



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



In the matter of:)	
)	
)	ISCR Case No. 08-07549
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire Department Counsel
For Applicant: *Pro Se*

June 30, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 21 debts totaling in excess of \$44,000, which were placed for collection. Applicant provided documentation that: five debts have been paid, two disputed debts were removed from her credit report, the creditor cannot locate one debt, and her son is current on his monthly car payments. There is no evidence the remaining 12 debts, totaling in excess of \$29,000, have been paid or are being paid. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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)

Statement of Reasons (SOR) on January 9, 2009, detailing security concerns under financial considerations.

On January 9, 2009, Applicant answered the SOR, and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated April 13, 2009. The FORM contained seven attachments. On April 17, 2009, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response was due² on May 17, 2009. No response to the FORM has been received. On June 11, 2009, I was assigned the case.

Findings of Fact

In her Answer to the SOR, Applicant stated the debts list in SOR ¶ 1.b, 1.e, 1.s, and 1.t have been paid in full, that she was waiting for receipts for the debts listed in SOR ¶¶ 1.f, 1.g, 1.h, and 1.i., and denies the debt listed in SOR ¶ 1.q. She admitted the remaining factual allegations, with explanations. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is a 41-year-old security officer who has worked for a defense contractor since December 2007, and is seeking to obtain a security clearance. Applicant is a single mother caring for three children. Applicant's take home pay for the pay period ending August 9, 2008 was \$1,918 and for the period ending August 23, 2008, was \$1,861, (Item 4) Applicant states her monthly expenses and debt payment was approximately \$3,000 per month. Her monthly net disposable income (gross income less expenses) was approximately \$750.

Applicant submitted a May 2008 letter indicating she had contacted a financial counseling organization. There is no evidence she entered into a formal agreement or individualized program with that financial counseling organization to address her financial difficulties.

Applicant co-signed on a truck with her children's father. The high credit was \$18,170 and monthly payments were \$479. The truck was repossessed, resold, and a balance of \$9,827.55 (SOR ¶ 1.l) remains on this debt. Applicant asserts, but failed to provide any supporting documentation, the truck debt was in a bankruptcy³ proceeding. In April 2008, the creditor offered to settle this matter for \$3,439 if payment was received before March 28, 2008. Payment was not made. (Item 3)

promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

² Responses to the FORM are due 30 days after receipt of the FORM.

³ As of February 2008, when Applicant completed her SF-86, she had not filed for bankruptcy protection during the previous seven years.

Applicant purchased a vehicle for \$18,868, which was repossessed resulting in a debt of \$13,257 (SOR ¶ 1.j). The debt continues to accumulate interest. Applicant states she tried to arrange payments on this debt. Applicant co-signed on a car for her son. The original debt was \$17,839 with monthly payments of \$396. At one time her son was behind on his payments and the debt was placed for collection, however, her son has brought his payments current. The most recent credit reports (Items 6 and 7) indicated the debt is being paid as agreed.

Applicant asserts, but failed to provide documentation, she is making \$50 monthly payments on a \$180 debt listed in SOR ¶1.a. Her credit report (Item 5) lists the debt as having been placed for collection. Applicant asserts, but failed to provide documentation, the \$85 debt listed in SOR ¶1.b. has been paid in full. Her credit report lists the debt as having been charged off.

Applicant asserts, but failed to provide documentation, she would arrange to make payments on the \$330 medical debt listed in SOR ¶1.c. Her credit report lists the debt as having been placed for collection. She asserts, but failed to provide documentation, her son would arrange payments on the \$435 debt listed in SOR ¶1.d. The SOR lists five accounts (SOR ¶1.e through ¶1.i) with a collection agency. Applicant provided letters stating four debts with the agency have been settle in full. (Answer to SOR)

Applicant stated she had contacted the telephone service listed in SOR ¶1.k (\$182) and asserts the creditor could not locate the debt. She stated she would continue to pursue this debt. No further documentation was received. Applicant disputed the \$193 debt listed in SOR ¶1.n. Applicant's credit report indicated the account was closed and refinanced. Applicant stated the creditor of the \$1,847 debt listed in SOR ¶1.o would not accept her offer of \$50 monthly payments.

Applicant owed \$1,970 on the debt listed in SOR ¶1.p. In August 2008, the creditor offered to settle this matter for \$1,182.12 if paid by August 29, 2008. Payment was not made. (Item 3) Applicant asserts, but failed to provide any documentation supporting her assertion, she pay \$50 bi-weekly on this debt. Applicant denied the \$575 debt listed in SOR ¶1.q, which has been deleted from her credit report.

Applicant asserts, but failed to provide documentation, she would arrange to make payments on the \$495 gas utility debt listed in SOR ¶1.r. Her credit report lists the debt as not satisfied. Applicant asserts, but failed to provide documentation, the \$303 insurance debt listed in SOR ¶1.s and the \$164 insurance debt listed in SOR ¶ 1.t have been paid in full. Her credit report lists these debts as having been placed for collection. Applicant asserts, but failed to provide documentation, she would arrange to make payments on the \$110 debt listed in SOR ¶1.u. Her credit report lists the debt as having been placed for collection.

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.

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

Revised Adjudicative (AG) ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. The SOR asserted 21 debts totaling in excess of \$44,000, which were placed for collection. Disqualifying Conditions Adjudicative Guidelines (AG) ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

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.

Applicant provided letters stating four of the five debts (SOR ¶¶ 1.e, 1.f, 1.g, 1.h, and 1.i), with one creditor had been settled in full. Applicant's credit reports indicate the monthly payments on the \$14,017 car loan (SOR ¶ 1.m) are being paid in a timely manner. Applicant disputed two debts (SOR ¶ 1.n and SOR ¶ 1.q) which have been removed from her credit report. Applicant contacted the creditor in SOR ¶ 1.k (\$182) and was informed the debt could not be located.

There is no evidence of payment on the remaining 12 debts, which total approximately \$29,000. Applicant asserted, but failed to provide documentation, that three debts were paid in full (SOR ¶ 1.b, \$85, SOR ¶ 1.s, \$303, and SOR ¶ 1.t, \$164). Applicant asserted, but failed to provide documentation, that an additional six debts (SOR ¶ 1.a, \$180, SOR ¶ 1.c, \$330, SOR ¶ 1.d, \$435, SOR ¶ 1.p, \$2,040, SOR ¶ 1.r, \$495, and SOR ¶ 1.u, \$110), totaling approximately \$3,500, are being paid or she will arrange payments. There has been no payment on three of the largest debts (SOR ¶ 1.j, \$13,257, SOR ¶ 1.l, \$9,827, and SOR ¶ 1.o, \$1,847), which total approximately \$25,000.

Applicant asserts two of the debts resulting from repossession are or may be included in bankruptcy proceedings. Applicant has provided no documentation that she has ever sought bankruptcy protection. The fact the co-signer may have included the debts in bankruptcy would not relieve her obligation on these debts.

None of the mitigating factors apply to the remaining unpaid debts. The behavior did not happen long ago. The behavior is not infrequent. There are numerous unpaid debts. There is no evidence the obligations were incurred under unusual circumstances. AG ¶ 20(a) does not apply. The evidence of Applicant's stated intentions to pay off her delinquent debts fall short of demonstrating a track record of financial reform and rehabilitation sufficient to permit the conclusion that Applicant's history of financial difficulties will be resolved soon and will not recur.

There is not sufficient record evidence to support application of Adjudicative Guideline ¶ 20(b) that her financial problems were beyond her control, and she has acted responsibly under the circumstances. Applicant did co-sign on two cars, one was repossessed and payments are current on the other. Co-signing is not an event beyond one's control.

There is no evidence Applicant has attended financial classes, maintains a budget, is living within her means, or paying her debts in a timely manner. AG ¶ 20(c) does not apply. Applicant submitted a May 2008 letter indicating she had contacted a financial counseling organization. There is no evidence of a formal agreement or individualized program with that financial counseling organization to address her financial difficulties. There is no showing payments have been made on any debt.

Applicant has paid five debts and her son is current on his car payments. AG ¶ 20(d), that she has initiated a good-faith effort to repay her creditors, does apply to these six debts. Applicant asserts she paid three additional debts and is paying or will start paying six additional debts. However, she provided no documentation supporting her assertion. Without documentation showing her efforts are being implemented in an organized or structured way, it is premature to conclude Applicant's financial difficulties have been resolved or are under control.

The lack of documentation also prevents the applying AG ¶ 20(d) to the remaining debts. A mere intention to repay debts without documentation establishing repayment or a good-faith effort to repay her debts is insufficient to warrant applying this mitigating condition.

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 is a single mother raising three children. Her monthly disposable income (gross income less expenses) is approximately \$750. In August 2008, when she answered the interrogatories, Applicant was made aware of the government's concerns about her unpaid obligations. Ten months later, there is evidence Applicant has addressed five debts totaling less than \$500 and her son is current on this car payments.

Applicant still has unresolved delinquent debts, which remain unpaid. She has no specific, concrete plan for addressing or resolving her delinquent debts in the foreseeable future. As previously stated, her assertion she is trying to address her delinquent debts lacks adequate corroborating documentation.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial considerations and personal conduct.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances a clearance is not recommended, but should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

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, financial considerations: **AGAINST APPLICANT**

Subparagraph 1.a – 1.d:	Against Applicant
Subparagraph 1.e -1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m and 1.n	For Applicant
Subparagraph 1.o and 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r -1.u:	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.

CLAUDE R. HEINY II
Administrative Judge