



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



In the matter of:)	
)	
)	ISCR Case No. 08-02930
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

October 16, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the hearing transcript, pleadings, and exhibits, I conclude that Applicant mitigated security concerns under Guideline E, Personal Conduct, but failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) Questionnaire on August 27, 2007. On July 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct, and 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.

On August 8, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on August 26, 2008. I convened a hearing on September 19, 2008, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified on her own behalf. She called no witnesses and offered no exhibits. DOHA received the transcript (Tr.) of the hearing on September 22, 2008.

Findings of Fact

The SOR contains 16 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.p.) and one allegation of disqualifying conduct under AG E, Personal Conduct (SOR ¶ 2.a.). In her Answer to the SOR, dated August 8, 2008, Applicant admitted all Guideline F and Guideline E allegations. At her hearing, she admitted again that she was responsible for and had not paid the debts alleged on the SOR. She also admitted that she failed to acknowledge the debts in response to Question 28a on the e-QIP she signed and certified on August 27, 2008. Applicant's admissions are admitted herein as findings of fact. (Answer to SOR; Tr. 21, 35; Ex. D.)

Applicant is 27 years old, unmarried, and the mother of a six-year-old child. She is a high school graduate and holds an associate of arts degree in general studies. She has been employed as a contract security guard for at least seven years. From September 2004 until June 2006, Applicant worked full-time as a contract security guard. From June 2006 until December 2006, she had part-time employment as a security guard. She resumed full-time employment as a security guard in January 2007 with her present employer, a government contractor. She was employed in that status until July 2008, when her eligibility for a security clearance was suspended as a result of receiving the SOR. She has been unemployed since July 2008. She is not receiving unemployment compensation. (Ex. 1; Tr. 39-43, 49-52.)

The SOR alleged, and Applicant admitted, that she was responsible for 16 financial delinquencies totaling approximately \$15,503. The SOR alleged the following delinquencies: an unsatisfied deficiency balance of approximately \$8,745 owed to a credit union for a charged-off loan financing an automobile that was voluntarily repossessed (SOR ¶ 1.h.); a \$108 debt, in collection status, to a utility company which was unpaid as of June 24, 2008 (SOR ¶1.a.); a \$760 debt, in collection status, for cable television service, which was unpaid as of June 24, 2008 (SOR ¶1.b.); a \$512 debt, in collection status, which was unpaid as of June 24, 2008 (SOR ¶1.c.); a medical debt of \$1,123, referred for collection and unpaid as of June 24, 2008 (SOR ¶1.d.); a debt of \$897, referred for collection and unpaid as of June 24, 2008 (SOR ¶1.e.); a debt of \$536, referred for collection and unpaid as of June 24, 2008 (SOR ¶1.f.); and a debt of \$401 to a utility company, which had been referred for collection and was unpaid as of June 24, 2008 (SOR ¶1.g.). (Ex. 5.)

The SOR also alleged the following unpaid financial delinquencies: a \$345 debt in collection status, which was unpaid as of September 7, 2007 (SOR ¶1.i.); a medical debt of \$286, referred for collection and unpaid as of September 7, 2007 (SOR ¶1.j.); a debt of \$150, referred for collection and unpaid as of September 7, 2007 (SOR ¶1.k.); and debts of \$72, \$111, \$894, \$330, and \$233, all in collection status and all unpaid as of September 7, 2007 (SOR ¶¶ 1.l., 1.m., 1.n., 1.o., and 1.p.) (Ex. 2.)

Applicant's current financial problems began in about June 2006 when her employer put her on part-time work and pay for six months. From January 2007 until she was suspended in July 2008, she held a full-time job. Her credit bureau report of September 7, 2007, showed two judgments, one for \$703 and one for \$1,229, filed against her in 2001. The record reflected that Applicant satisfied both judgments in May 2005. (Tr. 21-22; Ex.2.)

Applicant has not received child support from her son's father for over a year. She is receiving some support from her state's social services program. Her son was born prematurely and suffers from asthma and allergies; he requires year-round medical attention for these conditions. Applicant reported that a Federal health insurance program was paying her son's medical expenses. (Tr. 22, 44, 53.)

Applicant inquired about consumer credit counseling in July 2007 and May 2008. She has discussed credit counseling over the telephone with a representative of a credit counseling program, but she has been advised that she lacks sufficient financial stability to take advantage of the program's services. Applicant applied for debt consolidation loans in May, July, and August 2008. Each time she applied, she was turned down because of her weak financial position. At the time of her hearing, she was not current on her rent payments. (Tr. 28-29, 31-32, 38.)

Applicant completed and certified her e-QIP on August 27, 2007. In response to Section 28, entitled "Your Financial Delinquencies," Applicant responded "no" to Question 28a. Question 28a reads: "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Directions following Question 28a read: "If you answered "Yes" to [28]a . . . provide an entry for each occurrence to report."

Applicant admitted she knew she had debts that were over 180 days delinquent when she completed Question 28a. She was unsure and didn't know about all of her debts. However, when she tried to answer "yes," she did not know how many debts to list. She was advised by the person who helped all employees at her company fill out their security clearances to answer the question "no" and address the delinquencies later. (Tr. 27, 54-57.)

Policies

When evaluating an Applicant's suitability for a security clearance, an 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, the administrative judge applies these 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 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

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(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay her creditors. This evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties. Many of her current delinquencies began in about 2006, when her income was significantly reduced for about six months. However, from January 2007 until July 2008, she was employed full time. Applicant admitted that the 16 financial delinquencies alleged on the SOR

remained unresolved, resulting in substantial debt which continues to the present day, a situation which raises concerns about Applicant's good judgment.

Applicant has experienced reductions in her employment and, subsequently, her pay. Her young son has health problems which require medical attention. Applicant has not received financial counseling. While she did not dispute her debts and admitted that she was responsible for them, it was not clear that she understood her financial problems or how to resolve them. She had no plan in place to systematically resolve her substantial delinquent debt and prepare for future contingencies. I conclude that AG ¶ 20(b) applies in part in mitigation, but that AG ¶ 20(a), AG ¶ 20(c), AG ¶ 20(d) and AG 20(e) do not apply in mitigation to the facts of Applicant's case.

Guideline E, Personal Conduct

Under Guideline E, a personal conduct security concern arises when an applicant displays "[conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations" because such conduct "can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Additionally, Guideline E takes special note of "any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process." AG ¶ 15.

I have carefully considered all of the potentially disqualifying conditions under Guideline E. I have especially considered AG ¶ 16(a).¹

The SOR alleged that Applicant falsified material facts on her August 27, 2007 e-QIP by failing to admit any current financial delinquencies of over 90 days and any financial delinquencies within the past seven years of over 180 days. Applicant admitted the falsification but denied that it was intentional. She reported that the person who was tasked by her employer to advise employees in completing their e-QIP applications advised her to answer "no" to question 28a and provide the details of her financial delinquencies at a later time. Applicant complied with this advice.

I carefully observed Applicant's demeanor when she testified about completing her e-QIP and consulting with the advisor her employer provided about how she should answer Question 28a. I found Applicant's statement of her state of mind to be credible, and I conclude that her falsification was not intended to mislead or deceive. Accordingly, I conclude that AG ¶ 16 (a) does not apply to the facts of Applicant's case.

¹ AG ¶16(a) reads as follows: "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."

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 commonsense 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. Applicant's financial problems began at least two years ago and continued while she was steadily employed. She has not taken affirmative action to contact her creditors to discuss how she might pay or resolve her 16 delinquent debts. Her many financial delinquencies and her lack of attention to them continue to raise security concerns. Her current financial overextension is serious: she lacks sufficient funds to pay her monthly rent, and she has been unable to find work. It is unclear at this time how she will support herself and her young son.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the personal conduct security concerns but failed to mitigate security concerns arising from her financial delinquencies.

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 through 1.p:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

Joan Caton Anthony
Administrative Judge