



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



In the matter of:)	
)	
)	ISCR Case No. 08-08059
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

March 30, 2011

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I deny Applicant's eligibility for access to classified information.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on March 8, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on September 10, 2010, detailing security concerns under Guideline F (Financial Considerations) that provided the basis for its preliminary decision to deny her a security clearance. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and *the Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on September 10, 2010. She submitted a notarized, written response to the SOR allegations dated October 1, 2010 and a second response dated October 29, 2010, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on December 27, 2010. Applicant received the FORM on January 13, 2011. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response, which she mailed on March 11, 2011. DOHA assigned this case to me on March 21, 2011. The Government submitted ten exhibits, which have been marked as Items 1-10 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1. Her response to the FORM is marked as Applicant exhibit (AE) A.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b and 1.d of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.c, 1.e, 1.f, and 1.g of the SOR.¹ She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 55 years old, works as a dispatcher for a Department of Defense contractor. She began working for her employer in June 1986, almost 25 years ago. She received her first security clearance in 2005. The record contains no evidence that Applicant mishandled sensitive or classified information or that Applicant has encountered problems in the workplace.²

Applicant and her husband married in September 1988. They have one son, who is 23 years old. Her husband works in the trucking industry. In the last 10 years, he lost time from work due to illness and the fluctuations in the business cycle as related to the trucking industry. Their income has been directly impacted by his variable income.³

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 5.

³Response to SOR.

According to her personal financial statement attached to her responses to interrogatories, Applicant earns \$2,130 a month in gross income and receives approximately \$600 a month in net pay. She lists \$1,532 in payroll deductions without an explanation for the high level of deductions. Her husband's net income is listed at \$4,000 a month, for a household net income of \$4,600. Her monthly expenses total \$2,141 and include a first mortgage payment of \$485, a second mortgage payment of \$248, utility expenses of \$250, car expenses of \$250, a car payment of \$348, medical expenses of \$250, food expenses of \$150, and three other expenses of \$160. At the end of each month, Applicant has approximately \$2,460.

The SOR identified six purportedly continuing delinquencies as reflected by credit reports from 2008 and 2010, totaling approximately \$34,764. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

Applicant and her husband filed for Chapter 7 bankruptcy on August 18, 1997. According to the court docket sheet, they reaffirmed two debts. On December 5, 1997, the court discharged their remaining debts. A copy of their bankruptcy petition, including a list of creditors, is not included in the record. The six debts identified in the SOR became delinquent after Applicant and her husband's bankruptcy discharge.⁴

Concerning the \$14,830 debt listed in SOR ¶ 1.b, Applicant advised in her response to the FORM that she reached an agreement with the collection agent for this debt to pay \$200 a month. She provided a copy of a letter dated February 15, 2011, which indicated that a payment for \$200 would be withdrawn from her account on February 23, 2011. The letter is from a known collection agent, but does not specify the name of the original creditor or original account number. Applicant has not provided any other documents showing the relationship between the collection agent and the original creditor, nor has she provided documents showing when her payments began and how much she has paid on this debt. She did indicate in her two October 2010 responses that she was paying \$200 a month on this debt. The May 1, 2008 and November 6, 2008 credit reports indicated that this debt had been charged off and the account closed. The collection agent is not listed on any credit report in the record.⁵

Applicant admitted that she was behind in her mortgage payment in the amount of \$4,623 as alleged in SOR ¶ 1.d. When her husband became ill and missed time from work, she could not make all her mortgage payments. She stated that she is current on her payments and has paid her arrearage. She, however, did not provide any

⁴Item 10.

⁵Item 8; Item 9; AE A.

documents reflecting that she paid her past due amounts and that she is current. The July 12, 2010 credit report shows that she is still past due on her mortgage in the amount of \$4,623. The May 1, 2008 credit report indicates that her mortgage was current, but the November 6, 2008 credit report shows that she was behind at least two payments beginning in July 2008.⁶

Applicant denied owing any money to the creditors in SOR ¶¶ 1.c (credit card - \$7,835), 1.e (store account - \$1,776), 1.f (credit account - \$2,700), and 1.g (credit account - \$3,000). She acknowledged having an account with each creditor in the distant past, but stated that, to the best of her knowledge, each account had been paid. In her response to the FORM, she stated that she believed these four accounts had been included in her 1997 bankruptcy. The May 1, 2008 credit report reflects that all four accounts have a zero balance and have been closed because the account had been purchased by another lender. Except for the credit card debt in SOR ¶ 1.c, the name of the current holder of the remaining three debts is unknown, as the debt is not listed on the credit report under the name of the new owner. As to the debt in SOR ¶ 1.c, the May 1, 2008 credit report shows that the original bank creditor sold the debt to another bank, which sold the debt to a collection agency. The credit reports of record do not list either of the subsequent purchasers as an owner of this debt. Applicant indicated that she has no way to contact the creditors as she has not received any correspondence from them. The May 1, 2008 credit report shows a mailing address for each of the original creditors for these four debts, but the November 6, 2008 and July 12, 2010 credit reports contain no contact information for the original creditors.⁷

Applicant has not submitted documentation which shows that she attempted to validate these debts with the creditors or that she had disputed the validity of the debts with the credit reporting agencies. Likewise, the record does not contain documentation showing that she received credit counseling.

The three credit reports in the record indicate that Applicant pays or has paid many of her debts in a timely manner. The credit reports also reflect that she paid a number of past due debts.⁸

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

⁶Item 4; Item 7 - Item 9.

⁷Item 4; Item 7 - Item 9; AE A.

⁸Item 7- Item 9.

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 overarching 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

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

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems when her husband lost time from work due to illness and their finances were impacted by the work fluctuations of the trucking industry. Most of the debts listed in the SOR remain unresolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially the following:

- (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.

With the exception of her mortgage debt, Applicant's remaining debts became past due between November 2003 and November 2005. Her mortgage debt problems are more recent. Her financial problems are the result of her husband's variable work

and his illness, which makes AG ¶ 20(b) partially applicable. Because she has not provided evidence that she acted reasonably under the circumstances, stating instead that she has not heard from the creditors or received information that she still owes them money, this mitigating condition is not fully applicable. Under the guidelines, she has an affirmative duty to contact the creditors listed in the SOR about paying her debts. Because there is no evidence that she has contacted her creditors or the credit reporting agencies, or that she has paid the debts listed in the SOR, the remaining mitigating conditions are not applicable.

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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has worked for 25 years with her employer. She is an employee in good standing. Her financial problems are related to her husband's variable work and his health. She paid a number of old past-due debts that are not listed on the SOR. This shows that she has acted responsibly about some of her past debts and supports her statement and limited documentation that she is paying the creditor in SOR ¶ 1.b \$200 a month. She is probably current on her mortgage, but she has not provided the documentation which shows she paid her mortgage arrearage. Her main problem is a lack of documentation concerning the four remaining debts listed in the SOR, which total approximately

\$15,400. Without evidence of efforts on her part to dispute the debts remaining on her credit reports, Applicant has not mitigated the security concerns about her finances.

Overall, the record evidence leaves me with questions or 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 finances under Guideline F.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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.

MARY E. HENRY
Administrative Judge