



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00647
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro Se*

November 9, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SF86) on March 28, 2008. On July 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) noting security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 for SORs issued after September 1, 2006.

In a notarized response dated August 6, 2009, Applicant admitted five and denied seven of the Guideline F allegations set forth in the SOR, but did not address the allegation raised under Guideline E. She requested a decision be made without a hearing. Department Counsel submitted a file of relevant material (FORM), dated August 28, 2009. Applicant received the FORM on September 8, 2009, but declined to file a response to its contents. On November 2, 2009, the Director, DOHA, forwarded

the case for assignment to an administrative judge for administrative determination. I was assigned the case that day. Based upon a review of the case file, submissions, and exhibits, I find Applicant failed to meet her burden regarding the security concerns raised under Guideline F and Guideline E. Security clearance is denied.

Findings of Fact

Applicant is a 29-year-old mail clerk who has worked for the same defense contractor since 2007. She earned a high school diploma in 1999. Currently single, she has an 11-year old child. In choosing an administrative determination without hearing, Applicant chose to rely on the written record. Because her submissions are brief, the facts of record are exceptionally scant.

In 2004, Applicant was assaulted and stabbed by a former boyfriend. Her injuries precluded her from employment for about two years. In 2005 or 2006, Applicant broke an apartment lease. The apartment owner pursued a judgment against her in the amount of approximately \$2,500 in 2006. She satisfied the judgment in 2007 or 2008.¹ Also in 2006, she committed an act constituting welfare fraud. After paying restitution in the amount of \$850 in September 2007, Applicant pled guilty to the charge.²

Between 2006 and 2007, Applicant incurred medical bills when she suffered from pneumonia. She could not pay the bills and the illness prevented her from working for an unspecified period. She told investigators in 2008 that she had made arrangements to pay her medical debts.³ In her 2009 response to the SOR, however, she denied the debts, stating she had been “enrolled in [a] medical insurance plan at the time [the] cost [was] incurred. All costs should be covered by medical insurance.”⁴ No explanation was made as to why she changed her position regarding the resolution of these delinquent debts and no evidence of coverage was submitted. During her illness, Applicant also became delinquent on one or more telephone accounts. She told investigators in October 2008 that she planned to pay the balance or balances in November 2008. The balances referenced in the SOR remain unpaid.

On February 28, 2008, Applicant completed a SF86. In response to a question inquiring as to whether she ever had been over 180 days delinquent on any accounts or was currently 90 days delinquent on any debts, Applicant answered “No.”

As of October 2008, Applicant had a gross income of approximately \$35,000. Her bi-weekly net income was approximately \$1,300. She did not receive child support, disability, or retirement. Her monthly expenses included a cell phone for about \$110,

¹ Response to the SOR at 2.

² FORM, Item 11 (Investigator’s Notes, dated Jun. 27, 2008 – Jul. 2, 2008).

³ FORM, Item 12 (Investigator’s Notes, dated Oct. 3, 2008, – Oct. 28, 2008).

⁴Response to the SOR at 1.

clothes and food for her child amounting to about \$200, clothes and food for herself totaling about \$150, entertainment expenses of approximately \$60, and about \$150 a month toward repayment of misused food stamps. Amounting to about \$670, Applicant should have about \$630 leftover each month. Applicant has no assets, real estate, or investments. She described her financial situation as “good.”⁵ The record does not reflect her current financial status. There is no indication that she received financial counseling or is in repayment on any of her remaining delinquent debts.

Policies

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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and common sense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole person concept.” An 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.

The United States Government (government) must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”⁶ The burden of proof is something less than a preponderance of evidence.⁷ The ultimate burden of persuasion is on the applicant.⁸

A person seeking access to classified information enters into a fiduciary relationship with the government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government

⁵ FORM, Item 12 (Investigator’s Notes, dated Oct. 3, 208, – Oct. 28, 2008) at 4.

⁶ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 (EO) 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.”⁹ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹¹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹² Nor does it reflect badly on that person’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) and Guideline E (Personal Conduct) to be the most pertinent to the case. Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F – Financial Considerations

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.”¹³ The Directive sets out several potentially disqualifying conditions under this guideline. Here, Applicant admits some of the dozen delinquent debts cited in the SOR. While she denies the majority of the remaining debts at issue, she only offered evidence that one of those debts, the obligation noted at SOR allegation ¶ 1.e, was addressed or paid. Consequently, both Financial Considerations Disqualifying Condition

⁹ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

¹⁰ *Id.*

¹¹ *Id.*

¹² EO 10865 § 7.

¹³ Revised Adjudicative Guideline (AG) ¶ 18.

(FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and ¶ 19(c) (a history of not meeting obligations) apply.

For an unspecified time between 2004 and 2006, Applicant could not work due to injuries sustained in an attack by her ex-boyfriend. She was also unable to work during an unspecified time between 2006 and 2007 owing to a case of pneumonia. Because the periods of her incapacity are undefined, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (“the conditions that resulted in the behavior 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”) applies to a limited extent.

Applicant admitted \$530 in debts, referencing SOR allegations ¶¶ 1.f – 1.h for \$217, \$204, and \$109, respectively. Although she noted that the allegations set forth in SOR allegations ¶¶ 1.k – 1.1 for \$217 and \$204, respectively, are duplicative of the allegations noted at ¶¶ 1.f and 1.g., she provided no evidence linking the two. Given the similarity in entries, however, this conclusion appears to be correct. Therefore, in identifying the entries as duplicates, SOR allegations ¶¶ 1.k – 1.1 have been constructively addressed. Additionally, Applicant provided evidence that she satisfied the debt owed to her former apartment complex. That debt is noted at SOR allegation ¶ 1.e, referencing a sum of approximately \$729.

Remaining at issue are delinquent debts amounting to about \$9,850. Although Applicant denied the allegations in SOR allegations ¶¶ 1.a – 1.e and 1.i, no evidence that the medical debts at issue were ever covered by insurance or that the other accounts were paid, are in repayment, or were formally disputed was submitted.

Although the 2004 attack on Applicant was an extraordinary event and her need for recuperation unexpected, the debts still at issue are multiple in number and remain largely unaddressed. Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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”) does not apply.

There is no evidence that Applicant received financial counseling. There is no evidence that she followed through on any of the payments she told investigators she intended to make in 2008, nor is there evidence that she formally disputed any of the delinquent debts she denies with any of the credit reporting agencies. No documentation was submitted showing that she had medical insurance when her medical debts were incurred or that a medical insurer either assumed or paid the obligations. With the exception of the duplicative telecommunication bills noted above and the rental lease related debt noted in SOR allegation ¶ 1.e, there is no evidence any of the remaining obligations have been addressed. Consequently, neither FC MC AG ¶ 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”) nor FC MC AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) applies. The facts provide some mitigation for the creation

of the debts at issue, but fail to mitigate her failure to address the majority of the debts at issue. Security concerns remain unmitigated.

Guideline E – Personal Conduct

Under Guideline E “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”¹⁴ When Applicant completed her SF86, she had multiple delinquent accounts. In completing that form, she denied having any delinquent debts. This is sufficient to initially raise Personal Conduct Disqualifying Condition ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities).

A denial that one has delinquent debts is not self-evident proof that one deliberately provided a misleading or false answer. Here, however, Applicant totally failed to address the allegation raised and declined a hearing on the record. With no facts upon which the applicable mitigating conditions can be considered, security concerns remain unmitigated.

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 an 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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

¹⁴ AG ¶ 15.

I considered the potentially disqualifying and mitigating conditions in light of all the scant facts available concerning this case, as well as the “whole person” factors. Applicant is a 29-year-old mail clerk who endured difficult times in the early to mid-2000s. She was the victim of a brutal attack and suffered from pneumonia. As a consequence of both, she was unable to work for unspecified periods. Although she declined to submit any current financial information, she described her financial condition as of late 2008 as “good.” While “good,” there is no evidence she applies any of the approximately \$650 leftover each month toward her delinquent debts. Nor is there an explanation as to why she failed to make the payments she told investigators she intended to make in 2008. Finally, she presented no plan depicting how she intends to address the nearly \$10,000 in delinquent debt remaining at issue. As for personal conduct security concerns, Applicant failed to provide any explanation as to why she denied having delinquent debts when she completed her SF86.

The decision to deny an individual a security clearance is not a determination as to an applicant’s loyalty. Nor does it reflect badly on that person’s character. It merely indicates an applicant failed to meet the strict guidelines established for issuing a clearance. In choosing a determination without a hearing, and in failing to submit more information, Applicant failed to mitigate security concerns. Clearance is denied.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge