



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



In the matter of:)	
)	
)	ISCR Case No. 08-05585
)	
)	
Applicant for Security Clearance)	

Appearances

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

January 26, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on January 9, 2008 (Item 5). On August 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for financial considerations under Guideline F (Item 1). 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 30, 2008, admitting all of the allegations in the SOR (Items 3 and 4). She elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on September 23, 2008. Applicant received a complete file of relevant material (FORM) on October 27, 2008, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM or provide additional material. The

case was assigned to me on January 21, 2008. Based on a review of the case file and pleadings, eligibility for access to classified information is denied.

Procedural Issues

Department Counsel noted a typographical error in SOR 1.d in that the amount past due was listed at \$1,64.00 when it should have been \$1,064.00. Applicant was notified of the requested amendment when the FORM was sent on September 23, 2008. Applicant did not respond to the FORM and therefore did not object to the amendment. SOR 1.d is amended to show the amount past due as \$1,064.00.

Findings of Fact

Applicant is 34 years old and has been employed as a customer service representative for a defense contractor since June 2000. She is listed as married on the e-QIP with no children but it is unclear from the file if she is still married. There is an indication that she was planning to divorce her husband in 2007 (Item 5, e-QIP, and Item 6, Answers to Interrogatories). In her answers to the Interrogatories, dated July 23, 2008, Applicant provided a Personal Financial Statement listing her monthly net pay as \$1,600, with monthly expenses of \$1,155, leaving discretionary or disposable funds of \$345 monthly. In response to questions by a security investigator, Applicant stated her monthly income was \$1,942, with a net remainder for discretionary spending of \$563 (Item 6 at 12-13). Applicant listed in response to financial questions on the e-QIP a garnishment in 2007, a repossession in 2005, a bankruptcy in 2001, and an automobile loan in 2001 that was more than 180 days past due. (Item 5, e-QIP at 24-25).

Applicant filed for Chapter 7 bankruptcy in May 2001 and her debts of about \$10,000 were discharged in November 2002 (SOR 1.a; Item 6, Answers to Interrogatories, dated July 23, 2008). The SOR lists six delinquent debts totaling approximately \$20,461 that arose after the discharge in bankruptcy and are confirmed by a credit report dated February 1, 2008 (Item 7). Applicant admits these debts (Item 4). She also provided a credit report of July 15, 2008 as part of her response to Interrogatories that also confirms the debts (Item 6, at 18-31). The debts include a mortgage past due in the amount of \$6,291 (SOR 1.b); a credit card debt placed for collection for \$776 (SOR 1.c); another mortgage past due for \$1,064 (SOR 1.d); an automobile loan charged off for \$4,956 (SOR 1.e); an account placed for collection for \$778 (SOR 1.f); and a charged off cell phone debt for \$596 (SOR 1.g; See Item 7, Credit Report, dated February 1, 2008).

In response to interrogatories, Applicant stated that her husband took a toll on their finances by taking out pay day loans. She is trying to clear the debts and stated that she has worked out a payment plan with creditors and her husband is attempting to not have their house foreclosed. She also noted that she did not remember a tax debt to the city where their house was located. She noted that she is a trustworthy person who has never broken the trust of her customers. She values the trust of her customers

and would never do anything to compromise their security. She did not present any documents to verify the attempt to repay the loans or to keep the house from being foreclosed (Item 6, Answers to Interrogatories, at 2-3).

During an interview with a security investigator on March 11, 2008, Applicant stated that she left her husband in January 2008 and planned to file for divorce. She left him because of his mental instability and alcohol consumption problems. These problems caused them financial problems. When they first married in 2002, they had a joint checking account but it was closed because her husband wrote worthless checks. He wrote worthless checks to cash advance stores that she had to make arrangements to repay. She did not know what he did with the funds. They were able to purchase a house but they could not make the mortgage payments. She initially borrowed funds from her grandmother to make the back mortgage payments. Applicant stated that she has every intention of paying all of her debts. Applicant was starting the process to seek assistance from a credit counselor. She presented no information that she continued to pursue credit counseling (Item 6 at 8).

Applicant stated the mortgage debts at SOR 1.b and SOR 1.d are the same mortgage debt with one listing the immediate past due and one listing the entire amount past due. After she left her husband, he was to make the mortgage payments but did not because he was unemployed. She expects the house to go into foreclosure. Since the debts are the same, I find for Applicant as to SOR 1.d.

The credit card debt at SOR 1.c was used to buy personal items like groceries, gas, and a week-end trip. She was unable to make payments because of her husband's actions. She did not remember any notices for court action but did remember a garnishment notice. Applicant's husband promised to assist her with the car loan at SOR 1.e but he did not. After she was unable to make payments and the car was repossessed in 2006, she received a call from the finance company to make payment arrangements but she did not return the call since she did not have funds to make payments. The debt at SOR 1.f was for a computer she planned to use to attend college courses. She was unable to attend the course or make payments on the computer because of the financial problems caused by her husband. Applicant and her husband had cell phone service through the same carrier. They fell behind on payment after about six months of service. She receives occasional letters from a collection company concerning payments, but she has not responded. She believes the debt is about \$500 (Item 6 at 10-11).

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 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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.

Analysis

Financial Consideration:

Under financial considerations, 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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An Applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's five delinquent debts that arose after debts were discharged in bankruptcy are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) "inability or unwillingness to satisfy debts"; and FC DC ¶ 19(c) "a history of not meeting financial obligations". Applicant accumulated delinquent debts because she was unable to pay her financial obligations. The debts were accumulated after her previous debts had been discharged by bankruptcy. Applicant blamed her inability to make payments because of the actions of her husband. However, she has been steadily employed since her previous debts were discharged and she did not provide information to establish how her husband's actions impacted her ability to make payments on her debts while being steadily employed. The record from credit reports and responses to interrogatories show her inability or unwillingness to satisfy debts and that she has a history of not meeting financial obligations.

I considered Financial Considerations Mitigating Conditions (FC MC) ¶ 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". Applicant has taken no action to pay the delinquent debts so the debts are current. The debts are from various sources, credit cards, a loan, a phone bill, a mortgage, and a car loan, so they are not infrequent. Since the debts are current and not paid, they cast doubt on Applicant's current reliability, trustworthiness, or good judgment. The mitigating condition does not apply.

I considered FC MC ¶ 20(b) "the conditions that resulted in the financial problems 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 claims the debts were caused by her husband's action in taken out cash loans and not paying their debts. She acknowledged receiving information and calls concerning some of the loans but has not taken any action to return the calls or to seek payment plans on the debts. She has been steadily employed and has a net remainder of funds each month. She presented no information on how or why her husband's actions impacted her ability to make some payments on her debts. There has been no attempt to pay past due obligations when she has a positive monthly cash flow which indicates she is not trying to resolve her indebtedness. While some of the debt may have been caused by her husband's action, the debt payment is also her responsibility and payment was within her control. She has not established she acted responsibly in managing her finances and making payments on her obligations.

I considered FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts". For FC MC ¶ 20(d) to apply,

there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant presented no information to show she has a plan to pay the debts or any action that she has taken to pay her debts. Applicant has sufficient income to make some payments on her delinquent debts but has not attempted to do so. Applicant's debts were discharged in bankruptcy in 2002 and she started accumulating delinquent debts again in 2004. Bankruptcy is a legal and permissible means of resolving indebtedness. However, the circumstances of the bankruptcy action can be examined to determine any security significance. The filing of the bankruptcy action in itself does not create a security concern. Applicant accumulated delinquent debt after the bankruptcy discharge indicating a continual irresponsible and indifferent attitude towards her finances. There is no indication Applicant acted responsibly towards her debts or that the situation is under control. Some of her creditors tried to establish contact with her to resolve the indebtedness but she deliberately did not respond to them. Her finances are not under control and she has not acted responsibly. Applicant has not presented sufficient information to indicate a good faith effort to pay creditors or resolve debts. She has not presented sufficient information to mitigate security concerns for financial considerations.

“Whole Person” Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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) 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant has not taken action to resolve her past due debts. Her indifferent attitude, her failure to respond to her creditors, and her lack of actions shows she is not trustworthy, responsible, or that she exercises good judgment. Applicant has been irresponsible towards her delinquent debts and financial obligations. This is an indication that she might be irresponsible towards the protection and handling of classified information. I conclude Applicant has not mitigated the security concerns arising from her finances. Clearance is denied.

Formal Findings

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge