



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



In the matter of:)
)
) ISCR Case No. 08-01014
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: , Personal Representative

June 24, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

On January 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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 on February 25, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 25, 2009. DOHA issued a notice of hearing on April 2, 2009, scheduling the hearing for May 19, 2009. The case was reassigned to me on April 21, 2009. The

hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7. GE 1 through 4 were received without objection. GE 5 to 7 were admitted over Applicant's objection. Applicant testified on her own behalf, called one witness, and submitted Exhibits (AE) A through S, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted a series of documents, which were marked AE T through QQ, and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on May 28, 2009.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. She has worked for her current employer since January 2009. She has a Bachelor of Science degree, awarded in 1985. She married in 1998 and divorced in 2007. She has no children, but she was the stepmother of two children while she was married.¹

Applicant started incurring financial difficulties while she was married. She and her husband had a large mortgage payment, monthly car loan payments, and two children to provide for. Her finances were further exacerbated by her separation, divorce, and the loss of her job. Her ex-husband took some actions designed to hurt her financially, including opening accounts in her name without her permission. She was unemployed from January 2007 through March 2007.²

The SOR alleges 20 delinquent debts, totaling about \$44,066. In her answer to the SOR, Applicant admitted to all the debts alleged in the SOR with the exception of the debts alleged in SOR ¶¶ 1.a and 1.c. She also provided additional information to support her request for eligibility for a security clearance. Specific debts are addressed below.

SOR ¶ 1.a alleges a delinquent debt of \$737 owed to a credit card company. Applicant has consistently denied ever having an account with this company. The debt is listed on the credit report of April 26, 2007, but it is not listed on the more recent credit reports obtained on April 10, 2008 and January 6, 2009. Applicant disputed the debt online in 2007 and sent a dispute letter to the company in February 2009.³

In her response to the SOR, Applicant admitted to owing the \$1,048 delinquent debt owed to a bank, as alleged in SOR ¶ 1.a. Other than that admission, she has consistently denied owing this debt. She admitted that she had a checking account with the bank but stated that it was closed with no balance. She denied that she ever had a credit card with this bank. The debt is listed on the credit reports of April 26, 2007 and April 10, 2008, reporting the debt as a credit card account with the date of last action on

¹ Tr. at 44-47, 95; GE 1.

² Tr. at 93-95, 112-113; Applicant's response to SOR; GE 1-3.

³ Tr. at 48-51; Applicant's response to SOR; GE 2, 3, 5-7; AE A.

the account as occurring in 2001. The debt is not listed on the January 6, 2009 credit report. Applicant sent a dispute letter to the bank in February 2009.⁴

SOR ¶ 1.c alleges a federal tax lien of \$13,232 filed against Applicant in 2002. The lien is listed on the credit reports of April 26, 2007, April 10, 2008, and January 6, 2009. Applicant listed the lien on her Questionnaire for Sensitive Positions (SF 86) dated March 23, 2007, but she indicated that it was paid in May 2006. She was interviewed for her background investigation in May 2007. She told the Office of Personnel Management (OPM) investigator that she believed the lien was for federal taxes that she owed from 1984, 1985, and 1986. She stated that she was unaware that she owed the IRS until she received a letter in about 2004 that stated she owed about \$13,000. She told the agent that she made a payment plan in 2004, and paid \$250 per month for about ten months. She stated that she paid the lien off in May 2005 with money she received when she refinanced her home. In July 2008, Applicant certified the accuracy of the Report of Investigation (ROI) that summarized her interview with the investigator. She made no changes or additions. DOHA sent interrogatories and asked Applicant to provide proof that the lien was paid. She responded in October 2008, and stated that the lien was in her ex-husband's name on the house that was in his name. She stated that the house was sold in May 2006, and her ex-husband would not give her the paperwork required to prove the lien was paid. She testified that the tax lien was for property taxes owed on the house in her ex-husband's name. She stated that the IRS would not disclose any information to her about the tax lien because her name was not on the lien. She also indicated that the county court would not release information about the lien for the same reason. She was asked if she had received refunds when she filed her tax returns, as that could be circumstantial evidence that she did not owe the IRS. She stated that she received a refund last year. She was given the opportunity after the record closed to contact the IRS and have them provide a statement of any pending tax liability and/or provide proof that she received a tax refund. She submitted two documents from the IRS. One document stated that additional information was required to process her 2008 tax year return. The other document stated the IRS had not completed processing her request, but would respond within 45 days. She wrote that her 2007 tax information is in a box in her storage bin and it would take too long to find it.⁵

A judgment of \$1,204 was entered against Applicant on behalf of a financial institution in about April 2004, as alleged in SOR ¶ 1.d. Applicant listed this judgment on her 2007 SF 86. She discussed the judgment with the OPM investigator in her 2007 interview. She stated that the plaintiff was a collection company but she did not remember who owned the original debt. She stated that she appeared in court and admitted that she owed the money. When she responded to DOHA interrogatories in March 2008, she wrote that she was "trying to get a loan" to resolve the judgment. She admitted to owing the judgment when she responded to the SOR. At the hearing she testified that she was uncertain about this debt. She was asked if she went to court for

⁴ Tr. at 52-55; Applicant's response to SOR; GE 2, 3, 5-7; AE B, W-Y.

⁵ Tr. at 31-35, 55-56; Applicant's response to SOR; GE 1-7; AE M, U, V, Z, AA.

this debt and replied, "I don't think so." She stated that she did not remember if she went to court on this debt in 2004.⁶ I did not find her testimony credible.

Applicant settled in full the \$341 delinquent debt owed to a collection company on behalf of a telephone services company, as alleged in SOR ¶ 1.e, with \$110 payments on February 13, 2009 and February 14, 2009.⁷

Applicant admitted owing the \$1,177 delinquent credit card debt alleged in SOR ¶ 1.f. The company sent her a settlement letter on February 3, 2009, stating the company would accept \$812 in settlement of the debt. When she responded to the SOR on February 25, 2009, she wrote that she was accepting the settlement and would pay the debt on March 6, 2009. She was unable to make the payments. She contacted the company and obtained another settlement letter from the company. Applicant agreed to settle the debt with payments of \$250 on June 12, 2009, \$250 on June 26, 2009, and \$312 on July 10, 2009. Applicant indicated that she made the first payment.⁸

Applicant paid the \$218 delinquent debt owed to a collection company, as alleged in SOR ¶ 1.g, with a payment of \$148 on February 13, 2009.⁹

Applicant settled in full the \$466 delinquent debt owed to a collection company on behalf of a bank, as alleged in SOR ¶ 1.h, with \$242 payments on February 13, 2009 and March 24, 2009.¹⁰

SOR ¶¶ 1.i and 1.j allege delinquent debts of \$552 and \$576. The original debts were owed to two different credit card companies but they were being collected by the same collection company. Applicant settled in full the \$576 delinquent debt alleged in SOR ¶ 1.j, with a payment of \$443 made on March 5, 2009. She submitted a settlement letter from the collection company dated February 12, 2009, agreeing to accept \$363 in settlement of the SOR ¶ 1.i debt, which had grown to \$605, if paid by March 14, 2009. She testified that she paid the \$363 in settlement of the debt. Applicant was asked to submit a receipt of her payment in her post-hearing submissions. She submitted a letter from the collection company dated June 12, 2009, stating that the debt was settled in full on June 11, 2009.¹¹

SOR ¶ 1.k alleges a delinquent debt of \$519 owed to a collection company on behalf of a bank. This debt is listed on the three credit reports in evidence. Applicant

⁶ Tr. at 56-61; Applicant's response to SOR; GE 1-3, 5-7; AE C, BB.

⁷ Tr. at 61; Applicant's response to SOR; AE D.

⁸ Tr. at 62-64; Applicant's response to SOR; AE CC.

⁹ Tr. at 64-66; Applicant's response to SOR; AE E.

¹⁰ Tr. at 66-69; Applicant's response to SOR; AE I, P, S, DD.

¹¹ Tr. at 69-74; Applicant's response to SOR; AE F, G, R, JJ.

initially thought this was the same debt as alleged in SOR ¶ 1.h. Department Counsel pointed out to her that the credit reports list different account numbers for the two debts. Applicant admitted that she had an account with the original bank but she thought she paid the debt. She stated that she would notify the creditor and pay the debt. No additional information was submitted on this debt.¹²

Applicant settled in full the \$515 delinquent debt owed to a collection company, on behalf of a credit card company, as alleged in SOR ¶ 1.i, with a \$260 payment on February 18, 2009.¹³

SOR ¶ 1.m alleges a delinquent medical debt of \$520. The debt is listed on the two most recent credit reports, but the name of the creditor is not listed. Applicant stated that she believed her doctor sent her bill to the wrong insurance company. She was working with the doctor's office to correct the situation.¹⁴

Applicant bought a new truck in about September 2006, and financed it with a loan of about \$41,000. Her monthly payments were about \$690. She fell behind on the payments after she lost her job and the truck was repossessed. The finance company sued her for the deficiency owed on the truck and was awarded a judgment of more than \$19,000. This debt is alleged in SOR ¶ 1.o. Applicant paid \$100 toward this debt on April 13, 2009. She is hoping to obtain a loan to settle this debt.¹⁵

On February 12, 2009, Applicant paid the \$57 delinquent debt owed to a collection company for a returned check, as alleged in SOR ¶ 1.p. In her response to the SOR, Applicant indicated that she would pay the \$322 delinquent medical debt alleged in SOR ¶ 1.q on March 20, 2009. She did not pay the debt on that date; she paid the debt with a \$370 payment on June 12, 2009.¹⁶

SOR ¶ 1.r alleges a delinquent debt of \$1,091 owed to a collection company on behalf of a satellite television provider. In her response to the SOR, Applicant stated that she returned the three satellite converter boxes that she had and would pay the final bill of \$328 on March 20, 2009. She submitted a letter to the satellite company dated February 12, 2009, which purported to accompany the three boxes that were returned that date. Applicant was informed that the letter was not the best evidence that the boxes were returned. After the hearing she submitted a receipt showing that three packages were shipped on June 10, 2009. She paid the company \$328 on June 15, 2009.¹⁷

¹² Tr. at 74-77; Applicant's response to SOR; GE 5-7.

¹³ Tr. at 77-79; Applicant's response to SOR; AE J.

¹⁴ Tr. at 80; Applicant's response to SOR; GE 5-6; AE NN, OO.

¹⁵ Tr. at 38-42, 81-83; Applicant's response to SOR; GE 5-7; AE O, V, EE.

¹⁶ Tr. at 83-86; Applicant's response to SOR; AE K, FF, II, LL.

¹⁷ Tr. at 35-37, 85-88; Applicant's response to SOR; AE N, GG, PP, QQ.

Applicant paid the \$136 delinquent debt alleged in SOR ¶ 1.s on February 12, 2009.¹⁸

SOR ¶ 1.t alleges a delinquent debt of \$1,592 owed to a collection company on behalf of a public utility company. Applicant admitted to this debt in her response to the SOR, and stated that she would pay the debt with \$796 payments on April 3, 2009 and April 17, 2009. She has not made any payments on the debt. She called the utility company, but they told her the debt was already transferred to a collection company.¹⁹

Applicant's financial situation is much better than it has been for a number of years. She earns a good salary. She has downsized her lifestyle and expenses. She moved in with friends to save on rent. She drives a modest car. She has been receiving financial advice from an experienced friend. She has a budget and is saving money to use to pay her debts. She voiced a commitment to pay all her delinquent debts. Her plan is to take care of enough of her smaller debts to enable her to obtain a loan that she will use to pay off her largest debts. Her friend who is helping with her finances testified about her efforts at resolving her debts. He stated that she is a responsible, trustworthy person.²⁰

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 to be used 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, administrative judges apply the guidelines 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

¹⁸ Tr. at 88-89; Applicant's response to SOR; AE L, V.

¹⁹ Tr. at 89; Applicant's response to SOR.

²⁰ Tr. at 93-115; Applicant's response to SOR; AE U, V, MM.

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 the 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 adverse 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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 has not resolved the largest debts alleged in the SOR. Her financial issues are ongoing. AG ¶ 20(a) is not applicable. Applicant was unemployed for about three months in 2007. She had financial issues related to her separation and divorce. These qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant admitted that her unemployment and divorce were only partly accountable for her delinquent debts. Many of the delinquent debts were accrued before she separated and before she lost her job. She has begun to act responsibly by addressing her delinquent debts. AG ¶ 20(b) is partially applicable.

Applicant paid or has payment arrangements for a large percentage of the total number of her delinquent debts. However, she still owes a large percentage of the total amount owed on her delinquent debts. I find that Applicant acted in good-faith to pay some of her delinquent debts. AG ¶ 20(d) is applicable to the paid debts and the debts with payment arrangements. Because of the amount still owed, I am unable to find AG ¶ 20(d) applicable to all her debts. She has received financial counseling from an experienced friend and there are some indications that her financial problem is being

resolved. However, she still has a long way to go before her financial situation can be considered completely resolved. AG ¶ 20(c) is partially applicable.

Applicant disputed the debts alleged in SOR ¶¶ 1.a and 1.b, and provided evidence of her actions to resolve the issues. AG ¶ 20(e) is applicable to those debts. She provided contradictory evidence about the \$13,232 federal tax lien alleged in SOR ¶ 1.c. She initially stated to the OPM investigator that she believed the lien was for federal taxes that she owed from 1984, 1985, and 1986; she paid \$250 per month for about ten months; and she paid the lien off in May 2005 with money she received when she refinanced her home. She later stated that the lien was in her ex-husband's name for property taxes and the house was sold in 2006. She stated the IRS and the county court would not release information about the lien because it was not in her name. Applicant was provided the opportunity to provide other evidence that would support her position; specifically, she was asked to provide proof that she had received income tax refunds. She did not do so. I find that Applicant did not submit documented evidence to substantiate the basis of the dispute of the federal income tax lien. AG ¶ 20(e) is not applicable to that debt.

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) the 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 have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant's finances were adversely affected by her separation, divorce, and unemployment. However, she had financial problems before any of those events occurred. She has paid many of her delinquent debts, but the largest ones remain unresolved. Her financial situation appears to be headed in the right direction. She is receiving financial

advice from someone with knowledge in that area and has a budget. She has severely curtailed her living expenses to better enable her to pay her debts.

Despite the positive information, there are lingering concerns. Applicant does not have very many delinquent debts left to pay, but the total amount still owed is in excess of \$35,000. She made contradictory and inconsistent statements about her finances. She stated that she would pay certain debts at a certain time, and then did not make the payments during the period she stated that she would. Two items specifically cause me concern. Applicant listed the judgment alleged in SOR ¶ 1.d on her 2007 SF 86. She discussed going to court for the judgment when she was interviewed by the OPM investigator in 2007. She stated that she appeared in court and admitted that she owed the money. In July 2008, she certified the accuracy of the ROI that summarized her interview. When she responded to DOHA interrogatories in March 2008, she wrote that she was “trying to get a loan” to resolve the judgment. Despite all the above, at the hearing she testified that she did not remember if she went to court for this matter. That statement is simply not credible.

The second item of serious concern is her federal tax lien. Applicant provided inconsistent statements about this debt. She initially stated that she believed the lien was for federal taxes that she owed from the mid-1980s, and that she paid \$250 per month for about ten months before she paid the lien off in May 2005 with money she received when she refinanced her home. At the hearing she stated that was a different tax matter and that the tax lien was for property taxes and was purely in her ex-husband's name. She stated that the IRS and the county court would not give her any documentation on this matter because it was not in her name. Applicant stated that she received an income tax refund for tax year 2007. The IRS will normally withhold a refund if a taxpayer owes for a previous year. Applicant was told that proof of a refund would be some evidence that she does not owe the IRS. She did not provide proof of any refunds. She wrote that her 2007 tax information is in a box in her storage bin and it would take too long to find it. Proof of resolution of her tax issues would have been very positive information in mitigation. Instead, I am left with doubts of the existence of any refunds. The alternative is that Applicant does not care enough to find the proof. In either event, based upon the information currently available, her finances remain a security concern.

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 Financial Considerations security concerns.

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-1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraphs 1.e-1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraphs 1.l-1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p-1.s:	For Applicant
Subparagraph 1.t:	Against Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge