

DEPARTMENT OF DEFENSE DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
SSN:)	ISCR Case No. 08-10992
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel For Applicant: *Pro Se*

June 11, 2009

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concerns that arise from her numerous delinquent debts that remain unsatisfied.

On February 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR alleges a security concern under Guideline F (financial considerations). Applicant submitted an undated response to the SOR that was notarized on February 17, 2009. She admitted all allegations listed in the SOR and requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on March 13, 2009, that was mailed to Applicant on March 17, 2009. Applicant was informed she had

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

30 days from receipt of the FORM to submit her objections to any information contained in the FORM or to submit any additional information she wanted considered. Applicant acknowledged receipt of the FORM on April 1, 2009. Applicant submitted a letter, dated May 1, 2009, in response to the FORM. On May 13, 2009, Department Counsel executed a memorandum indicating she did not object to the admissibility of Applicant's submission. The case was assigned to me on May 28, 2009.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 46-year-old woman who has been employed by a defense contractor as an operator since January 2008. Her prior work history includes employment as a nursing assistant from November 1998 to July 2003, and as a dry film operator from March 2003 to March 2005. Those jobs were followed by five different periods of employment ranging from three to nine months when she worked as either an assembler or as a dry film operator.

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) in July 2008 in which she indicated she attended college from 1988 to 1999 and again from 2005 to 2006 without obtaining a degree. The CBRs contained in the FORM indicate she was awarded over \$60,000 in student loans during those years. Most of those accounts list the method of payment "as agreed" and indicate the accounts are closed. One student loan account, owing in the amount of \$26,774, is listed as being deferred. Applicant listed unemployment from August 2005 to May 2006 in her e-QIP while she attended college full-time. The CBRs indicate she received a \$10,523 student loan in August 2005 at the beginning of the listed period of unemployment.

According to the information contained in Applicant's e-QIP, she has never been married. However, in her response to the FORM she indicated she was providing for her children and their father who was having a difficult time finding employment. She has three children, ages 22, 20 and 14.

The SOR lists 16 accounts that have been submitted for collection in the total amount of \$9,247, five accounts that have been charged off in the total amount of \$1,921, and one account that has resulted in a judgment being entered against Applicant in the amount of \$1,251. Applicant admitted she was liable for each of these accounts. She did not submit anything to indicate she has made any payment on any of these accounts. Additionally, she disclosed in her e-QIP that two garnishment orders had been entered against her in the total amount of \$4,669.08.

Many of Applicant's delinquent accounts arise from credit card debt. Her credit bureau reports (CBR) disclose the date of last activity on most of the delinquent accounts occurred in either 2006 or 2007, although at least one dates back to 2004. As to one of the garnishment orders entered against her, Applicant stated in her e-QIP that it arose from a credit card debt that became delinquent in 1988 in the amount of \$500 and has now risen to over \$2,000.

Applicant wrote in response to the FORM that she was trying to work with a credit counseling agency in an effort to settle some of her debts. She also indicated she is paying on the judgment that was entered against her. It is unclear from the FORM if that payment is from one of the garnishments she admitted had been entered against her. Her explanation for the delinquent debt is the need to provide for her children and their father. Applicant acknowledged it will take some unspecified amount of time for her to be able to resolve the delinquent debt.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Guideline F (financial considerations), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.² The government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

² ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

³ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁴ Department of the Navy v. Egan 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

No one has a right to a security clearance⁹ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

Analysis

Guideline F, Financial Considerations

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. . . . (Adjudicative Guideline [AG] 18)

Applicant has at least 22 delinquent accounts, totalling over \$12,000, that have been either charged off, submitted for collection or that resulted in a judgment being entered against her. Her CBRs disclose the last activity on those accounts occurred at least several years ago. She acknowledged that one account dates back to a delinquent 1988 credit card debt that has accumulated over \$1,500 in additional interest and/or other charges over the years. Additionally, she has at least two outstanding garnishment orders that have been entered against her. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19C(c): *a history of not meeting financial obligations* apply.

The only explanation Applicant provided for the delinquent debt is her need to provide for her children and their father. However, the debt that she acknowledged which dates back to 1988 precedes the birth of two of her children. She listed continuous employment dating back to 1998 in the e-QIP she submitted, with the exception of a ninemonth period from August 2005 to May 2006 when she returned to school full-time. Her CBRs indicate she obtained at least one student loan during this time in the amount of \$10,523. Additionally, Applicant provided no information about what efforts she may have taken over the years to support her children and their father within the financial means available to her from her employment and the student loans she took out. Finally, while Applicant stated in her response to the FORM that she was working with a credit counsellor in an effort to settle her debts, she provided no information as to what actions were actually being taken to resolve the debts or any basis to conclude that she will resolve the debts with the service's assistance.

I have considered Mitigating Condition (MC) 20(a): the behavior . . . 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; MC 20(b): the conditions that resulted

⁹ Egan, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

¹¹ Egan, Executive Order 10865, and the Directive.

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; and MC 20(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 and conclude they do not apply. There is no record evidence to indicate any of the remaining mitigating conditions apply.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate the financial considerations security concern. She has not overcome the case against her nor satisfied her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance. Guideline F is decided against Applicant.

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-v: 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 a security clearance for Applicant. Clearance is denied.

Henry Lazzaro Administrative Judge