



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



In the matter of:)
)
-----) ISCR Case No. 08-03258
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

December 23, 2008

Decision

HARVEY, Mark W., Administrative Judge:

Applicant's statement of reasons (SOR) alleged five delinquent debts, totaling about \$45,000. One SOR debt duplicated another SOR debt, and her proven delinquent SOR debt actually totaled about \$33,000. She did not make any payments for more than a year or otherwise establish any track record of debt resolution of these four delinquent SOR debts. Applicant failed to mitigate financial considerations security concerns. Department Counsel withdrew the personal conduct allegation. Eligibility for a security clearance is denied.

Statement of the Case

On September 10, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF 86) (Government Exhibit (GE) 1). On September 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to her,¹ pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as

¹Government Exhibit (GE) 7 (Statement of Reasons (SOR), dated September 29, 2008). GE 7 is the source for the facts in the remainder of this paragraph unless stated otherwise.

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. The revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006. The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 October 28, 2008, Applicant responded to the SOR allegations, and requested a hearing (GE 8). Department Counsel indicated he was ready to proceed on November 17, 2008, and on that same date the case was assigned to me. At the hearing held on December 11, 2008, Department Counsel offered five exhibits (GEs 1-5) (Transcript (Tr.) 18), and Applicant offered three exhibits (Applicant's Exhibit (AE A-C) (Tr. 34). There were no objections, and I admitted GE 1-5 and AE A (Tr. 18, 34-35). Additionally, I admitted a Hearing Notice (GE 6), the SOR (GE 7), and Applicant's response to the SOR (GE 8). I received the transcript on December 19, 2008.

Procedural Issues

SOR ¶ 2.a alleges that on July 20, 2008, Applicant indicated in a letter that she was abandoning her attempt to obtain a security clearance because security clearance judgments are unfair and discriminatory against the working people of the United States. Department Counsel made a motion to withdraw this allegation, the Applicant did not object, and I granted the motion (Tr. 13). This allegation will not receive further discussion in this decision.

The SOR and the SOR response contain five identical subparagraphs under paragraph 1, except the SOR subparagraphs are incorrectly numbered in the SOR response (GE 7, 8). The SOR response lacks any subparagraph 1.d and there is a subparagraph 1.f (GE 8). I changed SOR ¶ 1.e to 1.d and SOR ¶ 1.f to 1.e and initialed the changes in the SOR response (GE 8).

Findings of Fact²

In her SOR response, Applicant admitted responsibility for the five SOR delinquent debts totaling about \$45,000 (GE 8). 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.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Applicant is a 46-year-old employee of a defense contractor (Tr. 5, 19).³ She married her spouse in 1983; however, she does not have any children (Tr. 19; GE 1). Applicant earned a high school diploma and an Associate in Arts degree (Tr. 6; AE B). She is currently enrolled in college and is pursuing a Bachelor of Arts degree (Tr. 6; AE C). She has completed nine courses towards her bachelor's degree and has a 3.8 GPA (Tr. 20). She has focused her classes on geometrics, which involves geography, information systems and using remote sense data to prepare maps for the national geospatial industry (Tr. 20). She is taking courses to improve her employability and increase her income (Tr. 20). A subcontractor to her current employer provided her employment from late 2003 to 2005 (Tr. 28). She has never served in the military (GE 1). A government contractor has employed her in the geospatial area since 2005 (Tr. 21, 28). Her security application did not disclose a police record or a felony conviction. Her record has no indication of illegal drug abuse or mental disability or instability. She has never left employment under adverse circumstances. When she completed her 2007 SF 86, she disclosed the delinquent debts in SOR ¶¶ 1.a, 1.e and several non-SOR delinquent debts. On September 10, 2007, she promised to rectify her debts and pay monies owed to her creditors (GE 1).

Applicant admitted responsibility for all five delinquent SOR debts, totaling about \$45,000. Her last contact with the creditors in SOR ¶¶ 1.a, 1.b, 1.c, and 1.e was in 2005 (Tr. 24-25). Her last contact with the creditor in SOR ¶ 1.d was in November 2007 (Tr. 24-25). She does not have any debts in addition to those listed on the SOR (Tr. 33). Their current status is summarized in the table below:

SOR PARAGRAPH AND TYPE OF DEBT	AMOUNT	STATUS
¶ 1.a Credit Card or Signature Loan	\$9,492	Delinquent debt since 2005 (Tr. 24)
¶ 1.b Credit Card or Signature Loan	\$13,180	Delinquent debt since 2005 (Tr. 24).
¶ 1.c Credit Card or Signature Load	\$11,208	Duplication of SOR ¶ 1.b (Tr. 24)
¶ 1.d Credit Card or Signature Loan	\$9,470	Delinquent debt-made payments until November 2007 (Tr. 23).
¶ 1.e Car Loan	\$1,716	Her vehicle was repossessed in 2004 and after the sale, she still owed \$1,716. This debt has been delinquent since 2005 (Tr. 24, 35-36)
Total	\$33,858	(excluding the debt in SOR ¶ 1.c)

Applicant was unemployed from August 2001 until July 2002 because her family moved to a different state (Tr. 26-27, 29; GE 1). Her first employment in a new state

³GE 1 (2007 security clearance application) is the source for the facts in this paragraph, unless stated otherwise.

was at a department store (Tr. 27). She has been steadily employed for the last six years (Tr. 27).

Applicant's husband was on active duty from 1983 to 2004 (Tr. 22). He retired as a Chief Master Sergeant (E-9) (Tr. 26). Applicant's husband was living off of his military retirement and was not employed (Tr. 25). Applicant's husband owns their residence, and Applicant pays him part of her income (Tr. 30). She is unaware of her husband's financial status (Tr. 30). Around 1994, Applicant and her husband agreed to keep separate accounts and separate debts (Tr. 32). The SOR debts were solely Applicant's debts (Tr. 32). Because Applicant was in a military family, there were frequent moves (Tr. 23). Applicant was unable to build seniority as an employee until her husband retired from the Air Force (Tr. 23).

Applicant's social security records for 1997 to 2007 show the following income:

Year	Income	Year	Income
1997	\$25,333	1998	\$18,597
1999	\$10,841	2000	\$19,442
2001	\$11,743	2002	\$5,901
2003	\$14,335	2004	\$13,833
2005	\$26,895	2006	\$23,991
2007	\$29,663		

Applicant has one financial asset, her 401K account, which contains about \$12,000 (Tr. 31). Recently her 1989 Toyota ceased operation for mechanical reasons, and she has not decided whether to try to have it repaired (Tr. 31).

Applicant did not disclose financial counseling. Applicant's plan to resolve her delinquent debts was to wait until the economy stabilized; then she intends to borrow enough money to pay her debts (Tr. 25). She insisted that she wanted to pay all of her debts (Tr. 25).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, 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. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

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 one 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 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." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, "Applicant's credit report was sufficient to establish the Government's prima facie case that Applicant had SOR delinquent debts that are of security concern." Applicant's history of delinquent debt is documented in her credit report, her 2007 security clearance application and her SOR response. Applicant's SOR alleged five delinquent debts, totaling about \$45,000. One SOR debt duplicated another SOR debt, and her actual delinquent debt load is about \$33,000. She admitted responsibility for the four delinquent debts. She did not make any payments for more than a year or otherwise establish any track record of debt resolution of these four SOR debts. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). "Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 07-00852 at 3 (App. Bd. May 27, 2008) (citing *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990)). Because the government has raised financial considerations security concerns, the burden now shifts to Applicant to establish any appropriate mitigating conditions. Directive ¶ E3.1.15.

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 application of any mitigating conditions. Her financial problems are not isolated because she currently has four delinquent debts totaling about \$33,000. The ongoing nature of her delinquent debts is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Moreover, I am not convinced her debts "occurred under such circumstances that it is unlikely to recur and does not cast doubt on the [her] current reliability, trustworthiness, or good judgment." Although she has been paying some of her non-SOR debts, she has failed to pay anything towards her SOR debts even though she has been steadily employed for more than four years.

Under AG ¶ 20(b), Applicant's unemployment from August 2001 to July 2002 resulted in multiple debts. As such, some of her debts are due to forces beyond her control. However, she did not provide sufficient information to establish that she acted responsibly under the circumstances or made sufficient efforts to address her delinquent debts, especially those debts which remained delinquent even though she has been steadily employed for at least four years.⁴ She admitted that she has not maintained contact with her SOR creditors, and made very limited efforts to pay the four delinquent SOR debts.

AG ¶¶ 20(c) and 20(d) do not apply. Applicant did not disclose financial counseling. There are no indications that "that the problem is being resolved or is under control" because the amount of delinquent debt has been unchanged for more than a year. There is insufficient information to establish that Applicant showed good faith⁵ in

⁴Even 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)). A component is whether he or she maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

⁵The 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

the resolution of her delinquent SOR debts because she did not establish that her failure to pay her delinquent debts was reasonable and necessary under the circumstances.

AG ¶ 20(e) does not apply because Applicant did not dispute her responsibility for any debts. I conclude Applicant's overall conduct in regard to her delinquent debts casts doubt on her current reliability, trustworthiness, and good judgment. She failed to resolve or make payments to four creditors to whom she owed substantial debts. She promised to pay two of her SOR creditors in her 2007 SF 86, and did not do so. She did not provide good cause for her failure to set up payment plans and make some payments despite having an opportunity to do so. Based on my evaluation of the record evidence as a whole, I conclude financial considerations are not mitigated.

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).

There is some evidence tending to mitigate Applicant's conduct under the whole person concept. Her dedication to her work and her country is a very positive indication of her good character and trustworthiness. She improved her employability and prospects for greater income through her continuing education efforts. Her 3.8 grade

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)).

point average is particularly impressive. She is completely loyal to her country. Applicant's record of good employment and law-abiding character weigh in her favor. There is no evidence of any security violation, or criminal activity. Her non-SOR debts are current and being paid. These factors show some responsibility, rehabilitation, and mitigation.

The mitigating evidence under the whole person concept and the adjudicative guidelines are not sufficient to warrant access to classified information. The overall amount of unresolved debt is about \$33,000 and substantial. She has been continuously employed for more than four years (with income ranging from \$23,991 to \$29,663 for the period 2005 to 2007), and did not establish that she lacked the funds to arrange and begin payment plans. She promised to pay two SOR debts in 2007 on her security clearance application and failed to fulfill her promise. Applicant has been aware of the security significance of her delinquent SOR debts since she received the SOR in October 2008, and she did not take any material actions to resolve her delinquent debts. 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 financial considerations security concerns.

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 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.

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
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 1.a:	Withdrawn

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 Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

Mark W. Harvey
Administrative Judge