



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ADP Case No. 08-03418
SSN: XXX-XX-XXXX)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Jennifer I. Goldstein, Esq., Department Counsel
For Applicant: *Pro Se*

March 10, 2009

Decision

TUIDER, Robert J., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information is denied.

Statement of the Case

On July 10, 2007, Applicant submitted a Public Trust Position Application (SF 85P).¹ On September 24, 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.² The SOR alleged security concerns under

¹ Item 5.

² On 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

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 public trust position for her, and recommended referral to an administrative judge to determine whether a public trust position should be granted, continued, denied, or revoked.

On October 27, 2008, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing.³ A complete copy of the file of relevant material (FORM), dated November 17, 2008, was provided to her, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁴ A response to the FORM was due on December 25, 2008. Applicant did not submit any additional information for consideration. The case was assigned to me on February 10, 2009.

Findings of Fact

In her response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.c., 1.e., 1.f., 1.g., 1.h., 1.j., and 1.k. She denied the allegations in SOR ¶¶ 1.a., 1.b., 1.d., 1.i., and 1.l. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 42-year-old service representative.⁵ She attended business college from March 1991 to November 1991. She married in July 1988, and has three children, ages 19, 17, and 10. She and her husband have been “separated for many years” and she currently receives intermittent child support from her husband. Her SF 85P states she has been separated from her husband since April 2000. Her Response to SOR does not contain specific details regarding the amounts of child she receives or does not receive.⁶

Applicant disclosed no police record; no use of illegal drugs; and no alcohol-related problems, counseling or treatment. She has worked for the same employer, a government contractor, since July 2007. Applicant indicated she has held access to sensitive information since she began her present position. Her access has never been suspended or revoked.

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.

³ Item 3.

⁴ The DOHA transmittal letter is dated November 17, 2008. Applicant signed the receipt for the DOHA transmittal letter on November 24, 2008. The DOHA transmittal letter informed Applicant that she had 30 days after receipt of the FORM to submit information.

⁵ Item 5, July 2007 SF 85P, is the source for the facts in this paragraph, unless stated otherwise.

⁶ Item 3.

In her 2007 SF 85P, Applicant disclosed several past due accounts, including a \$9,354 student loan that had gone to collections in 1992. Additionally, her background investigation addressed her financial problems and included the review of credit reports from August 2007, April 2008, September 2008, and November 2008.⁷ Also, it considered Applicant's answer to DOHA interrogatories.⁸

The DOHA interrogatories asked Applicant, in part, to explain and/or document the status of 12 delinquent accounts, totaling \$30,964.00 alleged in the SOR. Applicant responded that a credit counseling service she consulted advised "that I could file for bankruptcy but I have decided after further review I will be working w/a credit attorney." She also referred to an unspecified illness and a disability. She did not provide specific information regarding the nature, quality, or duration of her illness/disability and how that may have impacted her ability to pay her debts.

Applicant's response to the FORM failed to address her indebtedness in any meaningful way. She provided little or no information as to how she acquired the debts, why they became delinquent, documented efforts she has taken to resolve her debts, and what measures she has taken to avoid similar financial problems in the future. Her plan is to resolve her indebtedness through "credit repair with a credit attorney."

Applicant asserts that she is an honest person and a loyal U.S. citizen, who would never do anything to harm the interests of the U.S. She stated she is doing her best to raise three children on her own. She provided three character reference letters. All three authors spoke of Applicant's good character, work ethic, and trustworthiness. She also provided a copy of her Performance Management and Individual Growth Plan (position description).⁹

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 controlling 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

⁷ Items 9, 8, 7, and 6, respectively.

⁸ Item 4.

⁹ Item 3.

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,”¹⁰ 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).¹¹

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.

¹⁰ 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).

¹¹ “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

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 addressed by 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." Applicant's history of delinquent debt is documented in her SF 85P, her credit reports, her answers to DOHA interrogatories, and her SOR response.

Applicant provided no persuasive evidence that she has paid, settled or otherwise resolved the 12 debts totaling \$30,964 alleged. Her debts have been ongoing as demonstrated by her credit reports. For example, her \$9,354 student loan became past due in 1992. The 12 debts alleged in her SOR are substantiated by Applicant's admissions and/or evidence presented. 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.

Considering the record evidence as a whole,¹² I conclude that none of the mitigating conditions apply. Applicant's sparse favorable information fails to raise the applicability of any of the mitigating conditions.

Applicant has not dealt responsibly with her financial obligations before, or especially after receipt of the SOR. Based on her security clearance application, Applicant has continuously worked for her current employer since July 2007. She presented little or no evidence to show paid debts, settlements, documented negotiations, payment plans, budgets, or financial assistance/counseling. It is unclear when her last payments were made on any of these 12 delinquent debts. Considering the record as a whole, I conclude these 12 debts, totaling about \$30,964.00 are still valid, delinquent debts, and that Applicant is responsible for them.

Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility, or that she has taken control of her financial situation. Based on the available evidence, her financial problems are recent, not isolated, and are likely to be a concern in the future. She has not carried her burden of showing that any of the Guideline F mitigating conditions apply. Her overall financial behavior casts doubt on her current reliability, trustworthiness, and good judgment.

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.

¹² 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 AG ¶ 20(a), all debts are considered as a whole.

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 employment for a government contractor weighs in her favor. She has had access to sensitive information since at least July 2007. 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 and mitigation. She is well regarded by her superiors and co-workers.

The evidence against mitigating Applicant's conduct is more substantial. She has a significant history of delinquent debt that goes back to at least 1992. Applicant has had access to sensitive information since July 2007. As such, she was or should have been well aware of her financial responsibilities, and that her failure to be financially responsible would raise security clearance concerns.

In fairness to the Applicant, this decision should not be construed as a determination that she cannot or will not attain the state of financial stability necessary to justify the award of a DoD security clearance. 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. 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 public trust concerns pertaining to 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
Subparagraphs 1.a to 1.l:	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.

ROBERT J. TUIDER
Administrative Judge