



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



In the matter of:)	
)	
)	ISCR Case No. 08-06582
)	
Applicant for Security Clearance)	

Appearances

For Government: John Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

January 30, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Applicant completed and signed a Security Clearance Application (SF 86) on June 24, 2004. She recertified the SF 86 on January 10, 2005. On November 28, 2007, she completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP). On October 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns 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 within the Department of Defense for SORs issued after September 1, 2006.

On November 14, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on December 2, 2008. I convened a hearing on January 7, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced seven exhibits, which were marked Ex. 1 through 7 and admitted to the record without objection. Applicant testified on her own behalf and called no witnesses. She introduced two exhibits, which were marked as Ex. A and Ex. B and admitted to the record without objection.

At the conclusion of the hearing, I left the record open until close of business on January 14, 2009, so that Applicant could, if she wished, provide additional information for the record. Applicant timely filed one additional exhibit. Department Counsel did not object to Applicant's post-hearing submission. I marked the post-hearing submission as Ex. C, and it was admitted to the record. DOHA received the transcript (Tr.) of the hearing on January 26, 2009.

Findings of Fact

The SOR contains ten allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.j.) In her Answer to the SOR, Applicant admitted all ten allegations. Applicant's admissions are included herein as findings of fact.

Applicant is 37 years old and never married. She has attended evening college classes for several years, and she hopes to receive a degree in electrical engineering in 2009. She is also pursuing a degree in computer science. Since September 2007, she has been employed as an operations specialist by a federal contractor. Her annual salary is \$58,000. She currently holds a security clearance and seeks a higher level of clearance. (Ex. 1; Tr. 36-40, 47, 76.)

From May 2004 to March 2007, Applicant worked for employer A. She was terminated by employer A because she had improperly obtained and released confidential information about a coworker. In September 2006, prior to her termination, Applicant was counseled by employer A for aggressive behavior toward her coworkers. Applicant was unemployed for two months between March and May 2007. From May 2007 until August 2007, Applicant worked for employer B. When employer B moved its operations to another location in the same general area, Applicant refused to travel to the new location because she claimed she did not have access to adequate transportation. She was terminated by employer B, and she was unemployed from August to September 2007, when she acquired the position she now holds. (Tr. 42-48; 73-75.)

In February 2004, Applicant purchased the home in which she and her family had been living as tenants since 1991. She purchased the house for \$350,000. She obtained a first mortgage on the property for \$297,000. She also obtained a second mortgage of \$40,000 on the property. The seller of the property reduced the purchase price of the house by \$12,000. Applicant put \$3,000 of her money toward the purchase price of the home and paid closing costs. Applicant's mother, sister, and the sister's two children live with her in the home. Together, the mother and sister pay Applicant \$2,000 a month in rent. The mother and sister also pay all utilities on the home and purchase all groceries. (Tr. 38-40, 63-65, 78.)

Applicant used credit cards to finance repairs and renovations to her house. Between 2004 and 2007, she accumulated approximately \$80,000 in credit card debt. When she lost her job with Employer B, she stopped paying her credit card debt. In September 2007, when she began to work for her present employer, Applicant's mortgage went into default, and she failed to pay her credit card delinquencies. (Tr. 72-75.)

Applicant admitted the following delinquent credit card debts: a debt of \$9,804 on an account that was opened in February, 2004 and which was charged off in January 2008 (SOR ¶ 1.a.); a debt of approximately \$20,000¹ on an account that was opened in 2004 and which had not been paid since June 2007 (SOR ¶ 1.b.); a debt of \$2,778 on an account opened in 2004 and which had not been paid since June 2007 (SOR ¶ 1.c.); a debt of \$10,248 on an account opened in March 2004 and which had not been paid as of September 2007 (SOR ¶ 1.d.); a debt of \$27,865 on an account opened in March 2004 and which had not been paid since February 2007 (SOR ¶ 1.e.); a debt of \$11,255 on an account which had not been paid since October 2007 (SOR ¶ 1.f.); a debt of \$5,641 on an account which had not been paid since August 2007 (SOR ¶ 1.g.); and a debt of approximately \$2,000 on a credit card account (SOR ¶ 1.j.). (Ex. 5; Tr. 48-56, 88-89.)

Applicant sought credit counseling in September 2007. She made no further payments on her delinquent credit card debts until she contracted with a debt repayment service in September 2008. According to her agreement with the debt repayment service, Applicant will pay the service \$824 a month for 60 months. For the first eight months, the debt repayment service will charge Applicant a service fee of \$760 a month, leaving only \$63 each month for payment to her creditors. From months nine to 24, the debt repayment service will charge Applicant a service fee of \$332, leaving \$491 each month for payment to her creditors. (Ex. B; Tr. 81-88.)

Applicant's agreement with the debt repayment service makes clear that the service does not provide funds for settlement offers from creditors, and it cautions customers that they must save additional money to respond to settlement offers. Applicant failed to provide documentation to corroborate payment to the debt repayment service. (Ex. B at 1; Tr. 96-97.)

¹ Applicant's Ex. B identified the amount of this debt as \$15,948. (Ex. B.)

Applicant also owes a debt of \$1,041 to her state employment commission. (SOR ¶ 1.h.) The debt was incurred in 2007, and Applicant has known of the debt since September 2007. She has a verbal agreement to pay the debt in five installments of \$200, beginning in January 2009. As of the date of her hearing, Applicant had made no payments. (Ex. 5; Tr. 56-60.)

In September 2007, Applicant was notified that her primary home mortgage, an adjustable rate mortgage, was in default and would be subject to foreclosure.² As of September 2008, the \$293,000 account had not been paid and was placed for collection. (SOR ¶ 1.i.) To cure the default, Applicant entered into a forbearance agreement and payment plan. On November 1, 2008, she remitted two payments totaling \$9,000 to the mortgage servicing company. Half of the money came from her savings and half came from her mother and sister. She then committed to 23 increased monthly mortgage payments of \$3,354 from November 2008 to September 30, 2010. At her hearing, she provided documentation showing she had made the required payments in November and December 2008. In a post-hearing submission, she provided documentation showing she had also made three payments on her delinquent mortgage in March, May, and June 2008. (Ex. A; Ex. C; Tr. 78-81, 92.)

Applicant's monthly take-home pay is \$3,249. In addition, she receives \$2,000 in rent from her family members. The monthly payment on her primary mortgage is \$3,354. The monthly payment on her second mortgage is \$415. Each month she pays \$824 to the debt repayment service on her credit card debt. She has a verbal payment plan to pay her state unemployment commission \$200 for five months, beginning in January 2009. Her remainder after these payments is \$456.³ She reports \$600 in savings. (Tr. 81, 92-95.)

Since Applicant purchased her house for \$350,000 in 2004, it has increased in value. It now has an assessed value of \$534,000. She intends to refinance her mortgage at some time in the future and to use the proceeds to pay her debts. (Tr. 100-102.)

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, the administrative judge applies these guidelines in

² At the time of her hearing, Applicant was current on her second mortgage payments. (Tr. 66.)

³ Applicant provided a Personal Financial Statement, dated August 1, 2008, showing a net remainder of \$132.37 after subtractions for monthly fixed expenses and financial obligations. (Ex. C.)

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.

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).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt and was unable to pay her creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it 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. (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence 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 (AG ¶ 20(c) or the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 (d))

Most of Applicant's financial delinquencies arose between 2004 and 2007, after she purchased a home and used credit cards to pay for substantial home repairs. Her financial stability was affected when her actions caused her to be terminated from two jobs in 2007. These circumstances have resulted in overwhelming debt which continues to the present day, a situation which raises concerns about Applicant's good judgment.

Applicant sought consumer credit counseling and has recently made good faith efforts to pay or settle her financial delinquencies. She provided financial records to show she took action to forestall foreclosure on her home by paying a lump sum of \$9,000 and committing to an increased first mortgage payment for 23 months. Her current plans to pay her two mortgages, her credit card debt, and her debt to her state's employment commission leave her with very little remainder to save for settlement offers under the terms of her debt repayment plan. I conclude that AG ¶ 20(c) and AG ¶ 20(d) apply in part in mitigation, but that AG ¶ 20(a) and AG ¶ 20(b) do not apply in mitigation to the facts of Applicant's case.

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 security clearance must be an overall commonsense 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. Applicant's financial problems began when she was a mature adult. Her own actions led to her being terminated from two positions in 2007, and her subsequent unemployment made it difficult for her to honor her financial commitments. However, she failed to address her delinquent debts for a significant period of time, a decision that raises concerns about her judgment and reliability.

To her credit, Applicant has taken action in the past several months to address her delinquencies. At her hearing, she provided documentation showing good faith efforts to revitalize her first mortgage and to pay her credit card debt. However, these actions are recent and do not demonstrate a track record of satisfaction of debt consistently over time.

Applicant's financial situation arises from unusual circumstances, and she may find it beneficial to seek additional professional financial counseling and legal advice about resolving her debts and acquiring financial stability in the near term. Applicant can reapply for a security clearance one year after the date that this decision becomes final. If she wishes, she can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial delinquencies.

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. through 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge