



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



In the matter of:)
)
-----) ISCR Case No. 08-07573
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

November 12, 2009

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) listed six delinquent debts, totaling \$17,760. She resolved one debt for \$581. She has not made sufficient progress resolving the other five SOR debts. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On January 10, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF-86) (Government Exhibit (GE) 1). On April 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR (GE 8) to Applicant, 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), dated January 2, 1992, as amended and modified. The revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleged 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 Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On June 15, 2009, Applicant responded to the SOR (GE 9). On August 3, 2009, Department Counsel announced she was ready to proceed on her case. On August 10, 2009, DOHA assigned Applicant's case to me. On September 14 and 15, 2009, DOHA issued hearing notices (GE 6, 7). On October 14, 2009, Applicant's hearing was held. At the hearing, Department Counsel offered five exhibits (GE 1-5) (Transcript (Tr.) 18-19), and Applicant offered four exhibits (Tr. 20-21; AE A-D). There were no objections, and I admitted GE 1-5 (Tr. 19), and AE A-D (Tr. 22). Additionally, I admitted the Notices of Hearing, SOR, and response to the SOR (GE 6-9). On October 22, 2009, I received the transcript.

Findings of Fact¹

In Applicant's SOR response, she admitted she owed the debts in SOR ¶¶ 1.a to 1.c, and 1.e.² She explained that the debts resulted from her divorce and not having sufficient income to address her debts. A mortgage lender advised her not to attempt to resolve her delinquent SOR debts because they would be removed from her credit report because they were stale. She did not recognize the debt in SOR ¶ 1.d. She made payments towards the debt in SOR ¶ 1.e; however, when she changed jobs she asked the creditor to accept a lower payment and the creditor refused. She disputed her responsibility for the debt in SOR ¶ 1.f because the creditor misrepresented the services that would be provided as part of the agreement. Her admissions are accepted as findings of fact.

Applicant is 39 years old, and a defense contractor that has employed her since July 2007 in the areas of payroll, accounting, and human resources (Tr. 8, 24, 25). She has full-time employment with the government contractor, and she has had a part-time job working as a bartender for two months (Tr. 27, 57, 71). She has a graduate equivalency diploma (GED) and about two years of college (Tr. 8). In college, she focused on nursing, computers, and administration (Tr. 26, 27). After submitting her SF-86 in 2008, she received an interim Secret security clearance (Tr. 9, 25, 27).

Applicant married in 1995 and divorced in 2001 (Tr. 25, 26, 28; GE 1). She has custody of her children who are ages 17 and 13 (Tr. 26). She has never served in the military (Tr. 27).

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

² The source for the facts in this paragraph is Applicant's response to the SOR, dated June 15, 2009 (GE 9).

Financial considerations

The SOR listed six delinquent debts, totaling \$17,760 as follows: 1.a (credit card debt resulting in a judgment—\$7,595); 1.b (credit card—\$6,123); 1.c (credit card—\$1,722); 1.d (cell phone account—\$566); 1.e (cell phone account—\$1,173); and 1.f (cell phone account—\$581).

After Applicant was separated from her spouse, she used credit cards to re-establish her household (Tr. 29). Her husband promised to help with the credit cards, and they considered reconciliation of their marriage (Tr. 29). However, they were unable to salvage their marriage (Tr. 29). After her divorce she was unable to make her monthly credit card payments (Tr. 29).

A 2008 credit report shows the account relating to the debt in SOR ¶ 1.a resulted from a credit card account opened in 2004 (Tr. 28, 32, GE 5 at 4). The account had a high credit amount of \$3,602, and a balance of \$6,235 (Tr. 32; GE 5 at 4). The creditor obtained a judgment for \$7,595 in June 2005 (Tr. 35; GE 3 at 2). Applicant has not contacted the creditor for at least a year or two (Tr. 32). In June of 2008, she applied for a mortgage to purchase a home (Tr. 32). The lender advised her not to contact the creditors and not to offer to settle her debts because it was too late (Tr. 32). Her old debts would “fall off” of her credit report anyway because they were stale (Tr. 32).

Applicant’s 2008 credit report showed she opened the credit card account in SOR ¶ 1.b in November 2001 (Tr. 37; GE 5 at 5). Her credit report has a balance of \$5,831 (GE 5 at 5).

Applicant’s debt in SOR ¶ 1.c (\$1,722) resulted from a credit card delinquency (Tr. 38). The date of last activity on account was August 2002 (Tr. 38; GE 5 at 11).

Applicant did not recognize the debt in SOR ¶ 1.d (\$566) (Tr. 38). However, she previously told an Office of Personnel Management (OPM) investigator that this debt was for a credit card she opened in 2000 (Tr. 39; GE 2 at 3). She believed the information in the OPM summary was erroneous because she did not believe she opened any credit cards with less than a \$1,000 credit limit (Tr. 40). Even after receiving her 2008 credit report, she did not make any inquiries to determine her responsibility for this debt (Tr. 40).

The debts in SOR ¶¶ 1.e (\$1,173) and 1.f (\$581) related to cell phone accounts (Tr. 40-42). She had some contacts with the creditor in SOR ¶ 1.e after the debt became delinquent; however, the creditor was unwilling to accept a low enough payment (Tr. 41). For the account in SOR ¶ 1.f, the cell phone company told her that her cell phone would have coverage when she moved to a different state; however, her cell phone account charged very expensive roaming fees (Tr. 42, 43). She thought the debt in SOR ¶ 1.f was possibly paid in 2005 (Tr. 43; GE 1). However, her 2008 SF-86, indicates, “I am currently making payments with them to satisfy this debt.”

About two years ago, Applicant bought a house with someone else (Tr. 33). She was living with the person who purchased the residence with her (Tr. 51). On January 28, 2009, she moved out of the house (Tr. 36). She obtained a court order of protection against him (Tr. 51). In September 2009, she signed a quitclaim deed (Tr. 33). Her December 12, 2008, credit report shows a mortgage loan of \$175,000, which was borrowed in November 2008 (GE 4). There is no evidence that this mortgage debt is delinquent.

Applicant paid the three non-SOR judgments listed on her January 10, 2008, SF-86 for \$800, \$500, \$300 (Tr. 45-48; GE 1). She planned to pay the SOR debts (Tr. 34, 35). However, as of the date of her hearing, she has not paid her SOR creditors anything during the last two years (Tr. 34). She did not provide any written payment plans, or other documentation showing her plan to resolve her SOR debts. She does not have any current credit cards (Tr. 38).

Applicant's annual salary from the contractor has increased from about \$27,000 in 2007 to about \$34,000 now (Tr. 52). Her net monthly salary is about \$2,160 (Tr. 56). She receives \$1,050 monthly in child-support payments (Tr. 57). Her part-time employment as a bartender pays about \$250 monthly (Tr. 57, 71). Applicant's monthly expenses are about \$3,060 (Tr. 62). Her remainder after expenses is about \$400 (Tr. 63). She has about \$200 in the bank (Tr. 67). A roommate recently moved into her apartment, and she hopes the roommate will contribute \$300 monthly towards their rent (Tr. 66-67).

Applicant's annual salary before 2007 was about \$30,000 (Tr. 53). She has never been unemployed (Tr. 55). She received some financial counseling and has generated a budget (Tr. 70-71).

Character evidence

Applicant's supervisor from 2002 to 2004, described her as a trustworthy and responsible person (AE A). Applicant had access to sensitive medical information, social security numbers, and payment information and never mishandled or abused that access to information (AE A).

Applicant assisted a coworker during July 2004 to June 2007 with making travel arrangements, and as part of her duties, Applicant was entrusted with credit cards and sensitive financial information (AE B). Her coworker was confident that she is a trustworthy and responsible position.

Applicant's supervisor during July 2004 to June 2007 noted she was often trusted with sensitive personal and financial information (AE C). He described her as a trustworthy and responsible employee (AE C).

Applicant's supervisor at the defense contractor from June 2007 to the present indicates she has been promoted twice and is a tremendous asset to her employer (AE

D). She routinely handles sensitive personal and financial information (AE D). Applicant is a “very efficient, loyal and trustworthy employee.” (AE D).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 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 and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (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 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. Clearance decisions must be “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. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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). 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). "[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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines F (Financial Considerations) and E (Personal Conduct).

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 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." The Appeal Board has noted that an "Applicant's credit report was sufficient to establish the Government's prima facie case that Applicant had . . . delinquent [SOR] debts that are of security concern." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006). Applicant's history of delinquent debt is also documented in her OPM interview, her responses to DOHA interrogatories, her SOR response, and her oral statement at her hearing. She failed to ensure her creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five mitigating conditions under AG ¶ 20 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's conduct does not warrant full application of AG ¶ 20(a) because she did not act more aggressively and responsibly to resolve her delinquent debts. Her delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). She has made insufficient progress paying or resolving her SOR debts, which now total about \$17,000. None of the SOR debts are paid. Her delinquent debts continue to cast doubt on her current reliability, trustworthiness, and good judgment.

Applicant receives partial credit under AG ¶ 20(b) because her financial problems initially resulted from underemployment and divorce.³ She does not receive full mitigating credit because she did not establish that she acted with sufficient initiative to resolve her delinquent debts. She has been divorced since 2001, and her largest debt, the debt in SOR ¶ 1.a (\$7,595), resulted from a credit card account opened in 2004 that resulted in a judgment against her in June 2005. SOR debt 1.a cannot be attributed to her divorce. She did not provide documentation showing her requests to creditors to start payment plans. She has not contacted her SOR creditors for about two years.

³Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

AG ¶ 20(c) does not fully apply. Although Applicant received some financial counseling and generated a budget, she did not show any reduction in her SOR debts, even though she learned about the security significance of her delinquent debts during her OPM interview on March 17, 2008. She has not sufficiently demonstrated the financial self-discipline necessary to reduce and resolve her SOR debts. There are not “clear indications that the problem is being resolved or is under control.” She does not receive full mitigation under AG ¶ 20(d) because she did not establish good faith⁴ in the resolution of her SOR debts.

AG ¶ 20(e) does not apply because of the lack of documentation supporting Applicant’s dispute of any debts. However, under all the circumstances, I did mitigate her debt in SOR ¶ 1.f for a \$581 cell phone account. She explained that the cell phone company promised that she would not have to pay roaming charges after she moved. Then after she moved the cell phone company improperly billed her for roaming charges at her new residence.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve her delinquent debts. Although her debts initially resulted from underemployment and divorce, she has made little progress the last two years resolving her SOR debts. She did not pay any of her SOR debts. She did not make an initial payment on any payment plans on any of her SOR debts for the last two years.

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

⁴The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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 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.

The whole person factors supporting reinstatement of Applicant's clearance are significant; however, they are insufficient to warrant approval of Applicant's security clearance at this time. Applicant's supervisors noted Applicant's excellent work performance. She is a diligent, hard working, and dedicated employee. She was candid and forthright about her financial history. Her financial problems initially resulted because of underemployment and her divorce in 2001. The government is well aware of her financial problems, and her financial problems do not render her vulnerable to exploitation, manipulation, and duress. Applicant is a capable, reliable, and dedicated employee.

The evidence against approval of Applicant's clearance is more substantial at this time. I have resolved SOR debt 1.d for Applicant because of her credible account describing why she does not owe the cell phone company. She still has five unresolved SOR debts, totaling about \$17,000. She does not have a debt consolidation plan and has not set up payment plans with the five SOR creditors. Her efforts to address her five remaining SOR delinquent debts for the last two years have been inadequate, and financial considerations concerns are not mitigated at this time.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors,"⁵ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude she is not currently eligible for access to classified information.

Applicant provided strong character references, and there is no evidence of prior criminal conduct, security violations, or any other non-financial security concerns. If Applicant resolves the five remaining delinquent SOR debts (for example, if she has well-established payment plans on each debt), and has no misconduct or other new, adverse information raising any disqualifying condition(s), her security clearance should be approved a year after the date of this decision.

⁵See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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.e: Against Applicant
Subparagraph 1.f: 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 Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

MARK HARVEY
Administrative Judge