



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-07536
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

September 30, 2010

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on January 15, 2008. On February 17, 2010, the Defense Office of Hearings and Appeals (DOHA) sent her a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline F. DOHA acted 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on February 23, 2010; answered it on April 21, 2010; and requested a hearing before an administrative judge. DOHA received the request on

April 26, 2010. Department Counsel was ready to proceed on June 28, 2010, and the case was assigned to me on July 20, 2010. DOHA issued a notice of hearing on July 30, 2010, scheduling it for August 18, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until September 3, 2010, to enable her to submit additional documentary evidence. She timely submitted AX B through M, which were admitted without objection. Department Counsel's comments regarding AX B through M are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on August 27, 2010.

Findings of Fact

In her answer to the SOR, Applicant admitted all the allegations in the SOR except ¶¶ 1.i, 1.r, 1.u, 1.v, 1.w, and 1.cc-1.gg, which she denied. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 34-year-old design trainee employed by a defense contractor since September 2007. She worked for another defense contractor from January 2005 to August 2007. She served in the U.S. Navy from November 1994 to May 1997. She has never held a security clearance.

Applicant married in February 1995, separated in September 1997, and divorced in February 2006. She remarried about two years ago, after she submitted her security clearance application. Her current spouse is employed by a food processing company. (Tr. 81.)

Applicant and her husband filed a joint petition for Chapter 7 bankruptcy in October 1995. They received a discharge in January 1996. (GX 4.) She testified that this bankruptcy was the result of their youth, financial inexperience, and overspending. (Tr. 33.) This bankruptcy is alleged in SOR ¶ 1.a.

When Applicant left active duty in May 1997, she was pregnant with her third child. Her husband assured her that she was covered by his medical insurance, but she was not. Her baby was born in October 1997 but died shortly after birth. After the baby died, Applicant discovered that she and her husband had more than \$30,000 in medical bills that were not covered by insurance. (GX 2 at 3.)

After leaving the Navy, Applicant worked at various part-time and temporary jobs. (Tr. 36.) She was unemployed from April 2004 to January 2005. (GX 1 at 15-17.) She attended college from August 2000 to May 2002, from March 2004 to October 2006, and from August 2006 until the present. She expects to graduate in August 2011. (AX A.) The student loans alleged in SOR ¶¶ 1.cc-1.ff were incurred during her college education.

Applicant filed a second petition for Chapter 7 bankruptcy in April 2002, solely in her name. She testified that this bankruptcy was largely the result of medical bills. She had left the Navy, was separated from her husband, incurred substantial medical bills for her children, and had no medical insurance. (Tr. 35.) She received a discharge in August 2002. (GX 5.) This bankruptcy is alleged in SOR ¶ 1.b.

The SOR alleges 31 delinquent debts, of which nine were reduced to judgments. Applicant testified that she did not contact her creditors after she began working for a federal contractor in January 2005, because she concentrated on repaying personal loans from her mother and other family members. (Tr. 67.)

Thirteen of the delinquent debts alleged in the SOR (¶¶ 1.c, 1.f-1.h, 1.j-1.m, 1.s, 1.t, and 1.z-1.bb) are for medical and hospital services. Some are for small amounts, e.g., SOR ¶¶ 1.c for \$100, 1.m for \$54, and 1.aa for \$32. In March 2008, she told a security investigator that her ex-husband was obligated by their “divorce agreement” to pay the medical debts. (GX 2 at 4.) The record does not reflect whether this was an informal agreement or a provision in the divorce decree.

In response to DOHA interrogatories in October 2008, Applicant declared that she was trying to settle the debts. In her answer to the SOR, she admitted all the medical debts, of which six were reduced to judgments, and for each she stated she attempted without success to set up a payment arrangement when she first incurred the debt, and that she was now trying to set up a payment plan for each debt. She recently retained a law firm to assist her in verifying debts and negotiating payment plans for her medical debts as well as other debts. (Tr. 62-63.) She did not provide documentary evidence of any payment plans. At the hearing, she admitted she had not made any payments on any of the thirteen medical debts. (Tr. 70-75.)

In her post-hearing submission, Applicant presented evidence that she had been given an opportunity to apply for a charitable write-off of the debts for hospital services alleged in SOR ¶¶ 1.h and 1.k. (AX C.) There is no documentary evidence that she applied for or received a full or partial write-off.

Two delinquent debts are related to Applicant’s purchase of a home in May or June of 2006. She borrowed the money for closing costs, resulting in the judgment for \$3,050, which is unsatisfied, as alleged in SOR ¶ 1.d. (Tr. 70.) The home was foreclosed in January 2007, with about \$79,896 due on the mortgage, as alleged in SOR ¶ 1.gg. The property was purchased by the lender for \$67,900. (AX I.)

Applicant testified that her mortgage was sold shortly after she purchased the home, that she was not notified that the mortgage had been sold, and that she sent her payments by cashier’s checks to the old lender. She also testified that after the foreclosure sale her cashier’s checks were returned to her. I kept the record open to enable her to present copies of the checks or other financial records showing that the checks were never cashed. On September 2, 2010, she informed me that the issuer of the cashier’s checks was sending her copies of the checks, but she did not submit

copies of the checks or any further evidence on this issue. The record does not reflect whether the lender will seek a deficiency judgment. She has retained a law firm to investigate the circumstances of the foreclosure. (AX B; AX M.)

Applicant referred the collection account alleged in SOR ¶ 1.n to her law firm for verification, but the account is still unresolved. (AX L; Tr. 74.) She disputed the delinquent debts alleged in SOR ¶¶ 1.i and 1.v., and both debts were removed from her credit file. (AX G.) She also testified that she disputed the debt for telephone service alleged in SOR ¶ 1.r, but she provided no documentation of the dispute.

Applicant testified she resolved the three delinquent debts for cable service alleged in SOR ¶¶ 1.o-1.q. She did not provide receipts for the payments, but she submitted a document showing that her account was current. (AX D; Tr. 65.) She submitted documents showing that she resolved the delinquent debts alleged in SOR ¶¶ 1.u and 1.w. (AX F; AX H.)

Applicant admitted that the delinquent credit union loan alleged in SOR ¶ 1.e is unresolved. (Tr. 71.) She testified she was making payments on the cell phone debt alleged in SOR ¶ 1.y, but she produced no documentary evidence of a payment agreement or payments made. She testified she was attempting to settle the delinquent library fees alleged in SOR ¶ 1.x, but the debt remains unresolved. (Tr. 75.)

Applicant denied the delinquent student loans alleged in SOR ¶¶ 1.cc-1.ff. She testified that her student loans were deferred because she was still a student. Her testimony is corroborated by her most recent credit report, which lists numerous deferred student loans. (GX 10.)

Applicant received credit counseling from her credit union about a year ago. She testified that the credit counselor assisted her in making a budget. She promised to provide a copy of her written budget after the hearing, but she did not. (Tr. 61-62.)

There is no evidence in the record reflecting Applicant's current income and expenses. Although she responded to two sets of DOHA interrogatories (GX 2 and GX 3), she was not asked to submit a personal financial statement.

Applicant is very active in her community. She is serving her second term as president of the parent-teacher association for the middle school in her community. As president, she increased the membership from 67 to 292. She also serves on the advisory board for an educational outreach program designed to prepare at-risk students in middle school and high school to prepare for life after high school. She has established a partnership between her employer and the outreach program, in which employees visit schools participating in the outreach program and make motivational speeches. (AX A; Tr. 40-44.) Her spouse corroborated her description of her extensive community service, commenting that she "does too much." (Tr. 79.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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 guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security

clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18 as follows:

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.

Applicant’s financial history raises the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(b): indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

There is no evidence of “frivolous or irresponsible spending” after Applicant’s bankruptcy discharge in 1995, but her admitted financial irresponsibility before that bankruptcy discharge raises AG ¶ 19(b). AG ¶¶ 19(a), (c), and (e) are raised by her current financial situation.

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (b), (c), and (e), the burden shifted to Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that “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." AG ¶ 20(a). Applicant's two bankruptcy discharges are not recent, but they are a part of a chain of financial problems that began during her Navy service and have continued to the present. Her debts are numerous, ongoing, and not the product of circumstances making them unlikely to recur. I conclude that this mitigating condition is not established.

Security concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(b). Both prongs, i.e., conditions beyond the person's control and responsible conduct, must be established.

Applicant has encountered several conditions beyond her control: her marital break-up in September 1997, the death of her child in October 1997, her periods of unemployment and underemployment between May 1997 and January 2005, uninsured medical expenses, and a downturn in the housing market. Evidence that the foreclosure of her home occurred because of misrouted payments could apply under this mitigating condition, but she has failed to provide any documentation of the circumstances of the foreclosure.

Nevertheless, this mitigating condition is not established because the second prong (responsible conduct) is not established. She has been employed continuously since January 2005, and she learned shortly after filing her security clearance application that her delinquent debts raised security concerns. She did not seek financial counseling or legal help until recently. She admitted at the hearing that she had not made any payments on the medical debts, even though several are for small amounts. She has taken no action to resolve the delinquent credit union loan alleged in SOR ¶ 1.e. She has presented no documentary evidence that the telephone bill in SOR ¶ 1.r, the library delinquency in SOR ¶ 1.x, and the cell phone bill in SOR ¶ 1.y are being resolved. She has not provided any information about her income and expenses, even though she promised at the hearing that she would submit her current budget before the record closed.

Security concerns under this guideline also can be mitigated by showing that "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). This mitigating condition is not established because Applicant's financial situation is not under control.

Security concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999

WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

An applicant is not required, as a matter of law, to establish resolution of each and every debt alleged in the SOR. See ADP Case No. 06-18900 (App. Bd. Jun. 6, 2008). An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There also is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. *Id.*

Applicant recently resolved the debt alleged in SOR ¶ 1.u, and she paid the debt alleged in SOR ¶ 1.w several years ago. The student loans alleged in SOR ¶¶ 1.cc-1.ff are deferred now that she has resumed her college education. However, Applicant does not have a specific plan for resolving the remaining delinquent debts, nor has she taken significant actions to resolve them. Thus, I conclude that the mitigating condition in AG ¶ 29(d) is established for the debts alleged in SOR ¶¶ 1.u, 1.w, and 1.cc-1.ff, but it is not established for the remaining delinquent debts.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 20(e). This mitigating condition is established for the debts alleged in SOR ¶¶ 1.i and 1.v, which were disputed and deleted from Applicant’s credit file. She testified she disputed the telephone bill alleged in SOR ¶ 1.r, but she produced no documentation substantiating the basis for the dispute.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the relevant 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) 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is an intelligent, energetic, articulate, and well-educated woman. Her record of civic involvement is impressive. Her financial situation would likely be much improved if she had devoted the same level of energy to her financial obligations as she has to her civic duties.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.n:	Against Applicant
Subparagraphs 1.o-1.q:	For Applicant
Subparagraphs 1.r-1.t:	Against Applicant
Subparagraphs 1.u-1.w:	For Applicant
Subparagraphs 1.x-1.bb:	Against Applicant
Subparagraphs 1.cc-1.ff:	For Applicant
Subparagraph 1.gg:	Against Applicant

Conclusion

In light of all of the circumstances, 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.

LeRoy F. Foreman
Administrative Judge