



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



In the matter of:)	
)	
)	ISCR Case No. 08-08900
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro Se*

October 30, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the written record in this case, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 27, 2008. On April 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On May 21, 2009, Applicant answered the SOR in writing and requested that her case be determined on the record in lieu of a hearing. The Government compiled its File

of Relevant Material (FORM) on July 16, 2009. The FORM contained documents identified as Items 1 through 8. By letter dated July 16, 2009, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on July 20, 2009. Her response was due on August 19, 2009. She did not submit any information within the required time period. On October 8, 2009, the case was assigned to me for a decision.

Findings of Fact

The SOR contains 24 allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.x.). In her Answer to the SOR, dated May 21, 2009, Applicant admitted 12 of the Guideline F allegations of financial delinquency (¶¶ 1.a., 1.c., 1.e., 1.f., 1.g., 1.h., 1.k., 1.m., 1.n., 1.s., 1.v., and 1.x.). Applicant's admissions are admitted herein as findings of fact.

In her answer to the SOR, Applicant denied 12 Guideline F allegations (¶¶ 1.b., 1.d., 1.i., 1.j., 1.l., 1.o., 1.p., 1.q., 1.r., 1.t., 1.u., and 1.w.). The allegations were corroborated in credit reports in the record, which were marked as Items 3, 7, and 8. Eight of the allegations that Applicant denied were based on information she supplied in response to Question 28 on her e-QIP, which was marked as Item 4 in the record. The following record evidence establishes Applicant's responsibility for the delinquent debts that she denied: SOR ¶ 1.b. (Item 8 at 2; Item 3 at 48-49, 59); SOR ¶ 1.d. (Item 8 at 2; Item 7 at 10; Item 3 at 26, 51-52, 62); SOR ¶ 1.i (Item 7 at 4; Item 3 at 13); SOR ¶ 1.j. (Item 4 at 37; Item 7 at 5,7; Item 3 at 60); SOR ¶ 1.l. (Item 4 at 33; Item 7 at 7, 12); SOR ¶ 1.o. (Item 4 at 37; Item 3 at 49, 61; Item 7 at 9; Item 8 at 1); SOR ¶ 1.p. (Item 4 at 35; Item 8 at 2; Item 7 at 9; Item 3 at 22, 51, 62); SOR ¶ 1.q. (Item 4 at 35-36; Item 7 at 10; Item 3 at 50); SOR ¶ 1.r. (Item 4 at 34-35; Item 8 at 2; Item 7 at 10; Item 3 at 24, 51, 62); SOR ¶ 1.t. (Item 9 at 2; Item 7 at 11; Item 3 at 26, 52, 62); SOR ¶ 1.u. (Item 4 at 36; Item 7 at 11); and SOR ¶ 1.w. (Item 4 at 38; Item 7 at 12).

Applicant, who is 29 years old, has been employed since October 2007 as an electrical designer by a defense contractor. She has never been married. She is the mother of two children. Her daughter was born in 2002, when she was in a relationship which has since dissolved. She entered a second relationship in about 2005, and her son was born in 2006. Applicant currently lives in a spouse-like relationship with her son's father. The household also includes her partner's daughter. (Item 3 at 3-4; Item 4.)

In January 2009, Applicant responded to DOHA interrogatories and provided a personal financial statement. She reported that her net monthly income from salary was \$2,177. She reported that her partner's net monthly salary was \$1,210. She also reported that she received \$248 each month in child support. Applicant's total net monthly household income was \$3,635. (Item 5 at 5.)

Applicant's monthly fixed expenses are as follows: rent, \$900; groceries, \$344; clothing, \$20; utilities, \$420; car expense, \$191; insurance, \$3.60; medical expense, \$6.00; and alimony/child support/day care, \$676, for a total of \$2,560.60. (Item 5 at 5.)

Applicant owes about \$1,200 in student loans. She pays \$51 each month on her student loan debt. In her financial statement she identified the student loan debt as "current debts" and stated: "All other debt is past due debt not currently paying on." She reported a monthly remainder of \$1,024. (Item 5 at 5.)

The delinquent debts alleged on the SOR total \$23,430. In explanatory materials she provided with her answer to the SOR, Applicant reported that she was in good standing with her creditors until 2001, when she became pregnant and lost her job. She was unemployed for at least two months. In May 2002, her automobile was repossessed, and she owed a delinquency of \$7,042. The delinquent automobile debt is alleged at SOR ¶ 1.i. and has not been satisfied. Applicant reported the repossession on her e-QIP. In her answer to the SOR, Applicant denied the debt and stated that it was no longer on her credit report. (Item 1; Item 3 at 1, 3; Item 4 at 33.)

Applicant's financial difficulties continued. She separated from her daughter's father and found it difficult to make ends meet as a single parent. She moved to a new community in 2005 in order to find a better job. In 2006, she became pregnant again and decided to live with her current partner. She remained at home for a time to care for her two children and her partner's child. Her partner found work but was soon laid off. In the spring of 2007, Applicant applied for her current job. She was hired in October 2007. (Item 3 at 3-4.)

Applicant has worked hard at her job as an electrical designer. In a letter to DOHA in January 2009, she reported that she would receive a bonus of \$750 in February 2009. She also reported that she had filed her 2008 income tax return and expected to receive a refund of \$4,200. She stated that she intended to use her bonus and her tax refund to pay her delinquent debts. (Item 6 at 2.)

Of the delinquent debts alleged on the SOR, four were debts of less than \$100 (SOR ¶¶ 1.n., 1.q., 1.s., and 1.w.). Seven delinquent debts alleged on the SOR were in amounts between \$100 and \$300 (SOR ¶¶ 1.e., 1.k., 1.o., 1.p., 1.r., 1.u., and 1.v.). Two delinquent debts alleged on the SOR were in amounts between \$600 and \$700 (SOR ¶¶ 1.d. and 1.m.). Three additional delinquent debts were for larger amounts: SOR ¶ 1.g. (\$3,279), SOR ¶ 1.h. (\$6,913), and SOR ¶ 1.i. (\$7,042). (Item 1.)

The record establishes that Applicant paid or settled two of her delinquent debts in February 2009: the debt alleged at SOR ¶ 1.j. (\$311) and the debt alleged at SOR ¶ 1.o. (\$255.)

In her answer to the SOR, Applicant claimed she had made arrangements to pay the debts alleged at SOR ¶¶ 1.k. and 1.m. However, she failed to provide documentation to corroborate her assertions. (Item 3 at 1-2.)

Applicant claimed she had contacted the national credit bureaus and her state's Department of Health and Human Services to dispute several of the debts alleged on the SOR. In her answer to the SOR, she claimed to have disputed the debt alleged at

SOR ¶ 1.b., but she also reported that the credit bureaus concluded that the debt was hers, and, as a consequence, she was contemplating possible legal action.¹ She disputed SOR ¶ 1.d. as “not accurate. She claimed she filed a dispute with the national credit bureaus to contest the debt alleged SOR ¶ 1.f. as “outside the statute of limitations for [her] state,” but the credit bureaus did not find in her favor and she was contemplating possible legal action. She also claimed she disputed the delinquent medical debts alleged at SOR ¶¶ 1.p., 1.r., and 1.t. because they were incurred when she had medical insurance. (Item 3 at 1-2.)

Applicant also denied responsibility for the delinquent debts alleged at SOR ¶¶ 1.i., 1.q., 1.u., and 1.w. because they no longer appear on her credit reports. She claimed that she had disputed the debt alleged at SOR ¶ 1.w. as erroneous, and, as a result, the credit bureaus had removed it from her credit reports. Applicant’s credit report of March 6, 2009, corroborates her claims that she initiated disputes regarding the delinquent debts alleged at SOR ¶¶ 1.d., 1.p., 1.r., and 1.t. However, she provided no documentation to support her assertion that she disputed the medical debts alleged at SOR ¶¶ 1.p., 1.r., and 1.t. with her state Department of Health and Human Services, nor did she provide documentation to corroborate her claim that she filed disputes with the national credit bureaus regarding the delinquent debts alleged at SOR ¶¶ 1.b., 1.f., 1.i., and 1.w. (Item 3 at 1-2; Item 8)

In her answer to the SOR, Applicant stated that she consulted a workplace counselor and had “received advice and guidance on how [to] remedy [her] financial situation.” She also stated she had spoken with a mortgage banker about repairing her credit so that she could purchase a home “in the near future.” (Item 3 at 2.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “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 an applicant’s 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.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list

¹ In her answer to the SOR, Applicant claimed that the debt alleged at SOR ¶ 1.i was a duplicate of the debt alleged at SOR ¶ 1.b. However, she did not provide documentation to corroborate her claim. (Item 3 at 1.)

potentially disqualifying conditions and mitigating conditions, which are used 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, the administrative judge applies these guidelines 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. 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 in seeking to obtain 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

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay her creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

Several mitigating conditions could apply to Appellant's case. If the financially delinquent 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," then AG ¶ 20(a) might apply. If "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," then AG ¶ 20(b) might apply. If "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," then AG ¶ 20(c) might apply. If "the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts," then AG ¶ 20(d) might apply. Finally, if "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," then AG ¶ 20(e) might apply.

Applicant has a history of financial delinquencies that dates to at least 2001 and 2002. Her delinquencies are recent and on-going. They have occurred under circumstances that are likely to recur.

Applicant reported that she was fired from a job in 2001 and was unemployed for at least two months. In subsequent years, she and her partners have experienced some financial hardship and voluntary and involuntary unemployment. However, she has been steadily employed by her present employer since October 2007. In her financial

statement of January 2009, she reported a monthly remainder of \$1,024. In correspondence with DOHA in January 2009, she stated that she planned to use her \$4,200 income tax refund and her yearly bonus of \$750 to pay her delinquent debts. Despite having the resources to pay or settle many of her smaller delinquent debts, Applicant provided evidence to corroborate payment of only two of the 24 debts alleged on the SOR. The record does not reflect that the circumstances that gave rise to her delinquencies were beyond her control. Applicant has made promises to pay or settle most her debts in the future. However, in determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999).

While Applicant spoke with a counselor about her financial situation, she failed to provide clear indications that her financial problems are being resolved or are under control. Additionally, she argued that the statute of limitations in her state precluded the collection of some of the debts alleged on the SOR. Applicant's argument reflects a misunderstanding of the responsibilities required of one who is trusted to protect classified information. Indeed, DOHA's Appeal Board has emphasized that "reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve the debt within the meaning of the Directive." ISCR Case No. 07-16841 at 5 (App. Bd. Dec. 19, 2008).

Applicant asserted that she had disputed several of her delinquent debts. Her credit report corroborated that she had disputed four debts alleged on the SOR. She also asserted that several other debts had been removed from her credit report as the result of her disputes. However, she provided no documentation to corroborate the status of the debts that were no longer listed on her credit reports, and she failed to provide documentation to substantiate the disputes or whether they had been resolved.

I conclude that AG ¶ 20(a) does not apply to the facts of Applicant's case. I also conclude that while Applicant receives some credit under AG ¶¶ 20(b), 20(c), 20(d), and 20(e), the partial application of these mitigating conditions is insufficient to mitigate the facts of her case.

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 an 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 has obviously worked hard to excel at her work. Her employer has appreciated her efforts and has recognized them with a bonus. However, she has failed to pay or satisfy the majority of her financial delinquencies, many of which are several years old.

Additionally, Applicant's financial delinquencies occurred when she was a mature adult. She failed to satisfy her creditors even when she had sufficient funds to do so. She promised to pay her debts at some time in the future, but she has failed to put forward plans which show that she and her creditors have agreed to specific payments at specific times to satisfy her indebtedness. She has also argued that some of her old debts are no longer legally collectible. Her failure to take affirmative action to pay or resolve the majority of her delinquent debts continues to raise security concerns about her judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial delinquencies.

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. through 1.i.:	Against Applicant
Subparagraph 1.j.:	For Applicant
Subparagraphs 1.k. through 1.n.:	Against Applicant
Subparagraph 1.o.:	For Applicant
Subparagraphs 1.p. through 1.x.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge