

SOR 1.n is a charged off account in the amount of \$848 which Applicant denies. She explained that she has no idea what the account is for because she never had an

account with that company. She wrote to the company recently to dispute it and provided documentation to support this.

SOR 1.o is a charged off account in the amount of \$575 which Applicant denies. She disputes the credit card account because she has not had a credit card with the company since 1999 (Tr. 42). Applicant also noted she believes there is another person with her name who sometimes appears on her credit report. She has no documentation for this proposition (Tr. 84).

SOR 1.p is a phone account charged off in the amount of \$170. Applicant explained that the cell phone was one that her ex-husband used. She received a bill in 2000 but did not pay it. She wanted her husband to pay the account. She has not paid it (Tr. 46).

SOR 1.q is another charged off account for a phone in the amount of \$706. Applicant believes this is a duplicate of the phone bill referenced in the above allegation. She thinks it is a combination of the disconnection fee and the actual bill. She called and was told it was written off and no longer on record.

SOR 1.r is a charged off account in the amount of \$66 which Applicant denies because she believes she has paid it. She did not have any documentation to support this (Tr. 47).

SOR 1.s is for a collection account in the amount of \$695 which Applicant denies because it is a duplicate of the account alleged in 1.o. in the SOR.

Applicant's current monthly net income is \$1,280, decreased from \$1,613 on her personal financial statement. This is due to less overtime work. After monthly expenses and payment on some debt, she has a negative cash flow (Tr. 121). She is current with her car payment. She has no bank savings.

Applicant remarried in 2008. She and her husband do not pool their money. He does pay for certain household expenses. He has his school loans to pay and some credit card debt that he owns (Tr. 96).

Applicant has not received financial counseling other than speaking to the attorney for the mortgage company who told her she needed to pay the amount left on the home or file bankruptcy. She has no repayment plan in place for many of her debts. She stated at the hearing that she may file for bankruptcy at some point. She has not paid the remaining medical debts because she is waiting for a settlement from the insurance company. She did not provide any documentation for this proposition.

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, 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

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(a), an inability or unwillingness to satisfy debts⁶ is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations⁶ may raise security concerns. Applicant has numerous delinquent debts and could not meet her financial obligations from 2000 until the present. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where 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.⁶ Applicant's financial worries are partially the result of an automobile accident and a divorce. However her delinquent debts have various sources and have been ongoing. This potentially mitigating condition does not apply.

Under AG & 20(b), it may be mitigating where 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.⁶ As noted above, her financial problems may have increased with her divorce and later accident in 2007, but Applicant did not act responsibly in identifying and resolving her debts which preceded those events. She did not take an active stance when she learned about many of them. Applicant has worked steadily for many years with a few periods of unemployment, I find this potentially mitigating condition does not apply.

Evidence 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 control⁶ is potentially mitigating under AG & 20(c). This does not apply. Applicant has no budget and has had no financial counseling. She is paying one debt through a recent garnishment. She does not have a handle on her financial affairs.

AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.⁶ Applicant waited many years before attempting to resolve her financial issues. She is paying on some of

her debts and one debt has been resolved through a recent garnishment. I conclude this potentially mitigating condition does not apply.

AG ¶ 20(e) applies where the evidence shows “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.” In this case, Applicant stated that the alleged debts were unknown to her. She has not provided sufficient documentation. I conclude this potentially mitigating condition does not apply.

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 and conclude that under the whole person, there is not sufficient mitigation to overcome the government’s case.

Applicant has worked for number of years. She did have an automobile accident that was not her fault. She is waiting for an insurance settlement to pay the medical bills. However, there were a number of small co-payments that could have been paid. Applicant also separated and divorced her husband. That exacerbated her difficulties. The largest debt is the result of the marital home mortgage. Applicant has not addressed this until this year. She is contemplating filing bankruptcy. This is a legal means of resolving debt. However, she has not initiated any proceedings. Also, her poor judgment in sending money to someone she met through the internet and then not paying until a lawsuit resulted in garnishment this year does not provide for mitigation in this case.

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 under financial considerations.

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:	For 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:	Against Applicant
Subparagraph 1.m:	For 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

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.

NOREEN A. LYNCH
Administrative Judge