



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-03180
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

February 20, 2009

Decision

GALES, Robert Robinson, Chief Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On June 29, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On October 8, 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* (February 20, 1960), as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and

recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

It should be noted that on December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG are applicable to Applicant's case because her SOR was issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 5, 2008. In a sworn, written statement, notarized, but undated, received by DOHA on November 10, 2008, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on December 2, 2008, and the case was assigned to Administrative Judge Michael H. Leonard on December 8, 2008. On January 5, 2009, because of caseload considerations, it was reassigned to me. A Notice of Hearing was issued on January 12, 2009, and I convened the hearing, as scheduled, on January 29, 2009. During the hearing, four Government exhibits and one Applicant exhibit were received without objection. Applicant testified. The transcript of the hearing (Tr.) was received on February 4, 2009.

The record was kept open until February 12, 2009, to enable both parties to supplement the record by submitting their own respective recent versions of credit reports. The Department Counsel submitted one such report on February 4, 2009, and Applicant submitted another such report on February 6, 2009. Both submissions were admitted into evidence without objection.

Findings of Fact

In her Answers to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a. through 1.g., 1.l., and 1.q., of the SOR. She denied the remaining allegations.

Applicant is a 44-year-old employee of a defense contractor. She has been with the same employer since May 1997, and currently serves as an aircraft mechanic.¹ She is seeking to retain the SECRET security clearance previously granted to her in about September 1997.² Applicant has never been married,³ but does have three children,

¹ Government Exhibit 1 (e-QIP, dated Jun. 29, 2007), at 10.

² *Id.* at 23.

³ *Id.* at 12.

born in 1981, 1984, and 1988, respectively.⁴ As of June 2007, her children were still residing with her.⁵

It is unclear when Applicant's finances commenced a downward spiral, but the various credit reports in evidence would seem to indicate her problems started about the time some accounts were sent to collection as early as 2001. It appears she experienced financial difficulties of some sort, although she has not described any specific contributing factors other than being a single parent of three children. Several accounts became delinquent and were either "charged off" or placed for collection. Notwithstanding the collection activities of her creditors, when Applicant completed her e-QIP in June 2007, she denied having any accounts delinquent over 180 days, although she did acknowledge one account, not referred to in the SOR, to be delinquent over 90 days.⁶

Applicant ignored her debts until she received Interrogatories pertaining to her finances from DOHA in late May or early June 2008. On June 2, 2008, she furnished answers to those Interrogatories,⁷ and stated she was currently being advised by a credit counselor on correcting and reestablishing good credit.⁸ In reality, it was not until June 13, 2008, that she entered into a contract with a credit consultant for "credit consultation and guidance," and made the initial payment of an eventual total of \$850.00 for such consultation and guidance.⁹ She was advised not to pay any listed debt,¹⁰ and as of the date of the hearing, has not paid any creditor.¹¹

The first step in her effort to correct and reestablish credit was to dispute each derogatory account listed on her credit reports, regardless of the validity of the listing, with the ultimate goal of reducing any outstanding balances to manageable amounts below \$1,000.00.¹² She intends to dispute each debt, even two or three times, to motivate the creditors to make more favorable settlements as to the outstanding balances.¹³ As a result of those initial disputes, some of the accounts were deleted from the most recent credit reports.

⁴ *Id.* at 14-16.

⁵ *Id.*

⁶ *Id.* at 24-25.

⁷ Government Exhibit 2 (Interrogatories, dated June 2, 2008).

⁸ *Id.* at 4.

⁹ Applicant Exhibit A (Contract, dated June 13, 2008), at 1-2.

¹⁰ Tr. at 23.

¹¹ *Id.* at 41.

¹² *Id.* at 40-43.

¹³ *Id.* at 26, 42.

The SOR identified 18 purportedly continuing delinquencies. Applicant acknowledges that for each such account, she received something of value, including either a service, a loan, or an object, and that she is responsible for paying for them.¹⁴ Those debts listed in the SOR, and their respective current status, according to the credit reports, and Applicant's comments regarding same, are described below:

SOR ¶	TYPE DEBT	AMOUNT	STATUS
1.a.	Medical	\$43	Collection. Disputed. Unpaid.
1.b.	Credit card	\$632	Charged off. Collection. Disputed. Unpaid.
1.c.	Medical	\$453	Collection. Disputed. Unpaid. (no longer on credit reports)
1.d.	Mobile telephone service	\$1,547	Collection. Disputed. Unpaid.
1.e.	Mobile telephone service	\$1,696	Collection. Disputed. Unpaid.
1.f.	Loan	\$376	Collection. Disputed. Unpaid. (no longer on credit reports)
1.g.	Credit card	\$661	Collection. Disputed. Unpaid. (no longer on credit reports)
1.h.	Mobile telephone service (same as SOR 1.d.)	\$1,548	Charged off. Collection. Disputed. Unpaid.
1.i.	Loan	\$936	Charged off. Collection. Disputed. Unpaid. (no longer on credit reports)
1.j.	Collection attorney for loan in SOR 1.i.	\$480	Collection. Disputed. Unpaid. (no longer on credit reports)
1.k.	Loan	\$480	Collection. Disputed. Unpaid. (no longer on credit reports)
1.l.	Department store charge account	\$150	Charged off. Collection. Disputed. Unpaid.
1.m.	Mobile telephone service (same as SOR 1.e.)	\$1,741	Collection. Disputed. Unpaid.
1.n.	Credit card	\$969	Collection. Disputed. Unpaid. (no longer on credit reports)
1.o.	Bank loan	\$238	Collection. Disputed. Unpaid. (no longer on credit reports)
1.p.	Medical	\$89	Collection. Disputed. Unpaid. (no longer on credit reports)
1.q.	Medical	\$90	Collection. Disputed. Unpaid. (no longer on credit reports)
1.r.	Utility	\$155	Collection. Disputed. Unpaid. (no longer on credit reports)

It is well established that Applicant has made no reasonable or timely efforts to resolve her SOR debts. Quite to the contrary, her lengthy period of inaction towards her SOR debts and her recent and continuing efforts in universally disputing them, regardless of their validity, to motivate the removal of such debts from her credit report for a variety of reasons, seemingly including removal after seven years of inactivity,

¹⁴ *Id.* at 43-44.

error, or satisfaction, do not support her stated intention that she will satisfy the remaining delinquent financial obligations.¹⁵ Applicant has continuously ignored even the smallest of her SOR debts.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the 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.

An Administrative Judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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 meaningful decision.

Since 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, facts must be established by "substantial evidence."¹⁶ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the Applicant has the heavy burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants

¹⁵ Tr. at 48.

¹⁶ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1).

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.” Accordingly, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism.

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 as well. The evidence is sufficient to establish AG ¶¶ 19(a) and 19(c).

Applicant has been gainfully employed since before her financial difficulties began. As a single parent of three children, she was confronted with the usual lifestyle choices and expenses, none of which appear to be unexpected or beyond her control. She received something of value, including either a service, a loan, or an object, for each of the SOR debts, including those she admitted and denied. She obtained and furnished her children with cell phones, but refused to pay the bills; received medical services which were supposedly to have been paid by insurance, but were not; obtained several loans which she failed to repay; and used credit cards but did not maintain current balances. What was purportedly a willingness, accompanied by an inability, to satisfy debts, became more clearly an ability, accompanied by an unwillingness, to satisfy them.

Applicant’s clear intention is not to pay her SOR debts until such time as they are either removed from her credit report or the outstanding balances are greatly reduced. Furthermore, the fact that an otherwise valid delinquent account has been removed

from a credit report without an indication that the entry was originally erroneous, does not eliminate the responsibility of the debtor to repay that debt.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s failure or refusal to address even the smallest of her SOR delinquencies raises concerns about recurrence of delinquent debts and her current reliability, trustworthiness, or good judgment. The evidence fails to establish AG ¶ 20(a).

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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”¹⁷ Also, 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” may apply. In June 2008, after receipt of the DOHA Interrogatories, Applicant sought the assistance of a credit counselor on correcting and reestablishing good credit. She failed or refused to pay any of her delinquent debts prior to that time, and upon obtaining guidance from her credit counselor, decided to dispute each and every account regardless of validity.

Applicant’s intention was to see if she could get some of the accounts removed from her credit report and motivate the remaining creditors to reduce their outstanding balances. In this instance, the credit counseling is insufficient to establish that the problem is being resolved or is under control. And, there is no credible evidence Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve her debts. While 10 of the 18 listed SOR delinquencies have dropped off her credit report, Applicant has offered no evidence of any payment negotiations or payments on any of those accounts which she acknowledged were valid. Additionally, for those SOR debts that she denied, she did so not because they were not legitimate or valid debts, but because they were either not on a credit report she obtained or because she initially did

¹⁷ The 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)).

not recognize the listed creditor. In some of those instances, the creditor listed was that of a collection agency or collection attorney. Instead, Applicant has apparently attempted a scheme to avoid her financial responsibilities. The evidence fails to establish AG ¶ 20(c) or AG ¶ 20(d).

As to AG ¶ 20(e), Applicant has offered no reasonable basis to dispute most of the SOR debts that she denied. Nor has she offered any documented proof to substantiate the basis of her disputes or provided any evidence of actions to resolve the individual issues. Instead, she simply disputed everything. The sole exceptions, are apparent from a review of the evidence, and those are the debts listed as SOR ¶ 1.h. (which she has denied), which is a duplicate of the debt listed as SOR ¶ 1.d. (which she has admitted), and SOR ¶ 1.m. (which she has denied), and SOR ¶ 1.e. (which she has admitted).

Considering Applicant's extensive financial delinquencies, which continue unaddressed, her professed ability to satisfy those accounts for which the outstanding balances fall below \$1,000.00, and her scheme to avoid responsibility for the other overdue debts, Applicant has not demonstrated her financial responsibility.

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. When these problems first began, Applicant was the gainfully employed single parent of three children. Nothing has changed. She was confronted with the normal expenses of family life and had to make lifestyle and financial decisions the same as the multitudes of Americans. Applicant routinely and voluntarily obtained something of value, including either a service, a loan, or an object, for each of the SOR debts she admitted responsibility for, which were incurred from a wide variety of creditors, but either had no ability or intention to pay for

them. As a result, she accumulated extensive new delinquent debt. (See AG ¶ 2(a)(1) through AG ¶ 2(a)(4).)

Only when motivated by the receipt of Interrogatories from DOHA, and the concern of having her security clearance eligibility reviewed, did she take the first step of seeking guidance from a credit counselor. Upon obtaining guidance from her credit counselor, Applicant decided to dispute each and every account regardless of validity, and has refused to make any good-faith efforts to pay a variety of delinquent debts listed in the SOR. Instead, she preferred to wait for some of the debts to drop off her credit report, and hope that the remaining delinquent balances are reduced. (See AG ¶ 2(a)(6), AG ¶ 2(a)(7), and AG ¶ 2(a)(9).) While some of these debts may eventually become uncollectible, failure to repay creditors reflects traits which raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(5).)

Of course, the issue is not simply whether all her debts are resolved; it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. I am mindful that while any one factor, considered in isolation, might put Applicant's credit history in a sympathetic light, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.¹⁸ Considering the absence of any good-faith efforts, her universal dispute of otherwise valid delinquent financial obligations, her continuing refusal to address her debts, and her current financial situation is sufficient to raise continuing security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me with substantial questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

¹⁸ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	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. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Chief Administrative Judge