



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-04689
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro Se*

April 22, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SF-86) on January 19, 2007. On October 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under 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 for SORs issued after September 1, 2006.

In a response dated November 4, 2008, Applicant admitted 8 of the 10 allegations noted in the SOR and declined a hearing on the record. Department Counsel submitted a File of Relevant Materials (FORM), dated January 30, 2009, which Applicant received on February 21, 2009. She timely responded to it on or before March 20, 2009. On March 26, 2009, the Director, DOHA, forwarded the case for assignment to an administrative judge for administrative determination. I was assigned

the case the following day. Based upon a review of the case file, submissions, and exhibits, I find Applicant failed to meet her burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 64-year-old truck driver. She is married and has two adult children. Prior to her present career, she retired with distinction after nearly three decades of service in early education. Applicant received her commercial driver's license nearly three years ago, shortly before starting her current employment.

A decade ago, Applicant petitioned for Chapter 7 bankruptcy protection. Her debts were discharged in September 2000.¹ The only other indication of financial trouble occurred in the summer of 2007, when the family failed to receive pay checks for about 10 weeks.² Devoid of income, many of the accounts at issue became delinquent.³

There are few extraneous facts of record. Recent credit reports reflect her 1999 bankruptcy⁴ and nine delinquent accounts. Applicant admits she owes an in-state medical account with a balance of \$50, a state affiliate of a major telecommunications account with a balance of \$93, and an in-state medical account with a balance of \$25.⁵ She states in her response to the SOR that she is willing to pay these accounts if she had contact information or an address for them.⁶

Applicant constructively denies, however, a debt noted as delinquent in the amount of \$3,804. She states she was paying the balance in \$50 installments.⁷ The creditor demanded payment in full. Because the entity was rude on the phone, she hung up on them.⁸ Apparently, the issue was never revisited and payments ceased. Further, Applicant neither agrees nor disagrees with allegations claiming she owes balances on accounts in the amounts of \$4,218 or \$3,139 because she does not recognize the accounts.⁹ She presented no evidence of any efforts to establish contact

¹ SOR allegation 1.a.

² Item 9, Interrogatories, at 2. No specific details are given.

³ See, e.g., SOR allegations 1.h-1.j.

⁴ SOR allegation 1.a.

⁵ SOR allegations 1.b-1.d, respectively.

⁶ Item 4, Statement of Reasons Response, at 1.

⁷ SOR allegation 1.e.

⁸ Item 4, at 2.

⁹ SOR allegations 1.f-1.g; *Id.*

with the creditors or to dispute their entry on her credit report. As well, she believes she previously satisfied an account noted as having a delinquent balance of about \$745.¹⁰

Regarding a delinquent auto loan with a balance of approximately \$8,686, Applicant fell behind on her payments on a car she purchased.¹¹ The lender would not let her catch-up on her past due amount in increments, preferring either a lump sum payment or the return of the car. “They took the car and sold it for little or nothing. I absolutely refuse to pay for something I don’t have. Even if I had millions of dollars I wouldn’t pay for a car I don’t have. If they would have let me catch up I would have because I didn’t want to lose the car.”¹² That debt remains outstanding.

Finally, it is alleged Applicant owes a balance of approximately \$1,352 on a real estate mortgage account.¹³ The mortgage was on a time-share property. She writes: “We were supposed to be able to get a vacation anytime we wanted. Well, they lied. We could never get one no matter when we called after paying them for about a year & 6 mo. I called and told them ‘I am not paying anymore.’ They have already sold this property to some other sucker.”¹⁴ Regarding her failure to pay on this account, she notes: “even if I had the money I wouldn’t pay this money for something I don’t have.”¹⁵

The accounts at issue represent the extent of Applicant’s negative financial situation. She believes it is “very unfair” to think she is “a [security] risk just because of this little bit of money.”¹⁶ Her net total monthly income is approximately \$5,360 and her total monthly expenses are about \$4,000, leaving about \$1,200 per month to satisfy a monthly balance of about \$1,150 in regular debts, including student loans. In addition, Applicant notes she receives about \$739 in monthly Social Security payments and \$700 in retirement payments.¹⁷ Assets are described as a modest savings account and a “car/boat” worth about \$1,000.

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

¹⁰ SOR allegation 1.h; *Id.* at 2.

¹¹ SOR allegation 1.i.

¹² Item 4, at 2.

¹³ SOR allegation 1.j.

¹⁴ Item 4, at 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Item 9, at 8.

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. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹⁸ The burden of proof is something less than a preponderance of evidence. ¹⁹ The ultimate burden of persuasion is on the applicant. ²⁰

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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²¹ Any reasonable doubt about whether an applicant should be allowed access

¹⁸ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²¹ *Id.*

to sensitive information must be resolved in favor of protecting such sensitive information.²² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F – Financial Considerations

Under Guideline F, failure or an inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.²⁴ The Directive sets out several potentially disqualifying conditions under this guideline.

Here, Applicant has about nine delinquent accounts noted on her credit report, over half of which she admits or acknowledges.²⁵ Applicant admits the debts at issue in SOR allegations 1.b-1.d. She also admits she stopped paying toward debt balances on the debts noted at SOR allegations 1.e and 1.i because they would not work with her on establishing installment payments. She believes she already paid any sums owed on SOR allegation 1.h and 1.j., and does not recognize those accounts noted in SOR allegations 1.f or 1.g. Such facts are sufficient to give rise to Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and FC DC AG ¶ 9(c) ("a history of not meeting financial obligations") apply. With such conditions raised, the burden shifts to Appellant to overcome the case against her and mitigate security concerns.

There is evidence that a summer without pay checks in 2007 caused some of those accounts to become delinquent. To the extent that downturn in income affected her ability to stay timely on her then-current bills, Financial Considerations Mitigating

²² *Id.*

²³ Executive Order 10865 § 7.

²⁴ Revised Adjudicative Guideline (AG) ¶ 18.

²⁵ With regard to the 1999 bankruptcy filing (SOR allegation 1.a), there are insufficient facts of record to determine whether that filing and the accrual of that debt are similar in nature to the delinquent debt now at issue. Given the number of intervening years between that filing and the delinquency of the debts now at issue, the bankruptcy allegation, in and of itself, is of minimal significance and does not raise significant security concerns in 2009.

Condition (FC MC) AG ¶ 20(b) (“the conditions that resulted in the behavior 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”) applies.

The unexplained break in income occurred less than two years ago. In choosing a determination without a hearing, however, facts cannot be discerned as to how or why Applicant and/or her husband failed to be paid that summer, whether they were the type of facts not likely to repeat themselves in the future, or what efforts they took to honor their creditors during that time period. Consequently, FC MC AG ¶ 20(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”) cannot apply. Moreover, based on the very limited facts presented and in the absence of additional facts (e.g., whether Applicant pursued financial counseling, formally disputed any of the accounts she questioned, or made timely and regular payments on the remaining accounts at issue), none of the other available mitigating conditions apply.

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 public trust position 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, as well as the “whole person” factors. Applicant is a mature woman who turned to truck driving as a second career after raising her children and retiring from education. A decade ago, she resorted to bankruptcy protection for reasons unstated. Apparently, she dealt with her debts successfully between 2000 and 2007.

In the summer of 2007, Applicant, for some unexplained reason, received no pay checks. As a result, some bills became delinquent. Applicant states she is willing to pay the three debts noted in SOR allegations 1.b-1.d, two in-state medical bills and a major telecommunications company balance collectively representing less than \$200. She explains, however, that she does not have an address for these creditors and, therefore, cannot satisfy the debts.²⁶ In making this explanation, Applicant failed to document any attempts to locate these in-state creditors through local resources, her credit reports, the credit bureaus, or any other avenue. As for the SOR allegations 1.e and 1.i, she ceased making any payments or exploring alternative arrangements when the creditors chose not to accept the nominal monthly payments she proposed. Regarding those accounts she does not recognize, there is no documentary evidence showing any action taken by Applicant to address their inclusion on her credit report. For example, there is no indication she formally disputed the accounts noted in SOR allegations 1.f and 1.g with either the creditors or with one of the three major credit reporting bureaus. As for the two debts she believes she previously satisfied, noted in SOR allegations 1.h and 1.j, Applicant submitted no corroborating evidence showing her past payment(s), current balances, or other supporting documentation. In short, there is no tangible evidence as to any significant efforts made to address the delinquent debts noted in the SOR and her credit reports.

Debt, itself, is not necessarily a trigger for security concerns. Security concerns are raised in the presence of delinquent debt which has been neglected, mismanaged, forgotten, or ignored. Here, the SOR alleges over \$22,000 in delinquent debt. Although Applicant believes it is “very unfair” to think she is “a [security] risk just because of this little bit of money,”²⁷ \$22,000 is a significant sum. The case law is clear that the ultimate burden of persuasion is on the Applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the *prima facie* case against her. Here, Applicant failed to submit any tangible evidence substantiating her position on these debts, documenting her efforts to address these debts alleged, or otherwise reduce the amount at issue with evidence of payment or formal dispute of an entry. Consequently, financial considerations security concerns remain. With security concerns regarding her finances remaining, I conclude it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

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:

²⁶ This explanation is particularly vexing. Applicant tends to believe her summer without a pay check (2007) gave rise to her present situation. This surely would be recent enough, however, to remember the location, if not the name, of any health care or telecommunications provider(s) within one’s state of residence. If not, the brief passage of time and one’s presence in-state should make researching contact information a relatively simple task.

²⁷ *Id.*

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For 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:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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 a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge