DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 09-02838
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

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

September 15, 2010

Decision

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

On October 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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).

In a response dated October 26, 2009, Applicant admitted all four allegations raised under Guideline F and requested an administrative determination. On March 9, 2010, Department Counsel submitted a File of Relevant Material (FORM), which included nine attached items. Applicant timely responded to the FORM by submitting an undated letter and additional materials. The case was assigned to another DOHA administrative judge on April 27, 2010, then reassigned to me on September 7, 2010, for caseload considerations. Based on a review of the case file, submissions, and

exhibits, I find Applicant failed to meet her burden regarding the security concerns raised. Security clearance denied.

Findings of Fact

Applicant is a 46-year-old team leader who has worked for her present employer, a government contractor, since 2003. She earned a high school diploma and has experience as an aircraft mechanic. In requesting an administrative determination, she offered scant facts regarding her personal life or current financial situation.

Applicant was divorced in 1988. Except for a period of about three months of unemployment in early 2003, she has worked steadily since September 2001. Between 2001 and today, she has twice struggled with some financial issues. First, in 2001, she worked away from her home, incurring additional costs. Second, in December 2008, she accepted a supervisory position which resulted in a pay cut of approximately $1,600 a month.[1]

In 2009, Applicant depicted her financial situation as being "tight," barely making "enough to pay her living expenses, vehicle payments, and credit card monthly minimum payments."[2] At the same time, she commented that she "does do some gambling."[3] From 1998 until 2001, she would frequent a local casino every Friday she received her pay check, taking about $100 with her each time.[4] More recently, she traveled about an hour and a half to a casino about twice a month, taking $200 to $600 with her each trip.[5] In 2009, Applicant stated that she did not feel she had a gambling problem.[6] In her 2010 response to the FORM, she noted that she "joined Gambler Therapy."[7] No evidence was offered describing Gambler Therapy's program. There is no direct evidence indicating that her debts are gambling related.

At issue in the SOR are three debts, noted at SOR allegations ¶¶ 1.a - 1.c.[8] In her response to the SOR, Applicant admitted the debts. SOR allegation ¶ 1.a is for a

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[1] FORM, Item 8, Interrogatories, dated Jul. 8, 2009, at 4.

[2] FORM, Item 7, Interrogatories, dated Jul. 8, 2009, at 4.

[3] *Id*.

[4] *Id.*

[5] *Id.* Applicant admitted she would spend $400 to $600 per casino visit in response to the SOR. In FORM, Item 7, at 4, she noted that she took $200 to $300 with her on her casino trips, then stated that "she is trying to cut back on going as the casino is not paying very well and she could use the money for her bills."

[6] *Id.*

[7] Response to FORM, undated.

[8] Applicant admitted SOR allegation ¶ 1.d, which states: "You spend approximately $400.00 to $600.00 a month gambling."

medical services account for $187. The debt is from six years ago.[9] Applicant wrote that she previously tried to pay this balance, but that her payment was returned as undeliverable. She provided evidence that the debt was paid on April 6, 2010.[10]

SOR allegations ¶¶ 1.b and 1.c are for collection accounts in the amounts of $4,984 and $4,136, respectively. Applicant's December 2008 and May 7, 2009 credit reports, included as Item 5 and Item 6 of the FORM, note that the former account ($4,984) was opened in October 2007. It reflected a high credit limit of $3,675 and a November 2002 date of last activity. The December 2008 credit report reflects the entity's address and phone number. The credit reports also note that the latter account ($4,137) was opened in October 2007 with a high credit limit of $4,136, a balance of $9,411, and a date of last activity of October 2008. The latter is noted as being a collection effort on behalf of the banking account entry reported immediately above its own entry, for a charged-off account with a balance of $4,136.[11] Given the one dollar difference between $4,137 and $4,136, these two accounts may be assumed to be related. Applicant argues that SOR allegations ¶¶ 1.b and 1.c are both collection efforts for the $4,136 charged-off account, but provided no evidence linking the debt at SOR allegation ¶ 1.b for $4,984 to the charged-off account. Regardless, Applicant notes that the two accounts at issue were poised for removal from her credit report in October 2009. She was advised by attorneys not to make payments on either accounts because "[i]t would have started the 7 years of bad credit over again."[12] She wrote that the "2 credit cards are no longer on my credit report and NO I'm not going to open that can of worms again."[13] (emphasis in the original)

As noted, Applicant's current finances are "tight," and she is barely making enough to meet her monthly obligations.[14] There is no evidence that she has sought or received financial counseling, nor is there evidence of any additional sources of income or savings. Applicant expressed no concern regarding the debts noted at SOR allegations ¶¶ 1.a and 1.b, noting only that they are now off her credit report. She presented no evidence linking the two collection accounts as being duplicative efforts. Applicant stresses that she does not pose a threat to the national security. She feels

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[9] Response to FORM, *supra*, note 7.

[10] *Id.*

[11] The underlying account was opened in 2001 and ultimately closed by Applicant when the balance was approximately $2,900. Applicant stated that she closed the account because she could not make the minimum payments. She stated that she was later advised that the account was sold to the same entity as is reflected in SOR allegation ¶ 1.b. That entity is also noted as having been the source for the balance owed in SOR allegation ¶ 1.c, although there is no evidence showing that the two collection accounts are for the same underlying account balance. *See* FORM, Item 7, *supra*, note 2, at 3, and FORM, Item 5, dated Dec. 3, 2009.

[12] Answer to the SOR, Oct. 26, 2009.

[13] Response to FORM, *supra*, note 7.

[14] FORM, Item 7, Interrogatories, *supra,* note 2, at 4.

that this process has been dehumanizing and degrading.[15] Applicant stated: "You already revoked my clearance last year for the 1 year I had it. I'll just have to submit paper work again next year and every year after that until it's allowed."[16]

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. The AG lists 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 over-arching adjudicative goal is a fair, impartial, and commonsense 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant's responsibility to present "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."[17] The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.[18]

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 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.

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[15] Response to FORM, *supra*, note 7.

[16] *Id.*

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

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

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."[19] "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[20] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.[21] A security clearance denial does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, "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 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."[22] It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."[23] Here, Applicant admitted that her credit reports reflected three delinquent debts, totalling approximately $9,307. She also admitted that she has gambled, spending about $200 to $600 a month at casinos. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply.[24] With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Two of the delinquent debts at issue continue to be neglected. Although Applicant argued that they both represent the same debt, she provided no evidence that they are duplicative efforts by two separate collection agencies for the same account. She offered no documentary efforts demonstrating any efforts to verify those accounts or to dispute them with any of the three leading credit reporting bureaus. She is content that they were removed from her credit report last year, unresolved and unaddressed, through no efforts of her own. 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

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[19] *See also* EO 12968, § 3.1(b) and EO 10865 § 7.

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

[21] *Id*.

[22] AG ¶ 18.

[23] *Id.*

[24] In the absence of evidence that Applicant's gambling is or was compulsive or addictive, AG ¶ 19(i) does not apply.

doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

Applicant was divorced over a decade ago and there is no evidence that the debts at issue are related to that divorce. In 2001, she worked away from home, incurring higher expenses, but she provided no narrative linking the debts at issue to events in 2001. Indeed, the evidence shows that 2001 was the year she opened the account underlying the collection effort noted in SOR allegation ¶ 1.c. In December 2008, Applicant accepted a supervisory position that entailed a pay cut. There is no evidence, however, that her promotion led to the creation of the accounts noted in SOR allegations ¶¶ 1.b and 1.c, nor that the pay cut led her to become delinquent on those debts. Therefore, regarding the debts noted in allegations ¶¶ 1.b and 1.c, Financial Considerations Mitigating Condition 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) does not apply.

Without evidence or any indication that Applicant has received or is receiving financial counseling, FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) does not apply. Moreover, while Applicant paid the $187 debt noted in SOR allegation ¶ 1.a, she volitionally chose to ignore the other two accounts at issue, obviating application of FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

The burden for mitigation in these proceedings is placed squarely on Applicant. Lacking additional evidence as to her handling of the accounts at issue, any pursuit of financial counseling, or her present finances, Applicant failed to mitigate financial considerations security concerns.

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). 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors.[25] Applicant is a mature woman who has risen to a supervisory position. She has

[25] Examination of the "whole-person" in this matter is limited due to Applicant's failure to supplement the record with more personal information that might be relevant and material to this case.

been continuously employed since at least 2001. She is currently single and earning insufficient income to cover her monthly expenses.

Applicant chose to gamble at casinos at the same times she stated she was short on available funds. She continued to gamble despite her difficulty paying bills and her apparent dissatisfaction with the casino's odds. To her credit, she is now in Gamblers Therapy, although she failed to describe that program and she did not indicate whether she is still gambling.

When faced with two negative credit report entries that Applicant suspected might be duplicative efforts to collect on one charged-off account, she did not attempt to verify or dispute those entries in order to confirm her suspicions. Such a process could have been initiated on-line or by letter with the credit reporting bureaus. Rather, she chose to ignore those accounts until they were deleted from her credit report.

Applicant finds this process to be degrading and dehumanizing, failing to appreciate the Government's interest in the trustworthiness, judgment, and willingness to abide by rules and regulations of those seeking a security clearance. Here, Applicant showed that she paid one of the debts at issue. Her intentional disregard of the other two accounts, however, demonstrates an admitted effort to skirt her financial obligations, as well as poor judgment in light of her pursuit of a security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. As noted above, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. In light of the foregoing, security concerns remain unmitigated. Clearance 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
Subparagraphs 1.a	For Applicant
Subparagraphs 1.b	Against Applicant
Subparagraphs 1.c	Against Applicant
Subparagraphs 1.d	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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge