



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



In the matter of:)
)
-----) ISCR Case No. 08-01687
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

July 10, 2008

Decision

HARVEY, Mark W., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

On April 18, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF 86).¹ On March 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her,² pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

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

²Item 1 (Statement of Reasons (SOR), dated Mar. 25, 2008). Item I is the source for the facts in the remainder of this paragraph unless stated otherwise.

Clearance Review Program (Directive), dated January 2, 1992, as amended, modified and revised.³ The SOR alleges security concerns under Guideline F (Financial Considerations).⁴ The SOR 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 April 18, 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 29, 2008, was provided to her, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁵ Applicant did not provide additional documents within the 30 days. On July 7, 2008, the case was assigned to me.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.h, 1.i, 1.l, 1.m, 1.o-1.aa, 1.ac, 1.ag, and 1.ai. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 45 years old.⁶ She married in 1979 and divorced in 1983. She married in 1984 and divorced in 1998. She is not currently married. Her children were born in 1981, 1983 and 1985. She did not serve in the military. She attended junior college for several months in 2000. She has been employed for a defense contractor in security operations since November 2006. She has worked as a park associate from October 2002 to April 2006. 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.

³On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

⁴ When she completed her SF 86, she denied she had any unpaid judgments in the last seven years, and any liens against her property. See Item 4, Sections 27c and 27d. She admitted filing for bankruptcy in the last seven years, and her pay was garnished in September 2003. See Item 4, Sections 27a and 27b. She also admitted having debts delinquent over 180 days in the last seven years; and having debts currently delinquent over 90 days. See Item 4, Sections 28a and 28b.

⁵Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated May 2, 2008; and Applicant's receipt is signed and dated May 5, 2008. The DOHA transmittal letter informed Applicant that she had 30 days after Applicant's receipt to submit information.

⁶Item 4 (2007 security clearance application) is the source for the facts in this paragraph, unless stated otherwise.

Financial Considerations

Applicant admitted in her SOR response at ¶¶ 1.a and 1.b, that her budget showed a monthly net remainder of negative \$51, and that her debts were discharged under Chapter 7 of the Bankruptcy Code in September 2001 (Item 3). She denied responsibility for the 13 debts totaling \$19,411 as listed in SOR ¶¶ 1.c (\$5,409), 1.d (\$678), 1.e (\$777), 1.f (\$602), 1.g (\$1,197), 1.j (\$678), 1.k (\$111), 1.n (\$5,935), 1.ab (\$79), 1.ad (\$2,600), 1.ae (\$70), 1.af (\$79), and 1.ah (\$1,196) (Item 3). She admitted responsibility for the 20 debts totaling \$11,579, as detailed in SOR ¶¶ 1.h (\$122), 1.i (\$156), 1.l (\$128), 1.m (\$5,935), 1.o (\$286), 1.p (\$570), 1.q (\$554), 1.r (\$1,170), 1.s (\$447), 1.t (\$227), 1.u (\$26), 1.v (\$45), 1.w (\$65), 1.x (\$169), 1.y (\$47), 1.z (\$31), 1.aa (\$85), 1.ac (\$41), 1.ag (\$1,247), and 1.ai (\$228) (Item 3).

Applicant's budget showed a gross monthly salary of \$1,120, \$400 from a boyfriend and \$364 monthly from spousal support (Item 5). Her monthly net income is \$1,763 and her expenses total \$1,490 (Item 5). She pays \$100 monthly on a \$15,000 debt and \$212 on a \$2,186 debt (Item 5). Her budget did not allocate funds to pay the SOR debts. A significant portion of her delinquent debts resulted from medical treatments she received (Item 5).

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 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

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).

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 response to interrogatories. After her delinquent debts were discharged in 2001, she accrued 20 additional delinquent debts, totaling approximately \$11,579. 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 she did not act more aggressively and responsibly to resolve her delinquent debts.⁹ She receives partial mitigating credit under AG ¶ 20(b) because many of her

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)).

debts resulted from medical treatment and as such constitute a condition largely beyond her control.

AG ¶¶ 20(c) and 20(d) do not fully apply. Applicant received some financial counseling in connection with her 2001 bankruptcy. 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.

I find “For Applicant” for all the debts she denied in her SOR response in the decretal paragraph of this decision. There is insufficient evidence contradicting her denials to prove her responsibility for those debts. Moreover, some of them are likely duplications of the debts she admitted. AG ¶ 20(e) is not applicable to the debts she admitted because those particular debts are not disputed. She did not provide “documented proof to substantiate the basis of the dispute or [provide] evidence of actions to resolve the issue” with respect to the debts she admitted.

Applicant did not provide sufficient correspondence with her creditors for the debts she admitted to establish she acted responsibly and in good faith. She failed to arrange payment plans (although from her budget she does not have sufficient income remaining to generate payments plans). Her overall conduct with her creditors casts doubt on her current reliability, trustworthiness, and good judgment. Her financial problems are continuing and likely to recur. She should have been more diligent and made greater efforts to resolve her delinquent debts, especially after receipt of the SOR. 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.

¹⁰The 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)).

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.

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. These factors show some responsibility, rehabilitation, and mitigation. The overall amount of her delinquent debt at about \$11,579 is relatively low.

The evidence against mitigating Applicant's conduct is more substantial. Her Chapter 7 bankruptcy in 2001 provided her with the knowledge and opportunity for a fresh financial start. She was well aware of her financial responsibilities. She learned of the security significance of these delinquent debts when she received the SOR. Her efforts to resolve her delinquent debts were insufficient 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 she has not mitigated 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.

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

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
Subparagraphs 1.h and 1.i:	Against Applicant
Subparagraphs 1.j and 1.k:	For Applicant
Subparagraphs 1.l and 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o to 1.aa:	Against Applicant
Subparagraph 1.ab:	For Applicant
Subparagraph 1.ac:	Against Applicant
Subparagraphs 1.ad to 1.af:	For Applicant
Subparagraph 1.ag:	Against Applicant
Subparagraph 1.ah:	For Applicant
Subparagraph 1.ai:	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.

Mark W. Harvey
Administrative Judge