



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



In the matter of:)
)
) ISCR Case No. 08-07528
)
)
Applicant for Security Clearance)

Appearances

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

September 18, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s available information is not sufficient to mitigate the security concerns arising from financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On January 28, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP).¹ On March 12, 2009, 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 FORM Item 5.

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 denied or revoked.

On April 28, 2009, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing (Item 3). A complete copy of the file of relevant material (FORM), dated May 29, 2009, was provided to her by letter dated June 1, 2009. Applicant received the FORM on June 11, 2009. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. By letter dated July 28, 2009 (Applicant exhibit (AE) 1), she submitted material in refutation, extenuation, and mitigation in response to the FORM. The case was assigned to me on August 13, 2009.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.c, 1.f, and 1.g. She denied SOR ¶¶ 1.b, 1.d, 1.e, and 1.h. 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 54-year-old senior technical writer. She has been working for her current employer, a defense contractor, since September 2006.³ She attended college from June 1987 to June 1991, and received a Master's degree from a prominent U.S. university. Applicant is currently single. She has been married and divorced three times, the first two times when she was in her twenties. She last married in 1989, and was divorced in 1995. According to her e-QIP answers, she has no children.

Applicant's work history can be summarized as follows: she was unemployed during five months in 1998. After that, she was self-employed and/or underemployed from September 1998 to November 2005. From November 2005 to May 2006, she worked for a government contractor. After that, she was mostly unemployed until she was hired by her current employer in September 2006.

Applicant stated she was issued a Defense Department confidential security clearance, around April 1985, when she worked for a defense contractor. There is no evidence that she ever compromised or caused others to compromise classified information.

² On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines 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 5 (2008 e-QIP) is the source for the facts in this decision, unless stated otherwise.

In her 2008 security clearance application, Applicant disclosed she had three judgments against her that were outstanding. She also disclosed having financial problems and that she was trying to resolve them. Applicant's background investigation addressed her financial problems and included the review of her February 2008 and October 2008 credit bureau reports (CBRs) and her answers to two 2008 DOHA interrogatories. The SOR alleges eight delinquent and/or charged-off accounts and judgments, totaling approximately \$36,500. The delinquent debts were established by Applicant's admissions and her two credit reports (Items 8 and 9).⁴ Most of the debts have been delinquent for many years. Four of the SOR allegations concerned outstanding judgments against Applicant. Three of the judgments were filed in 2002 and one in 2008.

SOR ¶ 1.a alleged an unpaid 2008 judgment owing \$22,740. The debt originated from Applicant's defaulted credit card account. She initially disputed the value of this debt without success. In 2008, Applicant retained legal counsel to help her resolve her judgments. In 2008, her attorney made settlement offers on four of her judgments, three of which were alleged as SOR ¶¶ 1.c (\$690), 1.f (\$1,011), and 1.g (\$4,030). The judgment alleged in SOR ¶ 1.a was not included in the settlement offer.

In her response to the FORM, she claimed her attorney settled the judgment alleged in SOR ¶ 1.a, and that she was making payments. In her SOR response she stated that her payments on this judgment were to start in May. Notwithstanding, she failed to present any documentary evidence to show she settled or that she is making payments on this judgment. In light of her financial history, Applicant's uncorroborated statements are not sufficient to show she settled this judgment or that she is making payments. Applicant's evidence shows, however, that she paid two other judgments, for \$9,295 (Item 4) and \$1,657 (Item 8 and 9), which were not alleged in her SOR. She paid the \$9,295 judgment after the creditor started garnishing her pay in 2009.

SOR ¶ 1.b alleged a collection of \$5,691. Applicant denied this debt. She averred this debt was duplicated as a \$9,295 judgment in her CBRs, and that she paid it when she paid the judgment. Applicant's evidence fails to establish that the paid \$9,295 judgment is the same debt alleged in SOR ¶ 1.b for the following reasons. In her May 2008 statement to a background investigator, Applicant admitted she had two separate accounts with the creditor alleged in SOR ¶ 1.b on which judgments were obtained against her (Item 6, p. 4). Furthermore, a review of the CBRs indicates these two delinquent debts are two separate legal obligations to the same creditor. I find SOR ¶ 1.b to be Applicant's outstanding delinquent debt.

Applicant formally disputed the debts alleged in SOR ¶¶ 1.c (\$690) and 1.e (\$1,530) (Items 8 and 9), as indicated in the CBRs.

⁴ An applicant's credit report showing the delinquent debts alleged in an SOR is sufficient to establish the government's *prima facie* case. See ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2003).

SOR ¶ 1.d alleged a collection of \$350 by a large retailer. In her answer to the SOR, Applicant denied this debt, stating that the debt was not legitimate and that it was removed from her CBRs. However, in her May 2008 statement to a background investigator, Applicant admitted this was her retail revolving account that she had used it to buy her clothing, and that she stopped paying it in 2002 (Item 6). Applicant presented no evidence this debt has been paid or resolved. I find that this debt is still outstanding.

SOR ¶¶ 1.f (\$1,011) and 1.g (\$4,030) alleged two outstanding judgments that Applicant admitted. She hired an attorney to help her to settle or resolve these accounts.

SOR ¶ 1.h alleged a collection of \$500 on behalf of a bank. The debt is established by the February 2008 CBR (Item 9). Applicant claimed she did not have any accounts with that bank and denied the debt in her answer to the SOR. There is no evidence that she formally disputed the account.

Applicant explained her financial problems were the result of a major financial downturn she suffered during the Information Technology (IT) decline in 2000-2002. After 2002, she was unemployed or underemployed until 2006, when she was hired by her current employer. Before 2006, she had low paying jobs and she did not have sufficient income to pay her day-to-day living expenses and her delinquent obligations.

Applicant currently has a steady job and promised that she would be able to resolve her delinquent debts, and stay financially responsible in the future. She retained an attorney in 2007, to help her resolve some of her debts. In 2008, she retained another attorney to assist her with resolving her judgments. She claimed she has been working with a financial counselor to pay her delinquent debts. It is not clear whether she is talking about her attorneys or another financial counselor. Applicant's CBRs show that she paid three delinquent and/or charged-off debts, formally disputed two other delinquent debts, and paid two judgments. Other than these accounts, Applicant presented little evidence of other paid debts, settlement agreements, or efforts to resolve her delinquent debts since she acquired them.

Applicant admitted that she has not always used her best judgment addressing her debts and that she has failed to resolve her financial problems in a timely manner. She said that she was having problems identifying her legal creditors because of the duplication of her debts during the lengthy collection process.

According to her October 2008, response to interrogatories, Applicant's gross monthly salary was approximately \$5,401, and her deductions were \$1,957, for a net income of \$3,444. Her monthly expenses totaled \$1,485, and she was paying only three debts totaling \$998. She had a net remainder of \$961. Applicant has been borrowing money from her 401(k) retirement plan to meet the deficit caused by a garnishment of pay imposed in 2009.

Applicant is a patriotic citizen and never misses voting in a Presidential election. She was appointed by a state family court as a volunteer guardian *ad litem*. She believes she acted in good-faith because she started paying her delinquent judgments as soon as she had the income to do so. She also claimed she paid many debts in a timely manner. She failed to present documentary evidence to corroborate either of her claims. She also believes she is living in an austere and prudent manner. She claimed her debts were not caused by frivolous or irresponsible spending, but due to the financial downturn she suffered during the IT decline. Applicant averred she has medical problems that prevented her from working more than one job. Her current employer made reasonable accommodations that permit Applicant to work full-time.

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 required to be considered 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 commonsense 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,"⁵ 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,

⁵ 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).

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).⁶

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

Guideline F, Financial Considerations

Under Guideline F, the security concern is that an applicant’s 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.

Applicant has accumulated eight delinquent and/or charged-off accounts and judgments totaling approximately \$36,500, most of which have been outstanding for many years. Four of the SOR allegations concern judgments filed against Applicant – three in 2002 and one in 2008. Applicant’s evidence of efforts to resolve her financial obligations is summarized as follows: she retained attorneys in 2007 and 2008 to help her resolve her debts; in 2008, her attorney proposed settlement agreements in four of her delinquent judgments; she paid two judgments (not alleged in the SOR); she paid three debts not alleged in the SOR; and she formally disputed two additional debts. She presented no other documentary evidence of efforts to pay or resolve any of the financial obligations alleged in the SOR.

⁶ “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).

AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's sparse favorable evidence fails to fully raise the applicability of any mitigating condition. Her financial problems are ongoing and her evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence to establish circumstances beyond her control contributing to her inability to pay her debts, i.e., periods of unemployment, business downturn, and expenses caused by her medical condition. Applicant's evidence of efforts to resolve her financial obligations is summarized as follows: she retained attorneys in 2007 and 2008 to help her resolve her debts. In 2008, her attorney proposed settlement agreements on four of her delinquent judgments. She paid two judgments and three debts, all of which were not alleged in the SOR. Also, she formally disputed two debts alleged in the SOR. Applicant presented no other corroborating documentary evidence of efforts to pay or resolve any of the financial obligations alleged in the SOR. Applicant has been consistently employed since September 2006.

Her favorable information fails to fully establish a track record of financial responsibility. AG ¶ 20(b) does not apply.

AG ¶ 20(c) does not apply because there are no clear indications that her financial problem is being resolved or is under control. She presented evidence that she received financial counseling through her attorneys and that she started making some effort to resolve her financial problems in 2007. However, considering the number of delinquent debts, the date the debts were acquired (three are unpaid judgments dating back to 2002), the aggregate value of the debts, and the lack of corroborating documentary evidence of efforts to resolve her legal financial obligations prior to 2007, Applicant's information is insufficient to establish that her financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this 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.

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).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for her four years working for government contractors. There is no evidence of any security violation, or that she ever compromised classified information. Applicant is a patriotic citizen and never misses voting in a Presidential election. She was appointed by a state family court as a volunteer guardian *ad litem*. These factors show some responsibility and mitigation.

Notwithstanding, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant has not always used her best judgment addressing her debts. She has failed to show good-faith efforts to resolve her

financial problems in a timely manner. The sparse record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her 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, 1.b, 1.d, and 1.f - 1.h:	Against Applicant
Subparagraphs 1.c and 1.e:	For 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.

JUAN J. RIVERA
Administrative Judge