



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-10162
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

October 30, 2009

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate Guideline F (Financial Considerations) security concerns. Clearance is denied.

Statement of the Case

On June 24, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On June 1, 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 amended, modified and revised. The SOR alleges security concerns under Guideline F (financial considerations). The SOR detailed reasons why

¹ Item 4.

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, continued, denied, or revoked.

On June 29, 2009, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated August 17, 2009, was provided to her by letter dated August 19, 2009. Applicant received the FORM on August 21, 2009. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did submit additional material in response to the FORM within the time period of 30 days after receipt of copy of the FORM. The case was assigned to me on September 30, 2009.

Findings of Fact

Applicant admitted all the SOR ¶¶ 1.a. – 1.n. and 1.q. She denied SOR ¶¶ 1.o. and 1.p. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 33-year-old timekeeper/labor specialist.² She attended community college from January 1999 to May 2002, and was awarded an associate's degree in May 2002. She continued her education and attended a university from August 2002 to August 2005, and was awarded a Bachelor of Arts degree in August 2005.

Applicant married in October 1997 and divorced in July 2005, and her file does not reflect that she has any dependents. She did not serve in the U.S. military. Her file does not contain any adverse information relating to police involvement. For example, she has never been charged with a felony, any firearms or explosives offense(s), and does not have any currently pending charges. She has never been charged with any offenses related to alcohol or drugs. There is no evidence that she has abused alcohol or drugs. She has not been arrested for or charged with any other misdemeanor-level offenses. She has worked for the same employer, a defense contractor, since November 2007. Applicant seeks a security clearance in conjunction with her employment.

Financial considerations

Applicant's statement of reasons (SOR) lists 16 delinquent debts totaling approximately \$29,316. In addition, Applicant's February 25, 2009, Personal Financial Statement (PFS) indicates her monthly expenses exceed her monthly income. Her PFS does not address repayment of the delinquent debts set forth in SOR ¶¶ 1.a. to 1.e.

² Item 4 (March 2008 e-QIP) is the source for the facts in this paragraph unless otherwise stated.

and 1.g. to 1.p.³ The 16 delinquent SOR debts consist of one judgment and her remaining debts are collection and charged off accounts.

In her July 10, 2008, Personal Subject Interview (PSI), Applicant admits that she “. . . was a full time student and was unable to find employment while attending school and simply got behind on her financial obligation[s].”⁴ Applicant further states in her PSI that she “. . . is expecting to establish payment arrangements for any and all outstanding financial obligations,” and states with her new job and better pay she believes she will be able to resolve her financial obligations.⁵

The only documentation provided by Applicant to demonstrate that she has a payment plan arrangement in place for SOR ¶ 1.f.; however, Applicant has not provided any proof that she has actually made payments under that arrangement.⁶ Applicant has failed to provide any documentation demonstrating that she has either satisfied or established payment arrangements for the remainder of her debts. While some of her debts are not listed on her more recent credit reports, Applicant must demonstrate that she has resolved her debts.⁷

In Applicant’s response to the FORM, she stated:

I have attached some documents to this letter which show my effort in trying to take care of my debts. I am still working on getting in touch with the rest of my creditors, even though it has been difficult to get hold of some [of] these creditors, hence [I am] unable to locate some [of] my accounts. It is my deepest desire to get this issue resolved.

The documents she attached consisted of a letter dated September 4, 2009 from a debt reduction program. Included among her documents were four letters to creditors from the debt reduction program advising the creditors not to call the Applicant. Applicant offered no evidence in her FORM response that demonstrated any of the debts alleged had been resolved.

³Items 1 and 6.

⁴Item 5.

⁵*Id.*

⁶Item 6.

⁷ See ISCR case No. 07-10310 at 2 (App. Bd. July 30, 2008) (The Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation regarding satisfaction of individual debts.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “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 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guideline F (Financial Considerations).

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in her credit reports, in her response to DOHA interrogatories, and in her SOR response. Applicant’s SOR listed 16 debts including a judgment and 15 collection and charged off accounts totaling approximately \$29,316. Her financial difficulties extended over several years and continue today. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business

downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant full application of any mitigating conditions because she did not act more aggressively and responsibly to resolve her delinquent debts. Her delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Applicant does not receive credit under AG ¶ 20(a) because she did not establish that her financial problems "occurred under such circumstances that [they are] unlikely to recur." There is some residual doubt about whether she is fully committed to resolving her delinquent SOR debts and is making adequate steps to do so. AG ¶ 20(e) does not apply because she did not provide any documentation disputing any of the SOR debts.

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged by what she described as her inability to find employment while attending school, which caused her to fall behind on her debts. However, she has not provided sufficient evidence to establish that she acted responsibly under the circumstances with respect to her delinquent SOR debts since obtaining her current job in November 2007.⁸

AG ¶ 20(c) partially applies. Applicant consulted a company offering a debt reduction program; however, this did not occur until long after she received her SOR. Furthermore, there is no record evidence establishing that her debts are resolved or under control. There is no record evidence that Applicant has paid, started payment plans, disputed, or otherwise resolved any of the SOR debts. She did not provide specific timelines for setting up payment arrangements of any SOR debts. These are

⁸"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

some initial, positive “indications that the problem is being resolved or is under control.” She has admitted her responsibility for most of the SOR debts and promised to eventually resolve them. She established some mitigation under AG ¶ 20(d) because she showed some good faith⁹ in the resolution of her SOR debts by admitting responsibility for most of her SOR debts.

Applicant denied responsibility for the debts in SOR ¶¶ 1.o. and 1.p. for \$473 and \$110, respectively. She claimed that she made a payment arrangement with these creditors, but as noted, she did not provide any documentation that she has actually made payments under that arrangement.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve her delinquent debts. Her submitted documentation regarding her recent enrollment in a debt reduction program leaves too many questions unanswered. Her steps are simply inadequate to fully mitigate financial considerations security concerns.

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 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.

⁹The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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 have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of her clearance. Applicant deserves substantial credit for volunteering to support the Department of Defense as an employee of a defense contractor. There is no evidence that she has a criminal record or has ever violated security. There is every indication that she is loyal to the United States, the Department of Defense, her employer, and that she is an honorable person. She does not abuse alcohol or illegal drugs. She has never been fired from a job or left employment under adverse circumstances. Her file does not contain any adverse information relating to police involvement. She deserves some credit for enrolling in a debt reduction program, but documentation presented is inadequate to demonstrate financial responsibility. Cumulatively, these factors show some responsibility, rehabilitation, and mitigation.

The whole person factors against reinstatement of Applicant's clearance are more substantial. Failure to pay or resolve her just debts is not prudent or responsible. Applicant has a lengthy history of financial problems. She began to have financial difficulties several years ago, when multiple debts became delinquent. In February 2009, she responded to DOHA interrogatories, and June 2009, she responded to the SOR. She had ample opportunity to contact more of her SOR creditors and to make greater progress in the resolution of her SOR debts. She did not pay, start payments, dispute, or otherwise resolve any SOR debts. She made insufficient progress to resolve her delinquent debts, even though she had steady employment and ample opportunity to contact her creditors and provide documentation. She was on clear notice from her receipt of DOHA interrogatories and even more so after she received the SOR that she needed to show substantial progress in the resolution of her delinquent debts; however, she did not provide documentation showing her efforts to accomplish this security responsibility.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the financial considerations security concerns. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has failed to mitigate or overcome the government's case. For the reasons stated, I conclude she is not eligible for access to classified information.

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 to 1.q:	Against 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 Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

ROBERT J. TUIDER
Administrative Judge