



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 08-06518
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel
For Applicant: *Pro Se*

December 19, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate Guideline F (Financial Considerations) security concerns. Clearance is denied.

Statement of the Case

On October 15, 2007, Applicant submitted a Questionnaire for Sensitive Positions or Standard Form (SF 86).¹ On July 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),

¹ Item 3. This SF 86 has an attached signature page from an e-QIP version signed and dated Oct. 31, 2007.

dated January 2, 1992, as amended, modified and revised.² The SOR alleges security concerns under 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 security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On August 12, 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 September 2, 2008, was provided to her, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁴ On October 3, 2008, Applicant responded to the FORM, and supplemented her original Response to SOR, and provided additional material. The case was assigned to another administrative judge on October 21, 2008, and due to caseload considerations was reassigned to me on November 3, 2008.

Findings of Fact

In her responses to the SOR, Applicant admitted SOR ¶¶ 1.a. – 1.b., 1.d. – 1.f., 1.i. – 1.m, 1.o. – 1.y., 1.aa., 1.cc., 1.ff., and 1.hh., - 1.kk. She denied ¶¶ 1.c., 1.g. (stating it was the same debt as 1.i.), 1.h. (stating it was the same debt as 1.j.), 1.n. (stating it was the same debt as 1.d.), 1.z. (stating it was the same debt as 1.w.), 1.bb., 1.dd. – 1.ee., and 1.gg. 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 43-year-old program coordinator, who has been employed by a defense contractor since June 2007.⁵ She has been attending college since March 2004. The record does not reflect how many college credit hours she has earned. She has never been married and has no dependents listed in her SF-86. She did not serve in the military. She disclosed no police record; no use of illegal drugs in the last seven years; and no alcohol-related problems, counseling or treatment in the last seven years. Applicant indicated she received access to classified information at the confidential level

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 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 4.

⁴ The DOHA transmittal letter is dated September 4, 2008. Applicant signed the receipt for the DOHA transmittal letter on September 11, 2008. The DOHA transmittal letter informed Applicant that he had 30 days after receipt of the FORM to submit information.

⁵ Item 3 (SF 86) is the source for the facts in this paragraph, unless stated otherwise.

in 2001. The record does not reflect whether she currently has a clearance or whether her access has ever been suspended or revoked.

Applicant's October 2002 credit bureau report and court records disclosed she filed for Chapter 7 bankruptcy protection in October 1996, and was awarded a discharge in October 1996.⁶ Also, her credit bureau reports reflect she had state tax liens filed against her in 2007, 2006, 2003, 2001, and 1995.⁷

Applicant's background investigation addressed her financial problems and included the review of her October 2002, November 2007, and June 2008 credit bureau reports.⁸ Applicant admits her past history of debt resolved by bankruptcy in 1996. Since then, she acquired a significant number of delinquent debts that have been outstanding for many years. In some of her denials, Applicant asserts no more than confusion about the identity of the creditor. Her denials are generally not substantiated by documentary evidence. However, the delinquent debts alleged in the SOR are substantiated by credit bureau reports and her admissions attached to the FORM.

As noted by Department's Counsel's FORM, SOR ¶¶ 1.d. and 1.n. are the same debt. Applicant contends that SOR ¶¶ 1. g. and 1.i., 1.h. and 1.j., and 1.w. and 1.z. alleged the same debts. She provided some documentation in Response to FORM to support her position; however, the evidence was inconclusive. The SOR alleges 36 separate debts. After taking into account Applicant's claims that the above debts are duplicated, she still has 32 delinquent debts approximating \$35,000.

Applicant's indebtedness began shortly after her 1996 Chapter 7 bankruptcy discharge and continues in varying degrees until the present. Applicant's proof of payments and/or attempts to contact creditors are small and recent, and therefore cannot be viewed as demonstrating a good faith effort to either repay her creditors or otherwise resolve her debts. In her Response to SOR, Applicant stated she has "taken full responsibility for [her] previous financial delinquencies."⁹ However, she failed to present sufficient evidence to establish a track record of financial responsibility.

Applicant submitted two work-related reference letters attesting to her good character and value as an employee. Both individuals recommend Applicant for a security clearance.

Applicant's response to the FORM failed to address her delinquent debts in a meaningful way. She failed to provide information as to how she acquired the debts, why they became delinquent, what meaningful efforts she took until recently to resolve

⁶ Items 5, 8.

⁷ Items 5-7.

⁸ *Id.*

⁹ Item 2.

her debts, and what measures she has taken to avoid similar financial problems in the future.

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 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

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).

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.

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 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.” Applicant’s history of delinquent debt is documented in his credit reports, his answers to DOHA interrogatories, and his SOR response.

Applicant provided scant information explaining why she had to file for Chapter 7 bankruptcy protection in 1996 or the amount of the debts that were discharged. She admitted responsibility for the vast majority of her unpaid delinquent debts, which she acquired after her bankruptcy discharge. 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's evidence is not sufficient to show she has dealt responsibly with her financial obligations before, or after receipt of the SOR. Based on her security clearance application, Applicant has worked for her current employer since June 2007. In considering the number of debts alleged, she presented little evidence to show paid debts, settlements, documented negotiations, payment plans, budgets, or financial assistance/counseling. Although Applicant did submit additional evidence in response to the FORM, her efforts are viewed as doing too little too late when compared to the magnitude of her indebtedness and the length of time she allowed her debts to go unpaid. Considering the record as a whole, I conclude the vast majority of debts alleged¹³ 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

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.

¹³ See Findings.

not carried her burden of proving her financial responsibility. 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.

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 previous access to classified information at the confidential level. 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. Her work-related references are positive.

The evidence against mitigating Applicant's conduct is more substantial. She has a significant history of delinquent debt as shown by her 1996 Chapter 7 bankruptcy. Given her previous experience holding a security clearance, 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.

After her 1996 bankruptcy discharge, she showed minimum effort to resolve her new acquired delinquent debts. In short, her recent efforts to gain control of her finances are insufficient to overcome years of financial irresponsibility. 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 security 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.h:	Against Applicant
Subparagraphs 1.i. – j.:	For Applicant
Subparagraphs 1.k. – 1.m.:	Against Applicant
Subparagraph 1.n.:	For Applicant
Subparagraphs 1.o. – 1.y.:	Against Applicant
Subparagraph 1.z.:	For Applicant
Subparagraphs 1aa. – 1.kk.:	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