



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



In the matter of:)	
)	
)	ISCR Case No. 08-09704
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

January 13, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on May 23, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on May 29, 2009. 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.

Applicant acknowledged receipt of the SOR on June 4, 2009. She answered the SOR in writing on June 20, 2009, and requested a hearing before an administrative

judge. DOHA received the request on June 22, 2009. Department Counsel was prepared to proceed on August 31, 2009, and I received the case assignment on September 3, 2009. DOHA issued a notice of hearing on September 25, 2009, and I convened the hearing as scheduled on October 20, 2009. The government offered six exhibits (GE) 1 through 6, which admitted into evidence without objection. Applicant and one witness testified. Applicant submitted seven exhibits (AE) A through G. Except for AE D, her exhibits were admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on October 29, 2009. I held the record open until November 19, 2009, for Applicant to submit additional matters and to obtain copies of AE D. Applicant timely submitted 10 additional documents and copies of AE D.¹ AE D and AE H through AE Q are admitted without objection. The record closed on November 19, 2009.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b, 1.c, 1.bb, and 1.cc of the SOR, with explanations. She denied the remaining factual allegations in the SOR.² She also argued that many of the debts listed in the SOR are barred from collection under the statute of limitations in the state where she lives (hereinafter State).³

Applicant, who is 54 years old, works as a technical order librarian for a Department of Defense contractor. Applicant retired from the United States Air Force in January 1997 after 20 years of service. She began working as a contractor in April 1997. She held a security clearance while on active duty, without incident. She has held a security clearance as a contractor since 1997, without incident.⁴

Applicant married her first husband in 1983 and they divorced in 1992. She has two adult children from her marriage, who are 29 and 26 years old. Her daughter and son live independently from her. She married her present husband in 2001.⁵

¹Applicant and Department Counsel marked the additional submissions as 1 through 10. I have marked these documents to be consistent with Applicant exhibits admitted at the hearing. Number 1 has been remarked as AE D. Numbers 2 through 10 are remarked as AE H through AE P. I marked the November 17, 2009 credit report as AE Q.

²When SOR allegations are denied, the government bears the burden of producing evidence sufficient to prove them. 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).

³Response to the SOR.

⁴GE 1; Tr. 19-21.

⁵Tr. 19-21.

Applicant's financial problems began around 2000 with the pregnancy of her then 15-year-old daughter. For many years thereafter, Applicant supported her daughter and grandchildren, who are now 9, 5 and 4. Her daughter no longer lives with her and Applicant is not providing financial support for her daughter and grandchildren. Applicant's son is married and does not live with Applicant.⁶

When the events of September 11, 2001 occurred, Applicant's husband worked for a United States airline company. Because all airlines were grounded for a period of time in September 2001, his company laid-off or reduced the pay of its employees. Applicant's husband continued to work at a salary one-third less than his pay before September 11, 2001. Her husband retired from the airline in 2007. He does not receive retirement income from the airline company, but can fly, without charge, anywhere the airline flies. He now works 25 to 30 hours a week in maintenance work, earning \$12 an hour. He is also retired from the United States Air Force and receives retirement income.⁷

At the time Applicant and her husband married, he had significant debt and financial problems. After September 11, 2001 and his significant loss of pay, he contacted a debt counseling service. With the assistance of this service, Applicant's husband resolved his earlier debt issues. They concentrated their efforts on resolving his debt problems to the detriment of her finances. As a result, Applicant failed to pay all of her monthly expenses.⁸

Applicant's monthly income from her job and military retirement totals \$3,635. Her husband's monthly income from his military retirement and part-time job totals \$2,238 for a total monthly household income of \$5,918. They live in a trailer they own, and they rent the lot where their trailer is located. Although Applicant has not sought credit counseling, she and her husband have developed a detailed monthly budget, using his knowledge from his past debt-counseling experience. Their budget detailed the allocation of their income each month for debt payment, including some debts listed in the SOR. Their budgeted monthly expenses total \$4,624. Their budget does not include food costs and miscellaneous expenses. I estimate these expenses at \$500 a month. Applicant has approximately \$800 a month remaining after paying her bills listed in her budget. The record evidence does not contain information which would indicate that this money equates to payroll deductions.⁹

The SOR alleges that Applicant owes more than \$45,000 to creditors. The creditor in SOR allegation 1.a obtained a judgment against Applicant in 2006. The

⁶*Id.* at 14.

⁷AE C; Tr. at 14-16, 29.

⁸Tr. 17.

⁹AE B; AE C.

creditor collected the judgment by garnishing Applicant's wages. The judgment has been paid in full. This debt is the same as the debt alleged in allegation 1.aa.¹⁰

SOR allegations 1.b, 1.c, 1.d, and 1.e concern four tax liens filed against Applicant by the State. Applicant's son became emancipated in 2005, and thus, Applicant could no longer claim him as a dependent for tax purposes. Applicant and her husband did not change their tax withholding information to reflect this change. As a result, they owed additional taxes to the State. Prior to their marriage, Applicant's husband also owed taxes to the State revenue service. Applicant and her husband began repaying the state tax debt in October 2008. By the hearing date, they had paid \$2,600 on their state tax debt, which totaled more than \$6,000. The two smaller tax liens were paid when the Internal Revenue Service forwarded their tax refund to the State. After the hearing, they paid the remainder of their state tax debt.¹¹

Applicant suffered from migraine headaches from 2003 until 2005. She sought medical care at a hospital emergency room on many occasions. She provided the hospital with her insurance information. She had then, and still has, two health insurance policies with two separate insurance companies. Her primary insurance company is through her job and her secondary insurance company is as a military retiree. Her insurance carriers paid the hospital bills. She believed that medical bills listed in SOR allegations 1.f to 1.l, 1.q to 1.z, and 1.ff to 1.kk are bills from the emergency room physicians, who worked under a contract with the hospital. These bills should have been paid by her insurance plans. She spoke with a representative from her secondary carrier, who advised that the bills had not been submitted for payment. She also believed that the physicians' medical practice is no longer operating. Applicant's husband contacted the collection company. The collection company requested payment and suggested Applicant then submit the medical bills for payment. Applicant's husband told the collection company to submit the bills for payment as is the normal process. The collection company stopped its contact with them after this conversation. The medical bills listed in the SOR total \$4,487. Several debts may be duplications of other listed debts, but the evidence is unclear on this issue. The medical bills listed in SOR allegations 1.q to 1.y remain on Applicant's credit report and total \$2,600. Because the other medical debts are no longer on her credit report, Applicant believes that the debts have been paid by her insurance companies. She has not provided documentation that these debts are paid.¹²

Applicant developed a payment plan with the creditor listed in SOR allegation 1.bb. She began paying \$294 a month in June 2008. She has paid this amount monthly and currently owes less than \$3,000 on this judgment. She expects to pay this debt by November 2010. Applicant also began a payment plan with the creditor in SOR

¹⁰AE D; AE H; Tr. 34-35.

¹¹AE A; AE I; Tr. 24-27.

¹²GE 3; AE Q; Tr. 38-44.

allegation 1.n. She pays \$260 a month on this debt and currently owes less than \$1,300 on this debt. She anticipates full payment of the debt by April or May 2010. The creditor in SOR allegation 1.ee forgave Applicant's debt. The creditor reported the debt forgiveness amount of \$5,758 to the IRS and the state revenue service as income for Applicant. Just prior to the hearing, Applicant received a notice of proposed tax assessment from the State for the debt forgiveness. The State revised her income for the tax year 2005 and requested a payment of \$490 by November 15, 2009. Applicant paid the taxes due on the debt forgiveness on November 13, 2009.¹³

Two large debts remain unpaid (SOR allegations 1.m, which is the same as 1.dd,¹⁴ and 1.p). These debts total approximately \$11,000. One debt occurred when Applicant's son failed to pay his monthly car payment and the car was repossessed. After the creditor sold the car, Applicant and her son owe \$3,247 on this debt. Although she co-signed the car loan, Applicant believes this debt belongs to her son, who has not made arrangements to pay the debt. The remaining credit card debt is hers. Applicant's father-in-law died in March 2009. Her husband anticipates receiving an inheritance from his father and indicates the money will be used to resolve these two accounts.¹⁵

SOR allegations 1.n and 1.o involve the same cell phone account, which belonged to Applicant's daughter. Applicant believes she paid this account in full in 2003, but she has not requested the creditor or the credit reporting agency to investigate her belief, nor has she provided proof of her payment.¹⁶

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 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, 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,

¹³AE E; AE J; AE M; AE N; Tr. 51-53.

¹⁴SOR allegations 1.m and 1.dd are for the same car repossession debt. Allegation 1. dd reflects the current balance as \$3,247. See AE Q (Credit Report, dated November 17, 2009).

¹⁵AE L; Tr. 45-46.

¹⁶*Id.*

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, 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 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 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.

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 significant delinquent debt and was unable to pay her obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when “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.” Applicant’s financial worries did not arise under such unusual circumstances that these worries are unlikely to recur. Rather, the circumstances causing her financial problems could recur. Her financial problems are recurring and ongoing. This mitigating condition does not apply.

Under AG ¶ 20(b), disqualifying conditions may be mitigated when “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.” Applicant’s financial problems began in 2000 and 2001 with her daughter’s pregnancy and her husband’s significant loss of income. To their credit, she and her husband worked to resolve his debt problems after his income declined. This decision negatively impacted her finances, which continue to be problematic. Since 2008, Applicant and her husband have worked to gain control over their finances. This mitigating condition has some applicability in this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). While Applicant has not sought credit counseling, she and her husband are using the knowledge that he learned from his past experience with debt counseling to gain control over their finances. They developed repayment plans in 2008 for their state tax debt, one judgment, and one credit account, and have complied with their payment plans. In addition, one debt was paid through garnishment and one debt has been resolved through loan forgiveness.¹⁷ This mitigating condition applies to allegations 1.a-1.e, 1.aa-1.cc, and 1.ee.

Similarly, AG ¶ 20(d) can apply where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant developed debt payment plans following tax liens, judgments, or threat of court action, not on her own initiative. While she has paid or is paying these debts, her decision to pay the debts under these circumstances does not constitute good faith. This mitigating condition is not applicable.

AG ¶¶ 20(e) and 20(f) are not raised in this case. Applicant has not filed formal challenges with the credit reporting companies or the creditors for her unresolved debts.

¹⁷ See ISCR Case No. 04-07360 (App.Bd. Sept. 26, 2006)

While her husband has indicated that he will use his inheritance to resolve to the two large debts, he has not received his inheritance nor can he estimate at this time how much money he will receive. Future intent to pay debts is not sufficient evidence to support mitigation.

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 my conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's finances became unmanageable when her husband's income declined by one-third. He sought financial counseling, which helped resolve his debts. They focused their financial resources on his debts to the detriment of her debts. In the last decade, Applicant's daughter received significant financial assistance from Applicant to help raise her three children. This additional financial cost associated with raising her grandchildren diverted income away from debt repayment.

Applicant's daughter and grandchildren do not live with her anymore, and Applicant no longer provides financial support to her daughter. In the last 18 months or more, Applicant and her husband have successfully worked to gain control over their finances and to repay her old debt. They have a budget and a plan for allocation of their monthly income towards bill payment. They are improving their financial situation. The

SOR alleged more than \$45,000 in unpaid debt. Applicant's credible evidence reflects that she has resolved or is resolving over \$29,000 of this debt or more than 60% of the debts alleged in the SOR.

Applicant's unpaid debts can be placed in three categories: car repossession (\$3,247 1.dd), commercial credit accounts (\$8,454 1.n-1.p), and medical bills (\$5,000 1.f to 1.l, 1.q to 1.z, 1.ff-1.kk). The intent of Applicant's husband to use his inheritance to resolve the car repossession and commercial credit accounts is admirable. However, under Appeal Board law, a promise of a future intent to pay is not evidence of payment and rehabilitation of debt. See ISCR No. 08-05379 (App. Bd. Nov. 24, 2009). Applicant believes she paid the two cell phone debts in 2003, but has not provided documents which reflect payment, nor has she challenged the validity of these two small debts with the credit reporting companies. At this time, these debts remain unresolved.

Applicant's unpaid medical bills present a unique problem. At the time she incurred these bills, she presented the hospital with information about her insurance coverage, primary and secondary. Her insurance companies paid the hospital bills for her treatments between 2003 and 2005. For reasons unknown to Applicant, the emergency room physicians' office failed to submit its bills for payment. While Applicant may be absolutely correct that the bills would be paid by her insurance carriers, she had an obligation when she became aware that the bills were not being paid to contact the emergency room physicians' office and determine why. The record contains no evidence that Applicant made this contact. At this point, the credit collection company is refusing to submit the bills to Applicant's insurance carriers for payment. One likely reason for this refusal is that the credit collection company lacks information, such as dates of service, services rendered, or insurance codes, which would result in payment from the insurance carriers. I am not sure Applicant has information on dates of services and the types of services rendered. If she doesn't, she may not be able to pursue these claims with her insurance carriers. Ultimately, Applicant is responsible for any medical bills not covered by insurance. Applicant argues that her medical bills have been paid by her insurance carriers, as shown by the deletion of many of her medical bills from her credit report. The SOR lists medical bills totaling approximately \$5,000. From a careful review of the credit reports of record, there is a clear likelihood that some of the medical debts listed in the SOR are duplicates because the debts have been sold from one credit collection company to another without a correction of her credit report. The most recent credit report shows that Applicant's unpaid medical bills total \$2,612 and reflect the deletion of many medical debts from the report. The reason for the deletion of these debts is not known. Applicant has not provided information from the credit reporting company for this change in her credit report. Even assuming that many of the debts have been removed as duplicates, Applicant still owes \$2,612 in medical bills.

Applicant argues that the statute of limitations applies to her debts. Under state law, a creditor must take court action within a specified period of time to collect the debts owed to it. If the creditor does not pursue its rights within this specified period of time, any legal action to collect the debt is barred from collection under state law. The Appeal Board has held that elimination of debts by the statute of limitations is not

evidence of a good-faith resolution of debt. The Appeal Board has held that for purposes of security clearance eligibility, old, time-barred debts are current and ongoing. See ISCR Case No. 07-11814 (App. Bd., Aug. 29, 2008).

Applicant has made good progress on her debt resolution. She still has a fair amount of debt to resolve. Thus, I cannot favorably conclude that she should have a security clearance. Under the Directive, a sponsored Applicant can apply for her security clearance one year from the date of this decision. If she can show that she has paid or established payment plan for her remaining debts, she would be a good candidate for being granted a security clearance, assuming no other issues of a security concern arise.

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-1.e:	For Applicant
Subparagraph 1.f-1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n-1.z	Against Applicant
Subparagraph 1.aa-1.cc:	For Applicant
Subparagraph 1.dd:	Against Applicant
Subparagraph 1.ee:	For Applicant
Subparagraph 1.ff-1.kk:	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