



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



In the matter of:)	
)	
)	ISCR Case No. 09-00447
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

May 13, 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 an Electronic Questionnaire for Investigations Processing (e-QIP) on August 14, 2008. On January 25, 2010, 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On February 4, 2010, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on March

12, 2010. On March 25, 2010, a Notice of Hearing was issued, scheduling Applicant's hearing for April 12, 2010. On that date, 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 five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified on her own behalf and called two witnesses. She introduced 19 exhibits, which were marked as Ex. A through Ex. S. Applicant's exhibits were admitted to the record without objection. At the conclusion of the hearing, I left the record open until close of business on April 19, 2010, so that Applicant could, if she wished, provide additional documentation for the record. Applicant timely provided 21 pages of additional documentation, which I marked as Ex. T (nine pages); Ex. U (two pages); Ex. V (two pages); and Ex. W (eight pages). DOHA received the transcript of the hearing on April 21, 2010.

Findings of Fact

The SOR contains 15 allegations of disqualifying conduct under AG F, Financial Considerations. (SOR ¶¶ 1.a. through 1.o.) In her Answer to the SOR, Applicant admitted 14 of the allegations. (SOR ¶¶ 1.a., 1.b., and 1.d through 1.o.) She denied the allegation at ¶ 1.c. Applicant's admissions are included herein as findings of fact. (Answer to SOR; Tr. 34-56.)

Applicant is 49 years old, divorced, and the mother of two daughters, who are 19 and 17 years old. Applicant supports both daughters and a 15-month-old grandson. In 2001, Applicant earned a Bachelor of Science degree, and in 2003, she was awarded a Master of Science degree. Her current annual salary is \$54,000. The government contractor sponsoring her for a security clearance has offered her an annual salary of approximately \$60,000, if she acquires a security clearance. (Ex. 1; Tr. 58-60, 63-65, 93.)

Applicant's former husband, an immigrant, was deported to his country of origin for criminal activity. He did not provide child support for his two daughters. Applicant relied on welfare and other social service programs to subsidize her living and education expenses. She owes two student loan debts, one for \$54,415 and the other for \$47,338.¹ As of January 2010, the loans were no longer in deferment. Applicant is obligated to pay \$278 each month in interest on the two loans. At her hearing, she stated that she had not made the required payments for three months. (Tr. 60-66, 88-89.)

¹ Applicant's student loan indebtedness was not alleged in the SOR.

The SOR alleged that Applicant is responsible for 15 delinquent debts totaling \$14,712.² One of those debts arose when Applicant purchased furniture from a creditor in 2001. Thereafter, she lost her job and was unable to make payments on the debt. Her credit bureau reports show that she owes the creditor approximately \$3,776 on a judgment entered against her in February 2004. Applicant admitted the debt and reported that she had made two payments of \$100 to the creditor in 2008, although her bank was unable to honor the second payment because there were insufficient funds in her account. The creditor then sought court approval for enforcement of the judgment through garnishment of Applicant's wages. Applicant made two small payments on the debt in 2010. In a post-hearing submission, she provided documentation establishing that, beginning May 14, 2010, the creditor would receive eight bi-weekly deposits of \$350 from her pay to settle the debt for \$2,800. This debt was alleged at SOR ¶ 1.a. (Ex. 3; Ex. 4; Ex. G; Ex. L; Ex. O; Ex. U; Tr. 35-38, 67-70.)

The SOR alleged at ¶ 1.b. that Applicant owed a delinquent debt of \$945 to a telephone company, and, as of January 25, 2010, the debt had not been paid. Applicant admitted the debt but denied she owed the entire amount. At her hearing, she stated that she had disputed the debt. She also stated she would pay the debt in the future. In a post-hearing submission, she provided a copy of a letter she had written on April 16, 2010, to the credit reporting agencies requesting that the debt be removed from her credit report because the balance on the account was \$300 when the service was disconnected, and the account was closed four years ago. (Ex. W; Tr. 41-44.)

The SOR alleged at ¶ 1.d. that Applicant owed a creditor \$4,910 on a delinquent account. Applicant provided documentation establishing that the creditor had agreed to settle the account for \$2,757 and that she had made the following payments on the account: \$250 in October 2009; \$250 in November 2009; \$766 in February 2010; and \$766 in March 2010. Applicant's documentation also established that she had agreed to make a final payment of \$725 on the debt no later than April 23, 2010. (Ex. N; Ex. V; Tr. 39-45, 70-74.)

At her hearing, Applicant acknowledged that the delinquent debts alleged at SOR ¶¶ 1.e. (\$292); 1.f. (\$329); 1.h. (\$70); 1.i. (\$105); 1.m. (\$100); and 1.o. (\$254) had not been paid. In a post-hearing submission, she provided documentation establishing that on April 14 and 15, 2010, she had written to the creditors identified at SOR ¶¶ 1.e., 1.f., 1.h., and 1.m. and had made settlement proposals. (Ex. C; Ex. M; Ex. W; Tr. 46-50, 53-56.)

Applicant provided documentation establishing that the delinquent debts alleged at SOR ¶¶ 1.g. (\$574) and 1.n. (\$438) referred to the same account. She stated that she made payments on the account occasionally. She also acknowledged a \$1,692 delinquent account alleged at SOR ¶ 1.k. and stated that she made payments to the creditor when she was able to do so. (Ex. F; Ex. K; Ex. M; Tr. 51-55.)

² Applicant denied responsibility for a \$180 medical debt alleged at SOR ¶ 1.c. She was unable to identify the creditor. The Government did not produce any evidence to further identify the debt. (Tr. 44-45.)

Applicant provided documentation to corroborate that the \$428 delinquent debt alleged at SOR ¶ 1.i. had been paid off and satisfied in full. She stated she had made payoff arrangements with the creditor identified at SOR ¶ 1.j. (\$291) and expected the delinquent debt to be paid off soon. (Ex. Q; Ex. R; Tr. 50, 53.)

Applicant hopes to purchase a home in the near future. She has not had formal credit counseling. She relies on a financial self-help program in managing her finances and paying her debts. Using her self-help financial program, she prepared a personal financial statement, which she submitted after the hearing for inclusion in the record. (Ex. B; Ex. T; Tr. 75-78.)

Applicant's personal financial statement showed that her net monthly income is \$2,600³. She listed her monthly expenses in four categories: household expenses: \$2,060; restaurant, food, groceries: \$695; auto expense: \$270; insurance and medical expenses: \$515. Additionally, Applicant planned to set aside \$200 a month for paying her debts. Applicant's personal financial statement showed that she spent \$1,680 more than she earned each month. (Ex.T.)

Applicant stated that her father helps her with some of her living expenses. Her father, who appeared as a witness on her behalf, confirmed that he provided Applicant with financial assistance. Neither Applicant nor her father specified the amount or the degree of financial assistance that he provided to her on a regular basis. Applicant's good friend also testified as a witness on Applicant's behalf. She stated that she believed Applicant to be an honorable and honest person. (Tr. 80, 87, 106, 107, 110-112.)

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 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 adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

³ Applicant stated that she received a rent subsidy from a community housing commission, but she did not specify the amount of the subsidy. (Tr. 79.)

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, 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.

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 in seeking 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 that 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 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 delinquent debt that remained unsatisfied for several years. She was unable or unwilling 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 date to a least 2001, and they have continued to the present time. Moreover, each month she spends approximately \$1,680 more than she earns. While Applicant's current financial delinquencies do not involve large sums of money, she lives beyond her means,

thereby increasing her financial instability and her indebtedness. Applicant has not had financial credit counseling, and her financial difficulties occurred under circumstances that are likely to recur. Her financial delinquencies cast doubt on her current reliability, trustworthiness, and good judgment.

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. While she experienced periodic unemployment, divorce, and the challenges of raising two children as a single parent, she has also acquired a college education and an advanced degree. She has been steadily employed for approximately two years.

Applicant provided documentation to establish that she had paid one of the debts alleged on the SOR. However, most of her debts, some of them for \$100 or less, remain unpaid. She provided post-hearing evidence that she has attempted to settle or dispute some of her debts. Her personal financial statement indicates that she lacks a plan to avoid financial overextension in the future. According to her budget, she spends more than she earns each month. While Applicant's intention to satisfy her creditors is laudable, she has failed to demonstrate a track record of financial responsibility. She has not yet demonstrated priorities that emphasize paying her existing debts and avoiding additional financial delinquencies in the future. While I conclude that AG ¶ 20(b) and 20(d) apply in part to the facts of Applicant's case, I also conclude that AG ¶¶ 20(a), 20(c), and 20(e) do not apply to her 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 worked hard

to acquire an education and to care for her two daughters and her grandson. She has been steadily employed for at least two years.

Applicant's financial problems began when she was a mature adult. While she recently established a payment plan to satisfy a judgment pending since 2004, she has failed to demonstrate that she has developed a long-term strategy to satisfy her creditors and that she understands how to avoid excessive debt in the future. She appears to have a monthly deficit of over \$1,600, putting in doubt her ability to make consistent payments to reduce her debt in the future.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude, after a careful review of the facts of her case, the Financial Considerations adjudicative guideline, and the whole person concept, that Applicant failed to mitigate the security concerns arising from her financial delinquencies. If she wishes, and if her employer supports reapplication, Applicant can reapply for a security clearance one year after the date that this decision becomes final. At that time, she can produce new evidence that addresses the Government's current security concerns.

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.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraphs 1.d. – 1.k.:	Against Applicant
Subparagraph 1.l.:	For Applicant
Subparagraphs 1.m. – 1.o.:	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