



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



In the matter of:)
)
) ISCR Case No. 08-08473
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

October 30, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant is financially overextended and does not have the means to overcome her financial problems. She lacks a track record of financial responsibility. She failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 8, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 26, 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),

dated January 2, 1992, as modified and revised.¹ The SOR alleges a security concern 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 granted, denied or revoked.

On April 21, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on May 15, 2009. DOHA issued a notice of hearing on June 2, 2009. The hearing was convened as scheduled on June 30, 2009. The government offered Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on her own behalf and submitted Applicant Exhibits (AE) 1 and 2, post hearing, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 7, 2009.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a-1.e, 1.g, and 1.k-1.m. She denied SOR ¶¶ 1.f, and 1.h-1.j. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 41-year-old senior programmer analyst employed by a defense contractor. She received her bachelor's degree in computer base systems management in 1990, and her master's of education in mathematics and computer science in 1993.

In 2003, she had access to classified information at the secret level for a period of eight months. She was hired by her current employer in February 2008, and received interim access to classified information pending her security background investigation. There is no evidence that she has ever compromised classified information or that she has caused others to do so.

Applicant married her husband in July 2000 and they are currently separated. She has had a difficult marriage, marred by numerous separation periods. They were separated from October 2004 to March 2006 (Tr. 37), during 2008, and from January 2009, to the present (Tr. 33-34). She has four children of this marriage, ages 17, 11, 10, and 6. Until her January 2009 separation, she also was caring for her 13-year-old stepson.

¹ On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of the 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.

Applicant claimed she has received almost no financial assistance from her spouse since 2008. He did not have a job before May 2009. She does not know where he is and has not been able to force him to provide financial support for her children (Tr. 73).

Applicant started having financial problems between 2000 and 2005. She filed for a Chapter 13 bankruptcy protection in June 2005, to prevent foreclosure on the mortgage on her home. The bank agreed to work a payment plan with her, and she requested the dismissal of her bankruptcy. Applicant sold her home in March 2007 (Tr. 18). She attributed her financial problems, past and present, to four main causes: her husband's periods of unemployment and his inability to find a steady job; her periods of unemployment and underemployment; her marital problems; and a failed business enterprise. Because of her limited income, she could not afford to pay both her past financial obligations and her day-to-day living expenses.

Applicant testified her downfall over the last 11 years has been her inability to budget and to live a lifestyle commensurate with her earnings. She explained that when her spouse was working they lived the lifestyle of a two-income family. When he was unemployed, she was not able to modify her lifestyle and expenses to make their lifestyle proportionate for their reduced income (Tr. 74).

Applicant has been continuously employed since April 2000, except for periods of unemployment from October 2004 to February 2005, and while in between jobs. She was underemployed during 2005, when she was self-employed. She has worked for government contractors, or the government, from June 2005 to the present. She has been working for her current employer, a government contractor, since February 2008.

In her February 2008 security clearance application, Applicant disclosed having filed for bankruptcy in 2005, and that she had financial problems because of her periods of unemployment and her marital separations. Her background investigation addressed her financial status and included the review of March 2008, February 2009, and May 2009 credit bureau reports (CBRs), her response to DOHA interrogatories, and her security clearance application.

The SOR alleges 12 delinquent and/or charged off accounts, totaling approximately \$35,000, which have been delinquent for a number of years. In her response to the SOR, Applicant admitted the medical debts alleged in SOR ¶¶ 1.a – 1.e, and 1.k and 1.l were her debts. She explained that most of her medical debts were acquired when she was unemployed or self-employed and did not have medical insurance. She claimed that, at the time, her spouse was paying the family debts and he failed to address some of her medical bills (Tr. 28). Seven of the alleged delinquent debts can be considered as small debts since they are for less than \$400.

She claimed that some of the medical bills were incurred after she was employed and had medical insurance. Although some of the medical bills were already denied by her insurance carrier, she is resubmitting the medical bills for reconsideration. When

asked which of the seven alleged debts were acquired after she was employed and had insurance, Applicant indicated she had not researched the debts and could not identify them. Applicant's documents show her insurance company has been paying medical bills incurred while under coverage (AE 2).

Applicant satisfied the judgment alleged in SOR ¶ 1.f for \$445 in April 2007 (AE 1). She admitted the debt alleged in SOR ¶ 1.g for \$5,082, is her debt and that it has been delinquent for a number of years. She took a loan based on her anticipated 2003 federal income tax return. The Internal Revenue Service intercepted Applicant's 2003 tax refund and she did not have the money to repay the loan. Applicant contacted the creditor for the first time three weeks before her hearing. She was offered a lump sum discounted settlement, but she does not have money to resolve this debt. She promised to settle and pay it in the near future (Tr. 53).

She claimed the creditor will not take partial payments because the account has been charged off. Applicant never contacted the creditor prior to three weeks before the hearing, because she did not have the money to pay this or the other outstanding debts. She has very limited funds and needs to use available income to pay her utility bills and other necessities (Tr. 56)

The debt alleged in SOR ¶ 1.h for \$15,000 concerned a second mortgage Applicant took on a real estate property. It was paid in 2007, when she and her spouse sold the home (Tr. 59, GE 2, p. 8). The debt alleged in SOR ¶ 1.i for \$12,987 concerned a second mortgage (or equity loan) that Applicant took on another real estate property she owned and sold in 2003. She claimed the second mortgage or equity loan was paid with the proceeds of the sale (Tr. 59). The May 2009 CBR supports her claim (GE 4, p. 4).

Applicant disputed the allegation in SOR ¶ 1.j, concerning a debt for telephone services placed on collection by the provider. She claimed she paid this debt, and has a telephone services account with the same telephone service provider that is current (AE 2, at 6). I find this allegation for Applicant.

Applicant expressed remorse for her financial problems. She claimed she was not able to make more progress resolving her debts because of her January 2009 separation. After her separation, she was trying to keep the house together both emotionally and financially. She admitted she continued to live the lifestyle of a two-income household (Tr. 33-34). She explained she continued her two-income lifestyle because she was trying to protect her children, keeping them involved in their routines and activities.

In May 2009, Applicant realized she could not afford to live the lifestyle of a two income household, and she started to change her lifestyle. She has been doing budget spreadsheets as her first step to reduce her expenses to conform to a one-income

budget (Tr. 66). At the time, her truck was past due as well as all of her other debts.² She testified that of the hearing date, her truck account was current and that she was current in almost all of her utilities (Tr. 35). She started working on her medical bills first because resolving them would involve filing claims and not taking money that she needs for her family's day-to-day living expenses.

When questioned further, Applicant admitted she had to ask her father for a personal loan to prevent her truck from being repossessed. Even with her father's loan she is still one month behind on her truck payment (Tr. 96). Also, she admitted that as of the day of her hearing, she was one month behind on her electric and water bill. She promised she would pay those accounts as soon as she received her next pay check (Tr. 97).

Applicant's 2009 CBR shows she bounced a check. When asked about the insufficient funds draft, she claimed it was her husband who issued the check and that she intends to dispute the charges. The 2009 CBR shows the check was issued against her individual account (GE 4, at 3). She failed to present documentary evidence to show it was her spouse's check or that she disputed the charges.

Applicant has not participated in any financial counseling (Tr. 65). As of the hearing day, her net monthly income was around \$6,107, with monthly expenses of approximately \$5,898. Because it was summer and she was not paying for child care, her net remainder was approximately \$587. When she pays child care, her net remainder is around \$87.

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 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.

² Applicant drives a 2004 GMC Yukon Denali-V8 she purchased in August 2008 for approximately \$19,725 (AE 2, p. 4). When asked why she did not purchase a more economical vehicle she said she could not fit her kids in a smaller car (Tr. 103).

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,”³ 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, 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).

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 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

³ 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).

classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

The SOR alleged 12 delinquent and/or charged off debts that have been delinquent for a number of years. Applicant has resolved four debts (SOR ¶¶ 1.f, and 1.h – 1.j), totaling approximately \$29,023. She still has eight debts (SOR ¶¶ 1.a – 1.e, 1.g, 1.k, and 1.l), totaling approximately \$6,393 that are past due. These debts are Applicant's debts as established by the evidence and Applicant's admissions. In her post-hearing submission, Applicant promised to pay SOR ¶¶ 1.a, 1.c - 1.e and 1.l within 30 days. She noted SOR ¶ 1.b is no longer reflected in her last credit report, but she provided no documentary evidence to show that she paid the debt. She is now disputing the debt alleged in SOR ¶ 1.k for \$158. Concerning SOR ¶ 1.g for \$5,082, she promised to contact the creditor and settle the debt.

Applicant does not appear to have the financial means to pay her legal obligations, delinquent debts, and her day-to-day living expenses. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

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 established circumstances beyond her control contributing to her inability to pay her debts, i.e., her periods of unemployment and underemployment; frequent marital separations; a failed business; her husband's periods of unemployment and his inability to find a steady job; and her husband's failure to pay child support during separations. I find AG ¶ 20(b) applies, but does not fully mitigate the financial concerns.

Applicant's evidence is not sufficient to show she acted responsibly under the circumstances. She presented little documentary evidence of debt payments, contacts with creditors, settlement or negotiations of debts, or that she has properly disputed any of her debts. By her own admissions, Applicant's financial problems are related to her having the lifestyle of a two-income family, when in fact she has been the sole provider most of the time. I also find she is financially overextended and her financial problems are not under control. She received a personal loan from her father to stop her truck from being repossessed, and she still is one month behind on her truck payment. As of her hearing date, she was one month behind on her electric and water bills.

AG ¶¶ 20(a), (c), (d), and (e) do not fully apply because Applicant's financial problems are not yet under control and her delinquent debts are likely to recur. She did not receive financial counseling, submit a budget, or provide documentation disputing her debts. She also failed to show she made good-faith efforts to resolve her debts. AG ¶ 20(f) does not fully apply.

Despite partial applicability of AG ¶ 20(b), financial considerations concerns are not mitigated. Applicant is financially overextended. She lacks the income to bring his debts to current status.

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 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.

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 is attempting to correct her financial situation by contacting her creditors and making a budget commensurate with her one-family income. She resolved four debts totaling \$29,023. She has successfully worked for defense contractors and the government in the past, and now as employee of a defense contractor for approximately 20 months. There is no evidence she has ever compromised classified information or committed any security violations. Applicant expressed remorse for her financial mistakes and promised to repay her creditors. She established circumstances beyond her control contributing to her inability to pay her debts. These factors show responsibility, good judgment, and mitigation.

Notwithstanding, Applicant has been continuously employed since April 2000, except for brief periods of unemployment from October 2004 to February 2005, and while in between jobs. She was underemployed during 2005, when she was self-employed. She has worked for government contractors, or the government, since June 2005 to the present.

On balance, I conclude Applicant presented insufficient evidence of having a track record of financial responsibility. She presented little documentary evidence of efforts to pay her financial obligations or to resolve her debts. There are no clear indications that her financial problem is being resolved or is under control. Her inability to pay even relatively small debts, her bouncing a check, having to obtain a loan to make her truck payment; and being one month late on two utility bills show she is financially overextended. Her purchase of a large, luxury truck, albeit second hand, shows lack of judgment. She does not have the financial means to resolve her financial problems. Applicant's favorable evidence is insufficient to mitigate the security concerns arising under the financial considerations guideline.

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.e, and 1.g and 1.k - 1.m:	Against Applicant
Subparagraphs 1.f, and 1.h - 1.j:	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