



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



In the matter of:)
)
) ISCR Case No. 08-03128
SSN:)
)
Applicant for Security Clearance)

Appearances

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

August 20, 2008

Decision

TUIDER, Robert J., Administrative Judge:

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

Statement of the Case

On August 4, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, 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 Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.¹ The SOR alleges security

¹On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*

concerns under Guideline F (Financial Considerations). 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 May 8, 2008, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated June 9, 2008, was provided to her, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.² Applicant did submit additional information within the 30-day time period after receiving a copy of the FORM. Department Counsel reviewed Applicant's additional material on July 12, 2008, and had no objection to material submitted. The case was assigned to another administrative judge on July 22, 2008, and due to caseload considerations, was reassigned to me on July 25, 2008.

Findings of Fact

Applicant admitted SOR ¶¶ 1.b., 1.f.–1.g., and 1.i. She denied SOR ¶¶ 1.a. 1.c., claiming 1.c. and 1.g. are the same debt, 1.d.–1.e., and 1.h. Her admissions are incorporated herein as findings of fact. I make the following additional findings of fact:

Applicant is a 47-year-old SAMS-E Instructor/Data Conversion Technician, who has worked for her defense contractor employer since January 2007. She seeks a clearance in conjunction with her employment. Her employment “is contingent upon successful completion of a reference and background check.”³ The record evidence indicates Applicant attended college from September 1995 to June 2003; however, it does not indicate whether Applicant was awarded a degree.⁴ Applicant was married from May 1981 to November 1992. That marriage ended by divorce.⁵ Applicant has two children, a 26-year-old son and a 13-year-old daughter.⁶ Applicant served in the U.S. Army from October 1979 to June 1986, and from January 1987 to October 1992.⁷

(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.

² Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated June 9, 2008; and Applicant acknowledged receipt on June 17, 2008, which DOHA received on June 20, 2008. The DOHA transmittal letter informed Applicant that she had 30 days after Applicant's receipt to submit information.

³ Item 3.

⁴ Item 4.

⁵ *Id.*

⁶ *Id.*

⁷ Item 4.

Applicant receives \$475 per month from the Veterans Administration for a service connected disability.⁸

Applicant's background investigation addressed her financial situation and included the review of her e-QIP,⁹ her April 2008 Answers to Interrogatories,¹⁰ her March 2008 credit report,¹¹ and her August 2007 credit report.¹² The government established by Applicant's admissions and evidence presented that Applicant has or had seven unpaid or unresolved debts totaling approximately \$17,867. These debts were incurred over the course of several years. (SOR ¶¶ 1.b., 1.c., 1.e.–1.i.)

The debt in SOR ¶ 1.h. has been paid, and the debts listed in SOR ¶¶ 1.c. and 1.g. are the same debt. The debt in SOR ¶ 1.g. was sold to a credit management company and is also alleged in SOR ¶ 1.c. Applicant asserts this is the same debt.¹³ This debt (SOR ¶¶ 1.c. and 1.g.) has not been paid. Applicant also provided evidence in Response to the FORM that she is making payments of \$500 per month for the debt alleged in SOR ¶ 1.e., which is for an automobile. She indicated that these \$500 monthly payments began in May 2008 and before that she was making \$340 monthly payments. She did not provide documentation of this agreement, but she did submit two receipts for the months of May and June 2008 in her Response to FORM.

Applicant denies SOR ¶ 1.a., which alleges that she filed for Chapter 13 Bankruptcy in December 2005, and that bankruptcy was dismissed in February 2007 for failure to make monthly payments. She stated that she made a conscious decision to discontinue her Chapter 13 payment plan because she "sought a reamortization of [her] loan with [her] mortgage company."¹⁴ The government evidence, which consists of two credit reports, supports the government's allegations in this regard.¹⁵

Applicant also denied SOR ¶ 1.d., which alleges that her home mortgage loan in the amount of \$112,000 was foreclosed upon for non-payment. The government evidence as well as Applicant's Answer to Interrogatories supports this allegation.¹⁶

⁸ Item 5.

⁹ Item 4.

¹⁰ Item 5.

¹¹ Item 6.

¹² Item 7.

¹³ Item 3.

¹⁴ *Id.*

¹⁵ Items 6 and 7.

¹⁶ Items 5, 6 and 7.

Applicant was unemployed from April 2006 to January 2007. She indicated that she recently conferred with a credit counseling service, but did not submit any documentation reflecting that she retained their services or has an ongoing relationship with them and is following their counsel to resolve her indebtedness. She did state that she was advised by the credit counseling service that she was under “no legal obligation” to pay debts alleged in ¶ 1.b., 1.f., 1.g., and 1.i. because these debts were “charged off.”¹⁷

In her Response to FORM, Applicant states her plan is to first pay off her automobile loan (SOR ¶ 1.e.) and pay off the remaining accounts until they are satisfied. Per Applicant’s April 2008 Personal Financial Statement (PFS), she has a net monthly remainder of \$179.18 after paying all of her bills. This PFS does not address the outstanding debts alleged in the SOR.¹⁸

Applicant offered no documentation that any of her outstanding debts have been paid, that she has set up payment plans, or otherwise resolved them. She was awarded a Bronze Star Medal for service from August 6, 1990 to April 1, 1991 for “Meritorious achievement during Operation Desert Storm in connection with military operations.”¹⁹ Applicant submitted six reference letters in her Response to FORM attesting to her good character.

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

¹⁷ Item 3.

¹⁸ Item 5.

¹⁹ Item 3.

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,”²⁰ 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).²¹

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.

²⁰ 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). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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).

²¹ “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).

Analysis

Guideline F, Financial Considerations

Under Guideline F (Financial Considerations),²² 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.

The government substantiated its security concern under this Guideline through Applicant's admissions and evidence submitted. The debts alleged in SOR ¶ 1.c. and 1.g. are the same debt and it has not been paid or resolved. In Applicant's favor, the debt alleged in SOR ¶ 1.h. has been paid, and she is making automobile payments to the creditor in SOR ¶ 1.e. In the absence of further information, I am unable to glean any further information, favorable or unfavorable, with regard to identified financial concerns.

¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

²² Guideline ¶ 18.

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Of the nine Financial Considerations Disqualifying Conditions (FC DC) listed *supra*, two are applicable: ¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations*.

¶ 20. Conditions that could mitigate security concerns include:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Considering the record evidence as a whole,²³ I conclude none of the six Financial Considerations Mitigating Conditions (FC MC) are applicable or partially applicable except for the debts alleged in SOR ¶¶ 1.e. and 1.h. With regard to these two debts, application of ¶ 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, is appropriate. Applicant presented no evidence documenting efforts taken to contact creditors, or to resolve any of her other outstanding debts since she acquired them.

I specifically considered 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*, and conclude it does not apply.

Applicant asserts that she has no legal obligation to pay her “charged off” debts. While this may be true in a strict debtor-creditor context, it holds no weight under a security clearance analysis. The Appeal Board has frequently held that reliance upon legal defenses, such as the statute of limitations or state debt enforcement provisions, does not demonstrate honesty and reliability and therefore is of little probative value when resolving trustworthiness concerns associated with financial problems.²⁴

To conclude, Applicant presented little or no 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.

In fairness to the Applicant, this decision should not be construed as a determination that the Applicant cannot or will not attain the state of financial stability necessary to justify the award of a DoD security clearance. To the contrary, her mitigating evidence and whole person analysis suggests a sound potential for positive reform and outstanding accomplishments in the defense industry. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, she may well demonstrate persuasive evidence of her security worthiness.

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”²⁵ and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the Guidelines. Applicant has

²³ 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.

²⁴ See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); ISCR Case No. 01-09691 at 2 (App. Bd. Mar. 27, 2003).

²⁵ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

not mitigated or overcome the government's case. For the reasons stated, I conclude she is not eligible for access to classified information.

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.–1.d: ²⁶ | Against Applicant |
| Subparagraph 1.e.: | For Applicant |
| Subparagraph 1.f.–1.g.: | Against Applicant |
| Subparagraph 1.h.: | For Applicant |
| Subparagraph 1.i.: | 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

²⁶ As noted *supra*, the debts alleged in SOR ¶ 1.c. and 1.g. are the same debt. This debt has not been paid or otherwise resolved.