



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



In the matter of:)	
)	
)	ISCR Case No. 08-10786
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

December 7, 2009

Decision

RIVERA, Juan J., Administrative Judge:

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

Statement of the Case

On July 1, 2008, Applicant submitted a security clearance application. On March 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as modified and revised.¹ The SOR alleges a security concern under Guideline F (Financial

¹ On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of the revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security*

Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied or revoked.

On April 15, 2009, Applicant responded to the SOR allegations and requested an administrative determination. Department counsel converted the case to a hearing on May 22, 2009. At her hearing, Applicant also requested a hearing before an administrative judge (Tr. 20). The case was assigned to me on June 11, 2009. DOHA issued a notice of hearing on June 25, 2009. The hearing was convened as scheduled on July 14, 2009. The government offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on her own behalf and submitted Applicant Exhibits (AE) 1 through 8 (AE 8 was received post-hearing), which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 21, 2009.

Findings of Fact

Applicant denied all SOR allegations. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

Applicant is a 39-year-old senior systems analyst employed by a defense contractor. She finished high school in 1987. Between 1987 and 2007, she completed approximately two years of college, but she has not earned a degree.

Applicant was hired by her current employer in February 2008, and she received interim access to classified information pending completion of her security background investigation. This is the first time she has had access to classified information. She is the program manager for a government contract, and supervises a team of software developers. There is no evidence that she has ever compromised classified information or that she has caused others to do so.

Applicant married her husband in March 1998 and they were divorced in May 2004 (GE 1, Tr. 36). She has two sons ages 13 and 17. Her youngest son was born of this marriage and her oldest son is from a prior relationship. Applicant testified she has been the sole provider for her older child since he was born and the sole provider for the younger child since she separated from her ex-husband in 2001. Applicant testified she has received almost no financial assistance from either father. She maintains her children in sports and music activities. Her older son is in the process of applying for

Program (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

college. Applicant intends to provide financial assistance to her son while he attends college.

Applicant is proud that she has been continuously employed since age 21. She believes she has done well and that her job progression shows an advancing career with great experience and increasing responsibilities. She testified that, through the years, she has always handled sensitive data and has never misused or misappropriated the information. She considers herself to be an asset to her employer and has been awarded the highest compliments from customers and her employer. The government customer requested Applicant by name to be assigned to her current position.

Applicant attributed her financial problems, past and present, to three main causes: her separation from her ex-husband in 2001 and the subsequent 2004 divorce, the lack of financial support from both fathers of her sons, and her lack of financial responsibility. She admitted she knew her expenses exceeded her income and, notwithstanding, she continued to incur additional debt without paying for the older debts (Tr. 81). Because of her limited income, she could not afford to pay both her past financial obligations and her current day-to-day living expenses.

In her July 2008 security clearance application, Applicant disclosed having financial problems. Her background investigation addressed her financial status and included the review of her July 2008 and February 2009 credit bureau reports (CBRs), her response to DOHA interrogatories, and her two security clearance applications.

The SOR alleges 15 delinquent and/or charged off accounts, totaling approximately \$36,000. Applicant's testimony and the record evidence show that all the alleged SOR debts are her debts, and they have been delinquent for a number of years.

SOR ¶¶ 1.a, 1.k, and 1.l alleged three state tax liens totaling approximately \$25,588, for taxes owed for tax years 1998 through 2004. Applicant contested the charges and the state conceded their charges were not accurate. The state reduced her tax lien debt to \$6,129. At her hearing she testified that she was in the process of negotiating a payment plan with the state. After her hearing, Applicant claimed she had hired a tax attorney to help her re-file her taxes for the years in question to challenge the state's tax assessments. She provided no documentary evidence to support her assertions. SOR ¶¶ 1.e and 1.m alleged the same debt (\$917) in collection by two different collection agencies.

In February 2009, Applicant entered into a debt consolidation program to resolve her delinquent obligations. She needed assistance to establish contact with her creditors, negotiate payments, and make a payment plan. Most of Applicant's delinquent debts are being paid through her debt consolidation program, including the 10 debts alleged in SOR ¶¶ 1.b through 1.j, and 1.o. Her documents show she has been making some progress paying her debts. Based on her payment plan, she anticipates being debt free in 45 months.

It is important to Applicant to correct her credit, particularly now with her son soon to enter college. She intends to increase her contributions to her payment plan when her salary increases. Applicant claimed she paid the debt alleged in SOR ¶ 1.n; however, she presented no documentary evidence to support her claim.

Applicant's evidence shows that prior to entering into the debt consolidation program she negotiated and paid a delinquent \$2,396 debt (GE 2, Tr. 49). Applicant disclosed she has two joint delinquent debts for \$17,148 and \$5,000, which were not alleged in the SOR. She and her ex-husband purchased two vehicles that were later repossessed. Applicant believes both she and her ex-husband should be financially responsible for these debts. She is negotiating with him and hopes he will pay part of the debt. She is not making payments on these two debts.

Applicant expressed remorse for her financial problems. She claimed she has learned from her mistakes and will not repeat them. She believes she is doing all she can do under her circumstances to resolve her debts. She now has a working budget, which she follows, and she is being more financially responsible. Applicant received financial counseling through her credit consolidation program. Prior to February 2009, she had not participated in any financial counseling.

In 2006, Applicant sold her 1998 Ford Explorer and bought a 2005 Nissan Xterra for approximately \$28,000. She has a \$607 monthly payment she testified that she could barely afford. She explained she made a mistake purchasing such an expensive vehicle, but at the time she believed the purchase of the vehicle would assist her to reestablish her credit.

As of February 2009, her monthly take-home pay was around \$5,000, with monthly expenses of approximately \$4,327. She has been paying approximately \$280 a month into her debt consolidation program, which leaves her a remainder of approximately \$393 a month. This does not include any payments towards her state tax debt (\$6,129), the \$22,148 she jointly owes with her ex-husband for the two repossessed vehicles, and future expenses she anticipates she will incur when her son enters college.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's controlling

adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”² demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968 (Aug. 2, 1995), Section 3.

² See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

The SOR alleges 15 delinquent and/or charged-off accounts, totaling approximately \$36,000. All the alleged SOR debts are Applicant's debts, and have been delinquent for a number of years.

Applicant successfully contested three state tax liens totaling approximately \$25,588, alleged in SOR ¶¶ 1.a, 1.k, and 1.l. The state reduced her tax lien debt to \$6,129. Applicant claimed she hired a tax attorney to help her re-file her taxes for the years in question to challenge the state's tax assessments. She provided no documentary evidence to support her assertions. SOR ¶¶ 1.e and 1.m alleged the same debt (\$917) in collection by two different collection agencies. AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations) apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

In February 2009, Applicant entered into a debt consolidation program to resolve her delinquent obligations. The delinquent debts alleged in SOR ¶¶ 1.b through j, and 1.o, are being paid through her debt consolidation program. She has been making some progress paying her debts.

Applicant established circumstances beyond her control contributed to her inability to pay her debts, i.e., her marital separation and divorce, and the failure of the fathers of her two sons to provide financial support. I find AG ¶ 20(b) applies, but does not fully mitigate the financial concerns. Applicant admitted she made many mistakes and that her failure to be financially responsible contributed to her current financial problems. She knew that her debts exceeded her income and, notwithstanding, she continued to incur additional debt without paying for the old debts. Considering the evidence as a whole, Applicant's evidence is not sufficient to show she acted responsibly under the circumstances.

Since February 2009, Applicant has made some efforts to resolve her debts. Notwithstanding, at this time, her recent efforts are not sufficient to fully mitigate the financial security concerns. I also find she is barely making ends meet. She is financially overextended and her financial problems are not under control. Although Applicant is addressing 10 of her debts through a debt consolidation program, she has no plan in place to pay her \$6,129 tax lien debt. Additionally, she has three other non-SOR delinquent debts, totaling approximately \$22,223, which she has not addressed. Moreover, Applicant will soon be trying to provide financial support to her son for his college expenses.

AG ¶¶ 20(a), (c), and (d) do not fully apply because Applicant's financial problems are not yet under control and her delinquent debts are likely to recur. Although she receives full credit for participating in financial counseling, having a budget, and entering into a debt consolidation program, these measures are insufficient because her plans only address about \$10,000 in delinquent SOR debt. About \$28,000 in delinquent debt is not addressed.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is attempting to correct her financial situation by contacting her creditors and participating in a debt consolidation program. She successfully challenged and reduced her three tax liens debt to \$6,129. She has been successful working for defense contractors and the government from February 2009 to present. There is no evidence she has ever compromised classified information or committed any security violations. Applicant expressed remorse for her financial mistakes and promised to repay her creditors. She established circumstances beyond her control contributed to her inability to pay her debts. These factors show some responsibility, good judgment, and mitigation.

On balance, I conclude Applicant presented insufficient evidence of having a track record of financial responsibility. She presented documentary evidence of recent efforts to pay her financial obligations or to resolve her debts; however, there are not clear indications that her financial problem is being resolved or is under control. Her inability to pay even relatively small debts shows she is financially overextended. Her 2006 purchase of a large, expensive vehicle shows lack of judgment. She does not have the financial means to resolve her financial problems without substantially reducing her expenses.

Applicant is committed to providing financial support to her son for his college education. This additional expense makes it unlikely she will be able to pay the \$28,000 in debt that is not included in her payment plan. Applicant's favorable evidence is insufficient to mitigate the security concerns arising under the financial considerations guideline.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a - 1.l,
and 1.n and 1.o:

Against Applicant

Subparagraphs 1.m:

For Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge