



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



In the matter of:)
)
)
 SSN:) ISCR Case No. 07-17062
)
)
 Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: *Pro Se*

July 10, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate security concerns arising from her financial considerations. Clearance is denied.

Statement of the Case

On November 9, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On February 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR),² alleging security concerns under Guideline F (Financial Considerations). The SOR

¹ Item 4. There is no allegation of falsification of her SF 86.

² The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; 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.

detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On February 25, 2008, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing (Item 2). A complete copy of the file of relevant material (FORM), dated April 2, 2008, was provided to her, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.³ Applicant responded to the FORM on June 9, 2008. The case was assigned to me on June 16, 2008.

Findings of Fact

Applicant admitted the debts in SOR ¶¶ 1.a, 1.f and 1.h. She denied or disputed the remaining SOR allegations. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 52-year-old process analyst. She has worked for a government contractor since February 2007.⁴ She married in 1978, and her spouse is deceased. Her children were born in 1977, 1982 and 1983. One of her sons is handicapped and lives with her. She served in the Army reserves from 1989 to the present, and is currently a staff sergeant (E-6).⁵ She did not list her education level on her SF 86. She has no police record. She has not used illegal drugs in the last seven years, and has never used illegal drugs while in a sensitive position.

Financial Considerations

The SOR lists eight debts totaling approximately \$8,000. The following table shows the status of the delinquent debts listed in the SOR:

SOR ¶ and Type Debt	Amount	Status
¶ 1.a Credit Card Account	\$2,099	Judgment filed on May 22, 2006 (Items 5, 7)
¶ 1.b Medical Account	\$3,629	Judgment filed on June 22, 2000 (Items 5, 8)
¶¶ 1.c, 1.d and 1.e Telephone or	\$1,126, \$739 and \$218	Collection Account was Paid in April 2008 (Item 5; FORM

³ Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated Apr. 10, 2008; and Applicant's receipt is signed and dated Apr. 15, 2008.

⁴ Item 4 (2007 security clearance application) is the source for the facts in this paragraph, unless stated otherwise.

⁵ The file does not contain her military or enlistment records.

Cable Services		response at 1, 3, 4, 5 and 6)
¶ 1.f Medical Account	\$100	Collection account reported in December 2006 was Paid (Item 3 at 2, 3 and Item 5)
¶ 1.g Insurance Account	\$389	Disputed debt
¶ 1.h Medical Account	\$400	Collection account reported in December 2006 (Item 3 at 2 and Item 5)

Concerning SOR ¶ 1.a (\$2,099 judgment filed in May 2006), after receipt of the SOR, Applicant contacted the creditor attempting to settle the debt without success. She was going to include the debt in a debt consolidation program (answer to SOR at 8-12), and then changed her mind and decided to file for Chapter 7 Bankruptcy protection to resolve her delinquent debts (Response to the Form at 14).

SOR ¶ 1.b – Applicant disputed the amount of the debt, but admitted having several delinquent medical bills. She had included some of her debts in the unsuccessful debt consolidation program (answer to the SOR).

SOR ¶¶ 1.c, 1.d and 1.e (\$1,126, \$739, and \$218) were reported delinquent in August 2005, December 2001, and November 2002. The account numbers for the \$1,126 and \$739 debts correspond. The evidence suggests the two accounts are a duplication of each other. On March 24, 2008, Applicant provided a statement from the creditor in SOR ¶¶ 1.c – 1.e, dated March 1, 2008, indicating she owed \$836 (Item 3 at 5).⁶ Her evidence established that these accounts were transferred from collector A to collector B for collection (FORM response at 8). She included a letter from collector B, dated February 20, 2008, showing a settlement amount of \$440 on a \$734 medical debt (FORM response at 7). Her FORM response indicated collector B agreed to a settlement amount of \$1,590 for other debts to be paid in three equal payments (FORM response at 1). She made the three payments on March 17, 31, and on April 14, 2008 (FORM response at 1, 3 - 6).

SOR ¶¶ 1.f and 1.h (\$100 and \$400) are medical debts placed for collection, and reported to a credit reporting agency in December 2006 (Item 5). She paid SOR ¶ 1.f; and SOR ¶ 1.h is still outstanding. She disputed the debt in SOR ¶ 1.g (\$389). This debt was placed for collect on an insurance account. She said that when she ended her policy she received a refund check, and did not believe she owed any money. However, she did not provide any correspondence with the creditor showing she disputed the debt.

When she completed her e-QIP, she denied she had any: (1) unpaid judgments in the last seven years; (2) any debts delinquent over 180 days in the last seven years;

⁶ She provided one page from a three-page statement from the creditor showing she paid \$73.85 on December 3, 2007, and at that time owed \$361 (Item 3 at 6). On March 1, 2008, she owed the same creditor \$836 (Item 3 at 5).

and (3) any debts currently delinquent over 90 days. (See Item 4, Sections 27d, 28a and 28b.) Applicant did not receive notice in the SOR that a failure to disclose her financial problems raised a security concern. As such, these omissions cannot be used to deny her clearance. However, I may consider these omissions as part of the totality of the circumstances in Applicant's case.

On February 7, 2008, Applicant responded to interrogatories and promised to use a debt consolidation company to pay the debts in SOR ¶¶ 1.b – 1.e and 1.h (Item 9 at 2). She provided a budget indicating a \$140 monthly payment to the debt consolidation company, and \$99 monthly to the creditor in SOR ¶ 1.a (Item 9 at 3). Applicant provided pages 1, 4, 5, 9 and 10 of her debt consolidation agreement (Item 3 at 7-12). The service fee was \$904, with an initial payment of \$276 (Item 3 at 12). A letter from the debt consolidation company, dated May 28, 2008, indicated Applicant had enrolled in their 36-month program. The program's goal was to resolve three debts, and she paid \$92.05 on March 22, 2008, and April 22, 2008 (FORM response at 12, 13).

On May 12, 2008, she retained a law firm to file to discharge her debts under Chapter 7 of the Bankruptcy Code (FORM response at 14). There is no explanation as to why she terminated her debt consolidation program. Applicant also failed to present information regarding when she acquired the debts, why they became delinquent, what efforts she took to pay, settle, or otherwise resolve her delinquent debts, and how she plans to avoid future financial problems.

Applicant's budget showed a gross monthly salary of \$5,004, deductions of \$1,133, expenses of \$1,222 and a net remainder of \$1,801 (Item 9 at 3). She listed monthly payments of \$471 for a vehicle loan, \$138 for a financial company, \$140 for the debt consolidation company, and \$99 for the debt in SOR ¶ 1.b (Item 9 at 3).

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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”⁷ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁸

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly

⁷ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁸ “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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 ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is documented in her credit reports, her SOR response, and her FORM response. She admitted responsibility for all the alleged delinquent debts, except SOR ¶ 1.g. She hired an attorney to file for Chapter 7 Bankruptcy protection to resolve her delinquent debts; however, as of the day she responded to the FORM her debts were still outstanding. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) 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.

Applicant's conduct does not warrant full application of AG ¶¶ 20(a) and 20(b) because available information fails to establish she acted diligently and responsibly to resolve her delinquent debts.⁹ She did not disclose how she acquired the debts; why they became delinquent; what efforts she took prior to receipt of the SOR to resolve her debts; or, any conditions beyond her control that resulted in her financial problems (such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation). She is responsible for three delinquent debts totaling about \$6,000. It appears she began her attempts to resolve her delinquent debts only after receipt of the SOR. It is unclear when her last payments were made on any of these three delinquent debts.

AG ¶¶ 20(c) and 20(d) do not fully apply. Applicant probably received some financial counseling in connection with creation of her budget, working with the debt consolidation company, and meeting with her bankruptcy attorney. However, there are not "clear indications that the problem is being resolved or is under control." There is insufficient information to establish that Applicant applied the knowledge obtained from financial counseling or that she showed good faith¹⁰ in the resolution of her debts.

AG ¶ 20(e) is applicable to the debt in SOR ¶ 1.g because Applicant disputed the \$389 debt. She denied responsibility for this debt from the outset, and the only basis for the debt was a credit report. She did not provide "documented proof to substantiate the basis of the dispute or [provide] evidence of actions to resolve the issue." Notwithstanding, it is a relatively small debt and, under the circumstance of her case, I do not consider the dispute documentation necessary.

Applicant did not provide proof of her most recent correspondence with the creditors in SOR ¶¶ 1.a, 1.b, and 1.h, nor did she present evidence of her current

⁹ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

¹⁰ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that 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.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

financial situation. Considering the record as a whole, I conclude these three debts, totaling about \$6,000 are still valid, delinquent debts, and that Applicant is responsible for them. Applicant failed to explain why she did not establish payment plans for her debts even though according to her budget she has available income (about \$1,800 monthly) to take this reasonable and prudent action.

Applicant has the legal right to file for bankruptcy protection to resolve her delinquent debts. However, considering her available income, her unexplained filing for bankruptcy protection raises questions about her current and future financial situation. Her overall conduct with her creditors casts doubt on her current reliability, trustworthiness, and good judgment. She should have been more diligent and made greater efforts to resolve her delinquent debts, especially after receipt of the SOR on March 24, 2008. She has not carried her burden of proving her financial responsibility. Based on my evaluation of the record evidence as a whole, I conclude no mitigating conditions fully 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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c).

Applicant's record of good employment weighs in her favor. There is no evidence of any security violation. Aside from her delinquent debts (which is a civil, non-criminal issue), she is a law-abiding citizen. She served in the Army reserves for almost 20 years. These factors show some responsibility, rehabilitation, and mitigation. The overall amount of her delinquent debt at about \$6,000 is relatively low.

The evidence against mitigating Applicant's conduct is more substantial. Applicant has been carrying delinquent debts since around 2001. She was well aware of her financial responsibilities, and apparently had sufficient resources to establish payment plans with her creditors. Because of her age and position in the Army reserve,

she knew or should have known of the security significance of these delinquent debts. In March 2008, she received the SOR and was placed on further notice of the Government's security concerns. Her efforts to resolve her delinquent debts were insufficient when compared to available income that she could have used to address her delinquent debts. Her actions were not adequate to fully resolve security concerns. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude the sparse favorable information available in the record is not sufficient to mitigate the security concerns pertaining to financial considerations.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"¹¹ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude she is not eligible for access to classified information.

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
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c to 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

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

Juan J. Rivera
Administrative Judge

¹¹ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).