



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



In the matter of:)	
)	
)	ISCR Case No. 07-18303
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregory Cervi, Esquire, Department Counsel
For Applicant: Pro Se

August 13, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted her Questionnaire for National Security Position (SF-86), on July 29, 2005. On May 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, 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 May 14, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to be proceed on June 9, 2008. The case was assigned to me on June 10, 2008. On June 24, 2008, a Notice of Hearing was issued, scheduling the hearing for July 14, 2008. The case was heard on that date. The Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 7. The Applicant offered 2 exhibits which were admitted as Applicant Exhibits (AE) A – B. Applicant also testified. The transcript was received on July 22, 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 admitted the factual allegations in ¶¶ 1.a, 1.c, 1.g, and 1.k but denies the allegations in ¶¶ 1.b, 1.d, 1.e, 1.f, 1.h, 1.i, and 1.j. She also denies the allegations in ¶¶ 2.a, 2.b, and 2.c.

Applicant is a 38-year-old employee with a Department of Defense contractor seeking a security clearance. She has been employed with her company since February 2007. She is married and has two sons, ages 16 and 17. (Tr at 5, 24-25, 74; Gov 1)

Applicant's husband recently retired after 20 years active duty service in the United States Navy. From 2003 to 2006, Applicant's husband was stationed overseas. During that time, Applicant found employment on the installation where her husband was stationed. (Tr at 29, 81-82, Gov 1.) On September 22, 2003, Applicant completed a Questionnaire for Public Trust Position, SF 85P, in conjunction with her employment. She answered "No" in response to question 22.b "Are you now 180 days delinquent on any loan or financial obligation? Include loans or obligations funded by the Federal Government." (Gov 2.)

On July 29, 2005, Applicant completed a Questionnaire for National Security Position, SF 86 in order to apply for a security clearance. She answered "No" in response to question 28(a) "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" She also answered "No" in response to question 28(b) "Are you currently over 90 days delinquent on any debt(s)?" (Gov 1.)

A subsequent background investigation revealed that Applicant had the following delinquent accounts: a \$631 account placed for collection in September 1999. (SOR ¶ 1.a: Gov 5 at 5; Gov 6 at 5-6; Gov 7 at 3); an \$84 account placed for collection in October 1999 (SOR ¶ 1.b: Gov 5 at 6; Gov 6 at 3; Gov 7 at 3.); a \$1,437 credit card account placed for collection in May 2000 (SOR ¶ 1.c: Gov 5 at 4; Gov 6 at 4; Gov 7 at 2); a \$1,294 account placed for collection in August 2000 (SOR ¶ 1.d: Gov 5 at 3; Gov 7 at 2); a \$5,092 balance owed from on automobile repossession placed for collection in December 2000 (SOR ¶ 1.e: Gov 5 at 4; Gov 6 at 4); a \$75 account placed for collection in March 2001 (SOR ¶ 1.f: Gov 5 at 7; Gov 6 at 7; Gov 7 at 5); an \$18,350 balance owed on the repossession of a truck placed for collection in April 2001 (SOR ¶ 1.g: Gov 4 at 2; Gov 5 at 2; Gov 6 at 3-4); a \$61 delinquent account placed for collection in June 2003 (SOR ¶ 1.h: Gov 5 at 7; Gov 6 at 4, 8; Gov 7 at 2); a \$205 medical account placed for collection in January 2004 (SOR ¶ 1.i: Gov 4 at 1; Gov 5 at 8; Gov 6 at 8; Gov 8 at 2); a \$72 medical account placed for collection in May 2004 (SOR ¶ 1.j: Gov 4 at 1; Gov 5 at 8; Gov 6 at 8; Gov 8 at 1); and a \$171 credit card account placed for collection in November 2004 (SOR ¶ 1.k: Gov 4 at 1; Gov 5 at 8.)

In response to interrogatories, dated February 22, 2008, Applicant indicated that all of her delinquent accounts were closed or resolved because they no longer appear on her credit report. She provided a credit report dated February 21, 2008. (Gov 3 at 2-7, 10-12.) Only the delinquent medical accounts alleged in SOR ¶¶ 1.i and 1.j are listed on the most recent credit report offered by the Government, dated June 5, 2008. (Gov 7 at 7-8.)

At hearing, Applicant testified that she has not paid the debts that she admits she owes and has not paid the debts that she denies. (Tr at 32, 60-72.) All of her open accounts are current. She and her husband are in the process of purchasing a new home. (Tr at 19, 30, 33; AE B.)

Applicant claims that she did not realize that she had delinquent debts until she was interviewed in 2006 in conjunction with her background investigation. She had no intention to defraud the government by omitting her financial delinquencies on her security clearance application. (Tr at 21-22; Gov 3 at 7.) She claims that she disputed some of the delinquent accounts but has not followed up with the credit reporting agencies. (Tr at 54-55.)

In 2006, just prior to her family's move back to the United States, Applicant consulted a debt counselor. She did not find him helpful. (Tr at 49-51.)

Applicant's husband testified that his wife is very trustworthy. He claims that she was not aware of the delinquent accounts listed on the credit report. He is on terminal leave and is working for a government contractor. He retired at the grade of E-6. His monthly salary in his new job is approximately \$5,500 a month gross. He will get approximately \$1,000 per month in his military retirement check. He contacted the creditor in SOR ¶ 1.k for his wife. He claims the creditor had no information that his wife had an account. He acknowledges the account was not paid. (Tr at 77-90.)

Applicant and her husband's current financial position is relatively stable. (Tr at 34-45, 89-90; Gov 3 at 8.) In December 2005, their house was flooded. Their car was totally destroyed and their downstairs furniture had suffered from water damage. (Tr at 40-45.)

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. Applicant incurred 11 delinquent accounts from 1999 to 2004. The total approximate balance of the delinquent debt is \$27,472. Of that amount, \$23,442 relates to two automobile repossessions. Applicant's financial issues appear to be the result of neglect rather than an inability to pay her debts.

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 irresponsibility is too recent to apply this mitigating condition. Although most of the delinquent accounts are no longer listed on Applicant's recent credit reports, it appears to be the result of the passage of time rather than Applicant resolving the debts.

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) does not apply. Although Applicant's household possessions were damaged in a flood in December 2005, the record does not indicate that this was a huge setback for Applicant's finances. Most of the debts were delinquent prior to Applicant and her family moving overseas.

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. Although Applicant attended a brief financial counseling session, issues remain, because Applicant did not provide proof that she resolved any of the accounts. Rather, the accounts were taken off her credit report because they were more than seven years old. The removal of debts from a credit report does not make them disappear as if they never existed or preclude the Judge from considering other record evidence that shows those debts exist. The security significance of Applicant's financial history does not turn on whether Applicant's debts could or could not be legally listed on a credit report after the passage of seven years. ISCR Case and Appeal Board Decision, No. 02-14950 (May 15, 2003) at 4; see ISCR Case and Appeal Board Decision 98-0111 (November 13, 1998) at 3.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant made minimal effort

towards resolving her delinquent accounts. While Applicant's current financial situation is relatively stable, her past neglect of her financial responsibilities remains an issue.

Applicant has not mitigated the concerns raised under Guideline F.

Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Personal conduct concerns are raised because Applicant failed to list her delinquent debts in response to question 22.b on her application for a position of public trust, signed on September 22, 2003, and in response to questions 28(a) and 28(b) on her security clearance application, dated July 29, 2005. The following Personal Conduct Disqualifying Condition (PC DC) potentially applies to Applicant's case.

PC DC ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities). I find that it does not apply. Applicant states that she was not aware of the delinquent debts until she was interviewed by an investigator conducting her background investigation in 2006. I conclude her omission was not intentional.

I find for Applicant under the Personal Conduct concern.

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 current financial stability. However, I also considered Applicant's neglect of her past financial obligations. Applicant may have forgotten about these obligations but once she was reminded during her security background interview in 2006, she took minimal effort towards resolving these accounts. Applicant did not mitigate the concerns raised under financial considerations due to her past history of financial irresponsibility which raises concerns about her trustworthiness and reliability.

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:	Against Applicant
Subparagraph 1.k:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For 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