



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



In the matter of:)	
)	
)	ISCR Case No. 09-02090
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Department Counsel
For Applicant: *Pro Se*

March 24, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant has 14 accounts which are past due, written off, or placed for collection, which total approximately \$27,000. She is paying \$200 per month on one of the accounts. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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 within the Department of Defense on September 1, 2006.

Statement of Reasons (SOR) on May 20, 2009, detailing security concerns under financial considerations.

On June 10, 2009, Applicant answered the SOR, and requested a hearing. On August 5, 2009, I was assigned the case. On August 17, 2009, DOHA issued a notice of hearing scheduling the hearing, which was held on September 30, 2009.

The Government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through Q, which were admitted into evidence. On October 5, 2009, the transcript (Tr.) was received.

Findings of Fact

In Applicant's Answer to the SOR, she admitted all of the factual allegations, with explanations. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 53-year-old configuration and product data manager, who has worked for a defense contractor for 12 years. (Tr. 24) She is seeking to maintain a secret security clearance. Applicant has held a security clearance for 20 years. (Applicant's answer to the SOR) Applicant's manager stated Applicant is a valuable and dependable asset, and an outstanding employee who truly cares about her work. She continually meets challenging deadlines; cares about those she works with; has a reputation for making good decisions; and has a reputation for being a stable and reliable resource. (Ex. A)

The SOR lists 14 accounts which are past due, written off, or placed for collection totaling approximately \$27,000. Four of the debts are each for \$75 or less and another four are under \$200 each. These eight debts total approximately \$900.

In 1995, Applicant and her husband of 15 years divorced. At that time, she had little experience managing money. During the marriage, her husband managed the household finances. Their household combined annual income was \$90,000. After the divorce, her annual income was \$20,000. In October 2002, Applicant remarried. (Ex. 1)

In October 2003, Applicant provided a sworn statement to the Defense Security Service about her finances. (Ex. 2) As of that time, Applicant has not received any financial counseling. Applicant completed a personal financial statement (PFS) showing a monthly net remainder (monthly income less monthly expenses and monthly payment on debts) was \$743. Her October 2003 PFS listed five past due accounts that totaled approximately \$11,000.

In September 2003, Applicant's oldest son, his girlfriend, and their baby moved into Applicant's home. (Tr. 41) At the end of 2003, Applicant was not prepared for the

loss of \$780 per month in child support when her youngest son turned 18. Financial problems brought her credit score from 640 to the 400s.

In 2004, Applicant entered into a lease to purchase a home, which increased her rent payments from \$550 to \$900 per month. (Ex. 1, p. 32, Tr. 39) In October 2008, when Applicant completed her Electronic Questionnaires for Investigations Processing (e-QIP), she stated she hoped to have her medical collection accounts paid by the middle of 2009, and the remainder of her debts paid by the end of 2009. (Ex. 1, p. 34)

Between 2004 and 2006, Applicant had three cars repossessed. All of the vehicles were purchased used. (Tr. 27) In October 2004, she had a Crowne Victoria automobile repossessed. The creditor has not contacted her recently for payment. In 2004, she purchased a 2003 Cougar for her son. (Tr. 29) Shortly after the warranty expired, the car developed engine trouble. (Tr. 40) The vehicle was repossessed. Applicant currently makes \$200 monthly payments on the \$5,812 debt (SOR ¶ 1.h) related to this last repossession. (Tr. 29) She had previously been making \$400 monthly payments on the debt. Once this debt is paid, she will start paying her other obligations.

Several months after her son's Cougar had been repossessed, Applicant agreed to purchase her son a Chevrolet pickup truck if he would make the payments. He made six months of payments before being two weeks late on a payment. (Tr. 31) The pickup was repossessed, resold, and the balance owed is \$10,000 (SOR ¶ 1. i). (Tr. 31)

She currently has two vehicles which are more than six years old. The 2003 Buick, purchased in 2005, will be paid off in October 2009, and her \$407 monthly payments will end. (Ex. B. Tr. 26, 34) She was planning on selling the 2002 Avalanche, purchased in 2008, for \$1,000 to pay off pay-day loans. (Ex. C, Tr. 26) In 2008, Applicant attended a budget vacation plan presentation. She succumbed to the high pressure sales tactics and purchased a vacation plan, incurring a \$6,513 debt (SOR ¶ 1.c). At the time, Applicant's husband was working part-time in a job they hoped would become full-time. (Tr. 42) However, his part-time job ended and they were never able to start making the payments on the vacation plan. (Tr. 42)

Applicant asserts the creditor of the \$1,309 doctor's account placed for collection (SOR ¶ 1.j) offered to settle for half the balance and allow her to make payment over a six-month period. (Tr. 49) Applicant has not accepted the offer. She has not paid or made a repayment arrangement on any of the other alleged SOR accounts.

In September 2009, Applicant completed another personal financial statement, which indicated her monthly net remainder was \$333. (Ex. B) Applicant's husband is currently unemployed. (Tr. 25) They have decided to move to a smaller house, thereby reducing their rent from \$1,200 per month to \$600. (Tr. 36) Applicant is repaying two payday loans with monthly fees of \$260. (Tr. 37) With the smaller home, Applicant anticipates her insurance premium and utilities will be reduced. (Tr. 43) Applicant hopes to start addressing her past due obligations. Applicant asserts she has been poor all her

life and has dealt with financial issues all her adult life. (Tr. 51) She had some financial counseling in the mid-1990s, and is seriously thinking about obtaining more.

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 must be considered 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 for obtaining 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 the applicant may deliberately or inadvertently fail to 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

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion that Applicant has a history of financial problems. The SOR lists 14 accounts which are past due, written off, or placed for collection totaling approximately \$27,000. Four of the debts are each for \$75 or less and another four are under \$200 each. These eight debts total approximately \$900. Even the minor debts have yet to be addressed. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

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 application of AG ¶ 20(a) 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)). AG ¶ 20(a) does not apply.

The financial problems were not caused by conditions beyond her control. The three largest debts, which represent more than 80 per cent of the total debt, arose from two vehicle repossessions and a vacation plan. Six years ago, when asked about her finances, she was past due on five accounts. She has experienced financial difficulties all of her adult life. She has nine smaller debts, which together total less than \$900, that have not been addressed. Even the four debts for \$75 or less have yet to be paid. AG ¶ 20(b) does not apply.

In the mid-1990s, Applicant had some financial counseling and is seriously thinking about obtaining more. It does not appear that her financial problems are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant is making \$200 monthly payments on a debt (SOR ¶ 1.h) that resulted from a vehicle repossession. This represents a good-faith effort to repay the debt. I find for her as to this debt. Another creditor has offered to settle a debt placed for collection, but Applicant has yet to accept the offer or make payment on the debt. Applicant hopes to be able to repay her other debts. With time, Applicant may be able to address her debts, but there is no meaningful track record of her paying any of the SOR debts, with the one exception.

In evaluating Guideline F cases, the DOHA Appeal Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5

(App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that she has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that she has “. . . established a plan to resolve [her] financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). Applicant has failed to do this.

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.

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 facts and circumstances surrounding this case. The financial consideration security factors are unfavorable to the reinstatement of Applicant's clearance. However, the factors do warrant reweighing under the whole person concept. Failure to pay or resolve her just debts is not prudent or responsible. Applicant has a history of financial problems. When asked about her finances six years ago, she had past due accounts. She has experienced financial problems all her life and has not shown that she can manage her income and expenses.

There is no clear indication that the problem is being resolved or is under control. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to

the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a –1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.n:	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.

CLAUDE R. HEINY II
Administrative Judge