



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 08-01105
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

September 30, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns pertaining to Financial Considerations. Clearance is denied.

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-Qip), on April 16, 2007.¹ On April 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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 acknowledged receipt of the SOR on April 25, 2008, which was received at DOHA on April 29, 2008. She answered the SOR in writing on May 15,

¹ Applicant had previously submitted a Security Clearance Application (SF 86) on April 18, 2006.
GE 2.

2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 27, 2008, and I received the case assignment on June 4, 2008. DOHA issued a notice of hearing on June 23, 2008, scheduling the hearing for July 23, 2008. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 5, which were received without objection. The Government also submitted a Government's Exhibit List, which was marked as Exhibit (Ex.) I. Applicant offered Applicant Exhibits (AE) A through G, which were received without objection, and she testified on her own behalf. I held the record open to afford Applicant the opportunity to submit additional material. She timely submitted AE H through W, without objection. DOHA received the hearing transcript (Tr.) on July 31, 2008.

Findings of Fact

Applicant admitted the allegations contained in SOR ¶¶ 1.a. – 1.c., 1.e. – 1.f., 1.h. – 1.j., and 1.m. She denied the allegation contained in SOR ¶¶ 1.d., 1.g., and 1.k. – 1.l. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 28-year-old security officer, who has worked for a defense contractor since April 2006. She currently holds a secret clearance, which she has held since November 2001, granted to her while in the U.S. Army, discussed *infra*. She seeks a top secret clearance, which she stated is a job requirement. GE 1, Response to SOR, Tr. 15-16, 20-22.

Applicant graduated from high school in June 1987. She served in the U.S. Army from October 2000 to February 2006, and was honorably discharged. While in the Army, her primary Military Occupational Specialty (MOS) was Ammunition Supply Specialist, and her secondary MOS was Recruiter. Beyond high school, she attended college and estimates she has earned approximately 45 college credit hours. GE 1, Tr. 16-20. She has never been married and has no dependents. GE 1, Tr. 15.

Applicant's background investigation addressed her financial situation and included among other things the review of her April 2007 e-QIP, her April 2006 SF-86, her April 2008 and April 2007 credit bureau reports (CBR), and her March 2008 Signed Responses to Interrogatories and Attachments. GE 1 – 5.

The SOR alleged 13 separate allegations, 12 of which are debts approximating \$34,406, under Guideline F, Financial Considerations. They are itemized and discussed in order.

SOR ¶ 1.a. is a judgment in the amount of \$2,113 against Applicant in July 2007. The creditor sought payment for furniture Applicant purchased and financed in 2005 while she was still in the Army. Applicant stopped making payments after she was discharged from the Army in February 2006 stating, "I didn't have a job. I was making a

transition from the military to the civilian world.” Tr. 25. (She began her present job in April 2006, two months after she was discharged from the Army.) Applicant never did resume voluntary payments to this creditor after being discharged from the Army. To collect money owed, the creditor filed suit against Applicant in July 2007, and later garnished her wages in February 2008 until the debt was satisfied. Applicant received a notice of satisfaction from the district court stating the judgment had been paid in full Tr. 24-30, AE A, AE T.

SOR ¶ 1.b. is a judgment in the amount of \$8,608 against Applicant in May 2007 in favor of her former landlord for back rent. When asked how this debt arose, Applicant answered:

Like I said, during the time when I got out of the military I was just going through financial hardship. I had family situations and I was the only one that could help in that situation so I got out a loan to help pay the funeral costs of my grandfather and my grandmother died shortly after that, well, before that. And just bills with family and that’s basically –

Applicant was evicted in May 2007 for non-payment of rent and explained:

Well, I had a roommate and at the time when I was at the apartment complex there were, the Resident Manager had changed 3 times and they started a new system with the apartment complex. And basically they said that I owed more than I did and I had the evidence to support when I went to court but you know, I was found guilty of it and forced to pay. But I had a roommate and my roommate moved out and I was just unable to pay the bill on my own. Tr. 31-33.

The roommate moved out of the apartment to live with her mother six months before Applicant was evicted. The landlord obtained a judgment against Applicant and her roommate. Applicant stopped making payments to the landlord when her roommate moved out and testified neither she nor her roommate made any payments to her landlord after her roommate moved out, discussed *infra*. Applicant further testified that she has not made any payments to her landlord since her landlord obtained a judgment against her and her roommate. However, in her Response to SOR, Applicant stated, “I am currently paying the company \$250.00 monthly.” In Applicant’s post-hearing submission, she included an undated copy of a letter purportedly sent to the landlord’s management company confirming payment arrangements at the rate of \$200 per month. No proof of payment accompanied this letter. Tr. 31-40, Response to SOR, AE P.

SOR ¶ 1.c. refers to the garnishment action the furniture company initiated after obtaining a judgment against Applicant, discussed *supra*.

SOR ¶ 1.d. is a collection account for \$978 for cable services. Applicant denied this bill and is currently disputing the validity of the debt with the cable company.

Applicant testified her last communication with the cable company occurred in April 2008 by telephone. Post-hearing, Applicant submitted an undated letter purportedly sent to the cable company claiming she did not open an account with them adding she did not physically reside in the area where the services were provided. There is no evidence in the record containing a response from the cable company. Tr. 42-45, AE N.

SOR ¶ 1.e. is a collection account for \$112 for cable services. Applicant claimed this debt was paid, but did not have any documentation. At her hearing, she stated she had documentation, but did not bring it with her to the hearing. Post-hearing, she submitted an undated letter purportedly sent to her bank/credit union seeking documentation that would reflect payment to this cable company. Response to SOR, Tr. 45-47, AE I. Applicant's documentation fails to clarify her status with this creditor.

SOR ¶ 1.f. is a collection account for \$179 for an undefined service provided to Applicant while she was in the Army. She paid this debt in March 2008. Response to SOR, AE C, AE W, Tr. 47-48.

SOR ¶ 1.g. is a collection account for \$342 for telephone services. Applicant is disputing this debt claiming she was being billed for services she did not receive. Applicant claimed that she wrote a letter in April 2008 to the creditor disputing this debt, but did not have the letter with her at her hearing. Post-hearing she submitted a letter purportedly sent to the creditor advising that "someone in [state where telephone was provided] has a home in my name without my knowledge." She also disputed this debt on her credit report. Tr. 48-54, AE D, AE L.

SOR ¶¶ 1.h. and 1.i. are charged off accounts for \$8,899 and \$500, respectively, to the same credit union. At her hearing, Applicant testified she was given this loan in 2006 to help her sister who was experiencing a foreclosure proceeding. In her Response to SOR, she stated these loans were to help her family pay the funeral costs for a family member who had passed away. Applicant was employed at the time, but never made any payments citing "financial hardship." At her hearing, she stated she had contacted the credit union to set up payments and was informed her account had been charged off and that she would be contacted by their attorney. Applicant added her recent attempts to settle this account had been unsuccessful, and that she had written to the credit union seeking settlement, but did not have a copy of that letter at her hearing. Post-hearing, she submitted a letter purportedly sent to the credit union offering to make monthly payments of \$500 per month. Regardless of what this loan was for, there is no evidence in the record indicating her offer was accepted and/or that Applicant is making payments to the credit union. Tr. 54-63, AE M.

SOR ¶ 1.j. is a charged off account for \$9,502 to a different credit union. At her hearing, Applicant stated she was given this loan in 2006 to help her family pay the funeral costs for a family member who had passed away. Applicant has made payment arrangements with this credit union to pay \$400 per month beginning on July 28, 2008. She submitted documentation from the credit union reflecting this payment

arrangement, but no documentation of having actually made any payments. Tr. 61-65, AE E, AE V.

SOR ¶ 1.k. is a collection account for \$976 for cell phone services. Applicant successfully contested this debt claiming she was the victim of identity theft. The cell phone company sent Applicant a letter dated May 6, 2008 canceling her account and absolving her from any financial responsibility for the account. Tr. 65-66, AE F, AE G.

SOR ¶ 1.l. is a collection account for \$3,036 to a state college for tuition. Applicant claimed in her Response to SOR that she attended that college on a full athletic scholarship before joining the Army and was billed for classes after joining the Army. The college has already recouped \$2,500 through garnishment and the \$3,036 is the balance owed. Applicant testified she has been in contact with the college by telephone as recently as one week before her hearing. She also testified she wrote the college a letter in April 2008 attempting to resolve her debt, but did not have that letter with her at the hearing. Post-hearing Applicant submitted an undated letter purportedly sent to the college attempting to resolve this debt. There is nothing in the record documenting this debt has been paid/resolved. Tr. 66-72.

SOR ¶ 1.m. is a collection account for \$161 to an insurance company. Applicant's contention that this debt was paid was unsupported by the documentary evidence. Tr. 72-74.

At the time of hearing, Applicant had not sought financial counseling. Post-hearing she submitted documentation that she had made an appointment on July 28, 2008 with a credit counseling service. The credit counseling service reviewed Applicant's current income, living expenses, assets and liabilities to help analyze her financial situation and created a budget and action plan for Applicant. Tr. 74, AE Q, AE S.

Applicant former roommate testified, the roommate Applicant referred to in SOR ¶ 1.b., discussed *supra*. The witness/former roommate was named as a co-defendant in the lawsuit their former landlord filled to recoup back rent. The witness is a middle school teacher, and testified she did not think Applicant would compromise any information involving her job as a security officer. The witness also testified she and the Applicant began paying \$200 per month about four months ago on this judgment and that these payments have been made from a checking account they share. (This conflicts with Applicant's earlier testimony.) The witness testified that Applicant lives with her and her mother and that Applicant "gives us what she can." Tr. 80-89.

Applicant stated she made "some bad decisions clearly here, bad financial decisions." She submitted one reference letter from a work supervisor, who provided favorable comments about Applicant. AE H.

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.

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

Under Guideline F (Financial Considerations),² the Government's concern is that an Applicant's "[f]ailure 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."

Applicant has a history of failing to meet her financial obligations dating back to 2006, shortly after she was discharged from the Army. She has accumulated substantial debt in the last several years approximating \$35,000.

The Government established its case under this concern through Applicant's admissions and evidence presented. Although Applicant made some headway on several of the debts alleges, the majority of her indebtedness remains unresolved. Her financial difficulties remain ongoing. Financial Considerations Disqualifying Condition AG ¶ 19(a): *inability or unwillingness to satisfy debts*; and AG ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

Considering the record evidence as a whole,³ I conclude that Applicant is able to receive partial credit under Financial Considerations Mitigating Condition (MC) AG ¶ 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*; for her brief period of unemployment in 2006 after she was discharged from the Army and the death of family members. I also gave Applicant partial credit for making the effort to receive credit counseling under AG ¶ 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*.

However, whatever credit she received by those MCs is overcome by the past several years of financial mismanagement and failure to handle her finances in a responsible manner. Applicant presented minimal evidence documenting efforts taken to contact or resolve debts with her unpaid creditors. What evidence she did offer occurred well after the indebtedness had reached a crisis point. Nor does the evidence support the notion that her recent participation in financial counseling netted any tangible results.

² Guideline ¶ 18.

³ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

I am able to give Applicant full credit for resolving several of her debts as a result of having paid some debts and being the victim of identify theft. Application of AG ¶ 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;* and AG ¶ 20(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;* is warranted for these debts and is reflected under Formal Findings, *infra*.

Unfortunately, for the majority of Applicant’s debts, especially in the case of her larger debts, she has done too little too late. She presented little evidence to show she has dealt responsibly with her financial obligations before, or especially after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, credible payment plans). Applicant’s financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility, or that she has taken control of her financial situation. Based on her past performance, her prospective assurances ring hollow. Her financial problems are likely to be a concern in the future. Moreover, her financial problems are recent, not isolated, and ongoing. Hence, more time is needed for Applicant to put her financial house in order and establish a track record of financial responsibility.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does not support a favorable decision.

Overall, the record evidence leaves me with questions or 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 from her financial difficulties.

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.:	For Applicant
Subparagraphs 1.b. - 1.e.:	Against Applicant
Subparagraph 1.f. – 1.g.:	For Applicant
Subparagraphs 1.h. – 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant
Subparagraphs 1.l. – 1.m.:	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. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge