



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



In the matter of:)	
)	
)	ISCR Case No. 08-05278
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro Se*

January 27, 2010

Decision

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

Applicant signed a security clearance application (SF-86) on October 26, 2007. On March 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 an undated response received by DOHA on April 30, 2009, Applicant admitted 8 of 13 allegations under Guideline F and 4 of 6 allegations under Guideline E. Department Counsel submitted a File of Relevant Material (FORM), dated May 28, 2009. Applicant received the FORM on June 8, 2009, but declined to respond to its contents. On December 7, 2009, the Director, DOHA, forwarded the case for assignment to an administrative judge. The case was assigned to me on the same day.

Based on 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 49-year-old administration specialist who has worked for the same defense contractor since September 2007. She has also been employed as a financial aid advisor for a state university since 1999. Applicant has earned a bachelor's degree in business administration. Married, Applicant has "sent 3 kids to college [and] the last one is still attending college in her second year."¹ In choosing an administrative determination, Applicant chose to rely on the written record. The facts she submitted with regard to her financial situation are mostly derived from her response to the SOR and her responses to DOHA Interrogatories. These narratives are comprised of comments unsupported by documentary evidence. Because the information provided was brief, the facts of record are scant.

Applicant was laid off from a job in 2004, resulting in a year-long period of unemployment and the interruption of a debt consolidation repayment plan.² Two years later, she faced another lay-off.³ During this time period, she co-signed on various accounts for one or more sons, which they neglected.⁴ These included two car purchases and the acquisition of an apartment.⁵ When Applicant was apprised that she had a number of delinquent accounts noted on her credit report, she stated that she was unaware of the contents of her credit report and ultimately denied knowledge of some of the accounts.⁶ She implies, however, that some of the entries might be the result of identity theft because she lost her driver's license and a military identification card in 1999 or 2000.⁷

When completing her security clearance application, Applicant denied having been delinquent on any debts for over 180 days within the last 7 years. She did so because she believed she had reactivated a repayment plan to address her outstanding debts, thus placing them in active repayment. She was unaware that payments on this

¹ Item 4 (Applicant's Answer to the SOR). Applicant failed to note information regarding her children on her security clearance application.

² Item 6 at 2. Specifics regarding these and other incidents are vague.

³ *Id.* Applicant provides no details regarding this lay off or potential lay-off.

⁴ *Id.* at 2-3.

⁵ With regards to her co-signing aid for her "sons," Applicant noted they had "screwed me one to [sic] many times and its not happen [sic] again." Item 6 at 4.

⁶ *Id.* at 4.

⁷ *Id.*

repayment plan had not been reinitiated when she started her present job.⁸ For the same reason, she answered “no” to a question asking whether she was currently over 90 days delinquent on any debts. She also answered “no” to these questions because she was “a little uneasy with putting all [her] personal information on the internet.”⁹

On her security clearance application, Applicant denied she was charged or convicted with a felony offense or, in the last seven years, with any other offense. She admitted, however, that she was found guilty of theft by deception on January 29, 1996, sentenced to a year in jail, two years of probation, and a fine of \$371 for issuing two bad checks. She maintains, however, that a relative living with her wrote the checks without her permission.¹⁰ She also admitted that she was charged with theft by deception in April 1991, but notes that it was due to an overdraft caused by miscommunication between her husband and herself. She denied that she was charged with theft of services/failure to pay a just debt in October 1991, and theft of services in April 1992, but provided no evidence to support her claim.

At issue in the SOR are 13 delinquent accounts, noted in SOR allegations ¶¶ 1.a–1.m. Applicant admitted those allegations noted in ¶¶ 1.b (\$1,070), 1.c (\$1,042), 1.f (\$203),¹¹ 1.g (\$16,876),¹² 1.h (\$11,073),¹³ 1.i (\$162); 1.j (\$1,980),¹⁴ and 1.m (\$48).¹⁵ Consequently, she admitted that she has about \$32,500 in delinquent debt. She denies the remaining financial allegations, but provides no evidence or explanation supporting her denials. These debts amount to about \$5,000.

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they

⁸ *Id.* at 6.

⁹ *Id.*

¹⁰ Response to the SOR at 3.

¹¹ Applicant claims in her Response to the SOR that this account was paid off, but failed to provide evidence that this debt was satisfied.

¹² Applicant claims in her Response to the SOR that this amount represents the total owed by her son on a car loan. She states that the sum is his responsibility, but concedes she was a co-signer on the loan.

¹³ *Id.*

¹⁴ Applicant claims in her Response to the SOR that this amount represents a sum owed by her son(s) for an apartment for which she was a co-signer.

¹⁵ Applicant simultaneously admits and denied knowledge of this account.

are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." An 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 United States Government (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. . . ." ¹⁶ The burden of proof is something less than a preponderance of evidence. ¹⁷ The ultimate burden of persuasion is on the applicant. ¹⁸

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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." ¹⁹ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ²⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive

¹⁶ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁹ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

information must be resolved in favor of protecting such information.²¹ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Guideline F (Financial Considerations) and Guideline E (Personal Conduct) are the most pertinent to the case. Applicable conditions 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 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Here, Applicant admitted that she has at least \$32,500 in delinquent debt. While she denies responsibility for an additional sum total of about \$5,000 in debt, she provided no evidence that those debts are not hers or that they have been formally disputed. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) "a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Although she failed to provide specific dates for any periods of unemployment, Applicant repeatedly referenced at least one lay off in 2004 that affected her ability to make timely payments on a debt repayment plan. Such a situation is sufficient to raise Financial Considerations Mitigating 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).

Applicant's delinquent debts are multiple in number and remain unpaid. She admits to debt amounting to approximately \$32,500. While she alludes to one or more repayment plans, she failed to submit evidence of their existence, her payments on such a plan or plans, or any other documentary evidence indicating she has attempted to address the debts at issue. She similarly failed to present documentary evidence that she has a scheme to address these debts in the near future or that she has received any form of financial counseling. Therefore, neither Financial Considerations Mitigating

²¹ *Id.*

Condition (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), FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts), nor FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies.

Applicant currently holds two jobs, one of which is a state job she apparently has held uninterrupted since 1999.²² In the past two years, however, she apparently has held two jobs without interruption. There is no indication that during this period she reinitiated repayment on her debt payment plan or sought out an alternative method for addressing the debts at issue. There is no evidence that any of these debts have been paid or disputed. With no evidence shown indicating some degree of progress on the debts at issue, financial considerations security concerns remain unmitigated.

Guideline E – Personal Conduct

Under Guideline E, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” The guideline further notes that “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest. Here, evidence was presented suggesting Applicant was less than forthcoming with regard to her police record on her security clearance application and indicating she falsified material facts regarding her delinquent debts.

There is no direct evidence that Applicant intentionally misled or deceived when she denied having a police record. All the incidents at issue occurred over seven years prior to her security clearance application certification and there is no evidence as to whether she knew if her 1991 charge or 1996 conviction for theft by deception were felony incidents. She did, however, know that she was under a debt repayment plan when she was laid off in 2004, that payments under that plan ceased when she could no longer make them, and that the repayment plan involved significantly overdue accounts. Her decision not to acknowledge the existence of the repayment plan, if not the accounts being addressed under that plan, clearly misrepresented her financial situation. Consequently, Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) applies.

²² It is unclear whether this is the job from which she was temporarily laid off. There is no evidence, however, showing that she was ever totally without some income or forced to receive unemployment benefits. There is only her statements that there was sufficient income to continue on a debt repayment plan.

Applicant completed her security clearance application in October 2007. Although she failed to submit information as to what accounts were included in her repayment plan or provide some indication as to the sum at issue, reference to the accounts at issue indicate that her total liability for delinquent debts is quite high, nearly \$40,000. To date, she has yet to express a complete understanding of the true extent of her debt or the contents of her credit report. Personal Conduct Mitigating Condition (PC MC) ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) does not apply, nor does PC MC ¶ 16(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress). None of the other 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 an 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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

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 has worked two jobs simultaneously since at least September 2007. While she demonstrated maternal concern in co-signing loans with her sons, she ultimately became liable for their loans, leaving her liable for the loans at issue. While she stated that she had a number of her debts included in a repayment plan, she failed to submit a copy of that repayment plan and similarly failed to provide a list of what debts were included under such a plan. Her lack of specificity with regard to her period or periods of unemployment is as vague as her narrative regarding the debts at issue. In these proceedings, the burden is squarely on the Applicant to mitigate security concerns. By choosing an administrative determination in

lieu of a hearing, she chose to rely on a scant record virtually devoid of documentary evidence supporting her assertions. Consequently, financial considerations security concerns remain unmitigated. Due to a similar lack of documentation, personal conduct security concerns remain unmitigated.

There are no facts bringing Applicant's loyalty to the United States into question. Her reliance on a less than comprehensive written record, however, leaves significant questions unresolved. 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:

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:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2, Guideline E	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	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