



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



In the matter of:)
)
) ISCR Case No. 08-10012
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro Se*

January 28, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, 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 signed a Questionnaire for Sensitive Positions (SF-86) on June 29, 2007. On August 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 September 30, 2009, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on November 3, 2009. A Notice of Hearing was issued on November 5, 2009. On

November 23, 2009, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced nine exhibits, which were marked Ex. 1 through Ex. 9 and admitted without objection. Applicant testified on her own behalf and called one witness. She introduced two exhibits, which were marked as Ex. A and Ex. B and admitted without objection. DOHA received the transcript (Tr.) of the hearing on December 2, 2009.

Findings of Fact

The SOR contains 17 allegations which raised security concerns under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.q.) In her Answer to the SOR, Applicant admitted 13 allegations (SOR ¶¶ 1.a. through 1.c., 1.e. through 1.l., and 1.p. through 1.q.). The debts that Applicant admitted totaled approximately \$19,311. She denied four SOR allegations at ¶¶ 1.d., 1.m., 1.n., and 1.o. The debts that Applicant denied totaled approximately \$3,631.50. Applicant's admissions are included herein as findings of fact. (Applicant Answer to SOR.)

Applicant is 39 years old, divorced, and the parent of a 12-year-old son. She is a high school graduate and employed as a secretary by a government contractor. She has worked for her present employer since 1996. She has held a security clearance since 2001. (Ex. 1; Tr. 74.)

Applicant and her former husband share joint custody of their son. They are also jointly responsible for paying their son's tuition at a private school. Pursuant to a consent order dated September 19, 2008, the ex-husband is obligated to pay Applicant \$100 each month toward their son's tuition. Applicant is responsible for paying the remaining tuition each month. However, her ex-husband was injured on the job in January 2009, and he has been unable to work since that time. He has not paid his share of the son's tuition during the 2009-2010 school year. Consequently, Applicant pays \$546 in tuition for her son's education each month. (Ex. 1; Ex. 2 at 39-40; Tr. 67, 74-77, 82-83.)

Applicant and her former husband married in 1995. They separated in 2005, and they were divorced in 2006. Applicant had significant legal expenses connected with the divorce. In the early years of their marriage, Applicant and her husband incurred a number of debts. The SOR alleges at ¶ 1.q. that, in 2001, Applicant petitioned for Chapter 7 bankruptcy. In September 2002, the bankruptcy court discharged their debts.¹ In about January 2003, Applicant petitioned individually for Chapter 13

¹ In an interview with an authorized investigator on July 12, 2001, Applicant stated that she and her husband had filed for Chapter 13 bankruptcy. At the interview, she provided a financial statement showing that she and her husband had \$27,000 in debts and were required to make monthly payments of \$459 on the Chapter 13 bankruptcy. The record supports a conclusion that Applicant filed for Chapter 13 bankruptcy in 2001, and the filing then was changed to a Chapter 7 bankruptcy, which was discharged in September 2002. (Ex. 8 at 1-4; Ex. 9.)

bankruptcy. Her petition was dismissed in about August 2003 for failure to make the required payments to the trustee.² In December 2004, Applicant again petitioned for Chapter 13 bankruptcy. In October 2005, Applicant's petition was dismissed for non-payment. Applicant's Chapter 13 bankruptcies are alleged at SOR ¶¶ 1.o and 1.p. The government conceded that the debts alleged at SOR ¶¶ 1.i. and 1.j. were duplicates with the same account number and had been discharged in Applicant's Chapter 7 bankruptcy. (SOR; Ex. 1; Ex. 6 at 3; Ex. 8; Tr. 56-60, 93-94, 97-98.)

SOR ¶ 1.a. alleged that Applicant owed a debt of \$345 on an account that had been placed for collection and, as of June 3, 2009, had not been paid. Applicant identified the debt as a cell phone bill. The debt was listed as an unpaid collection account on Applicant's credit bureau reports of June 3, 2009 and October 14, 2009. Applicant failed to provide information establishing that the debt had been paid or settled. (Ex. 2 at 4; Ex. 3; Ex. 4; Tr. 35.)

The SOR alleged at ¶ 1.b. that Applicant owed a \$1,480 debt, in collection status, to a jewelry store, and, as of June 3, 2009, the debt had not been paid. In her answer to DOHA interrogatories, Applicant provided documentation showing that she had made 11 small payments of \$50 and \$25 on the debt in 2007. Applicant received notice from the creditor on January 21, 2009, that her account balance was \$1,480. She stated that she had made no payments on the debt in 2009 because the creditor would only accept large payments. The debt remains unresolved. (Ex. 2 at 54-65; Tr. 35-37.)

The SOR alleged at ¶ 1.c. that Applicant was indebted to a medical creditor on an unpaid delinquent debt of \$242. Applicant incurred the debt when she had dental braces in 2002 or 2003. She stated that she had paid the debt and intended to dispute the debt with the credit reporting agencies. She failed to provide a record or receipt to corroborate her statement that the debt had been paid, settled, or disputed. (Ex. 3 at 1; Tr. 37-40.)

The SOR alleged at ¶ 1.d. that Applicant owed a \$29 delinquent debt to a creditor and, as of June 3, 2009, the debt had not been paid. In her response to the SOR, Applicant denied the debt. The debt appeared on Applicant's credit bureau reports of January and October 2009. At her hearing, Applicant acknowledged the debt, said she had overlooked it, and stated that she would pay it at a future date. (Ex. 2 at 107; Ex. 3 at 1; Tr. 40-41.)

The SOR alleged that Applicant was responsible for two delinquent state tax liens. SOR ¶ 1.e. alleged that in November 2003, a state tax lien of approximately \$1,539 had been filed against Applicant and remained unsatisfied as of June 3, 2009. SOR ¶ 1.f. alleged that in December 2002, a state tax lien of approximately \$2,442 had been filed against Applicant and remained unsatisfied as of June 3, 2009. Applicant

² Applicant admitted that her payments to the trustee were late, but she denied that she failed to make the payments. (Tr. 57.)

contacted the state tax agency in January 2009 about the liens. She lacked the required funds to resolve the liens through the state's tax amnesty program, and, because of her financial history, the state would not enter a financial agreement with her for repayment of the liens. To satisfy the liens, the state intercepted Applicant's state tax refunds. The state taxing authority also told Applicant she could send in additional money to satisfy the liens. However, she has not done so. The tax liens remain unresolved. Applicant stated she would arrange a payment agreement to satisfy the liens if she received a security clearance. (Tr. 41-45.)

The SOR alleged at ¶ 1.g. that Applicant owed a \$1,036 debt, in collection status, and, as of June 3, 2009, the debt had not been satisfied. Applicant has not paid the debt. (Tr. 45-47.)

The SOR also alleged at ¶ 1.h. that Applicant owed a \$1,937 debt on an account that had been placed for collection and had not been paid as of June 3, 2009. Applicant identified the debt as an unpaid cell phone account. The debt has not been paid. (Tr. 47.)

The SOR alleged at ¶ 1.k. that Applicant owed a creditor a debt of \$4,174, in collection status, which had not been paid as of June 3, 2009. The debt was incurred when Applicant had Lasik eye surgery on both eyes in August 2007. Applicant has made no payments to the creditor to satisfy the debt. She claimed that the debt alleged at SOR ¶ 1.m. was the same debt alleged at SOR ¶ 1.k. However, Applicant's credit bureau report of October 14, 2009, showed two separate account numbers for the debts alleged at SOR ¶¶ 1.k. and 1.m. The creditor offered to settle the debt alleged at SOR ¶ 1.k. for approximately \$1,000, but Applicant declined the settlement because she lacked the necessary funds. (Ex. 3 at 2; Tr. 50-52.)

Applicant purchased an automobile on credit. She fell behind in her payments and owed the creditor \$691 on a debt of \$5,707. This debt is alleged at SOR ¶ 1.l. In May 2009, Applicant voluntarily surrendered the vehicle to the creditor. Applicant's credit report of October 14, 2009, reported that Applicant owed the creditor a deficiency balance of \$3,755 on the repossessed automobile. Applicant has made no payments on the debt. (Ex. 3 at 2; Tr. 52-54.)

Applicant owes the Internal Revenue Service (IRS) approximately \$10,400 in unpaid federal taxes, interest, and penalties for tax years 2002, 2004, and 2006. The SOR alleged at ¶ 1.n. that Applicant's wages were being garnished to satisfy the debt. Applicant provided documentation to establish that she had entered into a voluntary payroll deduction agreement with the IRS. The agreement specifies that \$225 will be deducted from Applicant's pay each month to satisfy the debt. Applicant intends to make the voluntary payments until her federal income tax delinquency is satisfied. (Ex. A; Ex. B; Tr. 54-56.)

Applicant has consulted with a bankruptcy attorney and two credit counseling firms about her delinquent debts. She has not yet made a decision about how to manage and resolve her delinquencies. (Tr. 62-63.)

Applicant's net monthly salary is \$3,160. She and her son share an apartment with her mother. Applicant and her mother divide the monthly apartment rent of \$1,650. Applicant pays \$825 each month, and so does her mother. Applicant helps her mother by paying \$250 each month toward the mother's car expenses. Applicant reported the following additional monthly fixed expenses: food: \$350; clothing: \$200; life insurance for herself and her son: \$50; school tuition for her son: \$546; and utilities, including cell phone: \$400. She estimated that she also had about \$75 to \$175 a month in miscellaneous expenses, for a total of approximately \$2,700 to \$2,800 in total monthly expenses. She estimated that her net monthly remainder was approximately \$200. She has about \$600 in her 401(k) account and about \$200 in savings accounts. She has no credit cards. (Ex. 2 at 7; Tr. 64-72.)

Applicant's mother testified as a witness on her behalf. Applicant's mother stated that she purchased all the food for the household that she shares with her daughter. She estimated that the food expenses were approximately \$100 a week. She also stated that she and her daughter split the monthly utility, telephone, and cable bills, and each paid half. (Tr. 89-93.)

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 potentially disqualifying conditions and mitigating conditions, which are useful 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 as to 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 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 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 to pay her creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. 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.

The record shows that Applicant’s financial delinquencies began several years ago and continue to this day. Applicant’s current financial delinquencies involve substantial sums of money in proportion to her income and resources, occurred under circumstances that are likely to recur, and cast doubt on her current reliability, trustworthiness, and good judgment.

Applicant was divorced in 2006. She incurred significant legal expenses at the time of her divorce. Because of a work-related injury, her ex-husband has been unable to pay his share of their son’s private school tuition. Applicant therefore pays approximately \$550 a month in private school tuition for her son. However, Applicant and her son share an apartment with her mother. Applicant’s mother pays half of the monthly rent on the apartment and half of the utility expenses each month. She also pays for all of the food consumed by Applicant and her son, an expense that Applicant and her mother estimate to be \$400 a month. The record does not include facts that suggest protracted conditions beyond Applicant’s control that would explain her failure over a period of years to meet her financial obligations. She has been steadily employed with her current employer since 1996.

To her credit, Applicant entered into a voluntary payroll deduction agreement with the IRS, and she has authorized a deduction of \$225 each month to satisfy approximately \$10,000 in delinquent federal taxes, interest, and penalties. She has begun the process of financial counseling. However, Applicant is also responsible for at least ten other debts that remain unresolved. She remains dependent upon her mother for financial support, and she does not have a plan in place for avoid financial overextension in the future. While Applicant's intention to satisfy some of her creditors in the future is laudable, it is too soon to conclude that she has demonstrated a track record of financial responsibility. She has not yet demonstrated that she will repay her creditors and avoid future financial delinquencies. While her divorce was a condition that created financial difficulties that may have been beyond her control, she failed to pay debts that arose well before her marriage ended, and she did act responsibly under the circumstances. I conclude that AG ¶¶ 20(a), 20(c), and 20(e) do not apply to the facts of Applicant's case. I also conclude that AG ¶¶ 20(b) and 20(d) apply only in part to the facts of Applicant's case.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant has been steadily employed in her present job since 1996. She is a reliable employee. She is attempting to provide her child with a good education.

Applicant has experienced financial difficulties since at least 2001, and she has sought bankruptcy protection three times. Most of the debts alleged in the SOR remain unpaid and unresolved. Applicant's financial problems began when she was a mature adult, and she failed to address her delinquent debts for a significant period, a decision that raises concerns about her judgment and reliability. To her credit, she began

voluntarily to repay her federal income tax delinquencies through a payroll deduction. However, she has failed to satisfy other debts and continues to rely upon her mother for financial assistance. It is not clear at this time that she will accept responsibility for managing her own financial problems and satisfying her creditors.

Applicant may find it beneficial to seek professional financial counseling and legal advice about resolving her debts and acquiring financial stability in the near term. She can reapply for a security clearance one year after the date of this decision if her employer will sponsor her. At that time, she can produce new evidence that addresses the Government's current security concerns.

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. - 1.h.:	Against Applicant
Subparagraphs 1.i. - 1.j.:	For Applicant
Subparagraphs 1.k. - 1.m:	Against Applicant
Subparagraph 1.n.:	For Applicant
Subparagraphs 1.o -1.q.:	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.

Joan Caton Anthony
Administrative Judge