



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



In the matter of:)	
)	
)	ISCR Case No. 09-03109
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Pro Se

January 13, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire (SF 86) on December 30, 2008. On July 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On August 27, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 9, 2009. The case was assigned to another administrative judge on September 17, 2009. On October 5, 2009, a Notice of Hearing was issued, scheduling the hearing for October 28, 2009. On October 27, 2009, the case was transferred to me due to a family emergency of the assigned administrative judge. The case was heard on October 28, 2009.

On October 8, 2009, Applicant submitted a request for continuance until March 2010, to allow her additional time to pay some debts, dispute balances, and to settle other accounts. The request for continuance was not acted upon prior to the case being transferred to me. At the beginning of the hearing, I heard Applicant's reasons for requesting a continuance. I denied the continuance but held the record open until December 1, 2009, to allow Applicant time to submit additional documents. The request for continuance and the government's response are marked as Hearing Exhibit (HE) I. (See *also* Tr at 13-16)

During the hearing, the government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered no exhibits. After the hearing, Applicant timely submitted a 21-page document that was admitted as AE A. Department Counsel's response to AE A is marked as HE II. The transcript (Tr) was received on November 5, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admits all of the SOR allegations.

Applicant is a 50-year-old security guard employed by a Department of Defense contractor applying for a security clearance. She has worked for her current employer for the past three years. This is her first time applying for a security clearance. She is a high school graduate and has taken some college courses. She is single and has three sons, ages 25, 27, and 30. (Tr at 6-10, 34; Gov 1.)

Applicant's security clearance background investigation revealed that she has the following delinquent accounts: a \$128 judgment filed against her in July 2008 (SOR ¶ 1.a: Gov 2 at 7; Gov 3 at 1; Gov 4 at 1; Gov 5 at 3); a \$613 judgment filed against Applicant in April 2005 (SOR ¶ 1.b: Gov 2 at 7, 33-36, 39; Gov 3 at 1; Gov 4 at 1; Gov 5 at 3); a \$295 cable television account placed for collection in September 2008 (SOR ¶ 1.c: Gov 3 at 2; Gov 4 at 1); a \$35 medical account placed for collection in December 2002 (SOR ¶ 1.d: Gov 2 at 8; Gov 3 at 2; Gov 4 at 1; Gov 5 at 6); a \$10,488 balance owed after an automobile repossession placed for collection in November 2002 (SOR ¶ 1.e: Gov 2 at 8, 15-16, 39; Gov 3 at 2; Gov 4 at 2; Gov 5 at 7); a \$381 cell phone account placed for collection in July 2008 (SOR ¶ 1.f: Gov 2 at 7, 39; Gov 3 at 2; Gov 4 at 2; Gov 5 at 4); and a \$631 cell phone account placed for collection in June 2003 (SOR ¶ 1.g: Gov 2 at 7, 39; Gov 3 at 2; Gov 4 at 2; Gov 5 at 4).

Additional delinquent accounts include: a \$666 utility account placed for collection in February 2007 (SOR ¶ 1.h: Gov 2 at 8-9, 39; Gov 3 at 2; Gov 4 at 2; Gov 5 at 6, 8); a \$495 credit card account placed for collection in July 2006 (SOR ¶ 1.i: Gov 2 at 8, 39; Gov 3 at 2; Gov 4 at 2; Gov 5 at 6); two medical accounts in the amounts of \$267 and \$333, placed for collection in December 2005 and April 2006 (SOR ¶ 1.j: Gov 2 at 7; Gov 5 at 3-4); and a \$32,500 mortgage foreclosure in May 2008 (SOR ¶ 1.k: Gov 2 at 8, 38; Gov 3 at 2; Gov 4 at 2; Gov 5 at 7).

The status of the delinquent debts are:

SOR ¶ 1.a, \$128 judgment: Applicant claimed that she paid the \$128 judgment. She provided two receipts after the hearing showing that she made a \$134.58 payment to the creditor on May 21, 2009, and a \$312.49 payment on May 22, 2009. It appears the payments related to personal property taxes for her automobiles. It cannot be determined that the payments relate to the \$128 judgment. There is a possibility the debt alleged in SOR ¶1.a was resolved, but there is insufficient evidence to establish that it has been resolved at this time. (Tr at 29-31; AE A at 13-14)

SOR ¶ 1.b, \$613 judgment for past due rent: Applicant provided proof that the judgment alleged in SOR ¶ 2.b was resolved. She provided a summary of her rental payment history which showed that she was up-to-date on her rental payments. SOR ¶ 1.b is found for Applicant. (Tr at 31-33; AE A at 2-7)

SOR ¶1.c, \$295 cable bill, placed for collection: Applicant claims that this was her 25-year-old son's account. During the hearing, she testified that she intended to include this in a debt consolidation plan that she is in the process of entering into with a financial establishment. After the hearing, no proof was provided that she entered into a debt consolidation plan. The debt remains unresolved. (Tr at 33-34, 65)

SOR ¶ 1.d, \$35 medical account placed for collection: Applicant believes that this is a dental bill. She intended to include it in a debt consolidation plan. After the hearing, no proof was provided that she entered into a debt consolidation plan. The debt remains unresolved. (Tr at 35-36, 46, 65)

SOR ¶ 1.e, \$10,488 balance owed after an automobile repossession: Applicant attempted to work out a payment agreement with the collection agency. She is able to afford a monthly payment of \$130. She claimed the collection agency was unwilling to accept that amount. In 2005, she was unable to make the payments, she told the company to come pick up the car. She still has the car, but it no longer works. She intended to include it in a debt consolidation plan. After the hearing, no proof was provided that she entered into a debt consolidation plan. The debt remains unresolved. (Tr at 39, 43-46)

SOR ¶ 1.f, \$38 cell phone account placed for collection: Applicant intended to include this debt in a debt consolidation plan. After the hearing, no proof was provided that she entered into a debt consolidation plan. The debt remains unresolved. (Tr at 65)

SOR ¶ 1.g, \$631 phone account placed for collection: Applicant intended to include this debt in a debt consolidation plan. After the hearing, no proof was provided that she entered into a debt consolidation plan. The debt remains unresolved. (Tr at 65)

SOR ¶ 1.h, \$666 utility account placed for collection: Applicant intended to include this debt in a debt consolidation plan. After the hearing, no proof was provided

that she entered into a debt consolidation plan. The debt remains unresolved. (Tr at 36, 65, 67)

SOR ¶ 1.i, \$496 credit card account placed for collection: Applicant intended to include this debt in a debt consolidation plan. After the hearing, no proof was provided that she entered into a debt consolidation plan. The debt remains unresolved. (Tr at 65)

SOR ¶ 1.j, two medical accounts, \$267 and \$333 placed for collection: Applicant intended to include these two debts in a debt consolidation plan. After the hearing, no proof was provided that she entered into a debt consolidation plan. The debts remain unresolved. (Tr at 65)

SOR ¶ 1.k, \$32,500 mortgage foreclosure: Applicant purchased a mobile home that she shared with her boyfriend, the children's father. In 2001, Applicant moved out of the house because her boyfriend was abusive. He was to make the payments on the house. He left the property and stopped making payments and the mobile home was foreclosed. Applicant has not been contacted about being responsible for any deficiency judgment. Applicant's former boyfriend filed bankruptcy. She asked him for the phone number of the lawyer he talked to about the debt. She has the lawyer's phone number but has not contacted him. The status of the debt is uncertain. (Tr at 36-39, 68)

Applicant's financial problems began in 2001 after she separated from her boyfriend because of his abusive behavior. She was unable to keep up with her bills. Applicant also sends support to her mother. For the past six years, Applicant's mother cared for Applicant's granddaughter (Applicant's youngest son's daughter). When her mother cared for her granddaughter, Applicant gave her mother \$300 a month. Her granddaughter now lives with her natural mother. She still sends her mother \$60 a month. Her 27-year-old son lives with her and depends on her for support. He is a student. (Tr at 34, 36-39, 41, 52-54, 70-71; Gov 2 at 9)

Aside from the debts alleged in the SOR, Applicant owes a state tax debt for tax year 2004. She is not sure how much she owes. She has no additional delinquent accounts. (Tr at 55, 71-72)

Applicant's net monthly income is approximately \$2,400. Her rent is \$1,065. The utilities are included in the rent. Her car payment is \$480. Her car insurance is \$176. Her groceries are \$300. She pays \$200 for cell phones for herself and her son. She sends \$60 to her mother. She tithes about \$60 a month to her church. (Tr at 39-43, 57) Her total monthly expenses are approximately \$2,341. Based on these figures, after expenses, Applicant has approximately \$59 left over each month.

On June 29, 2009, Applicant sought financial counseling with her credit union. She initially attempted to consolidate her loans through the credit union. (Gov 2 at 18-26) At the hearing, she indicated that she was seeking to consolidate her debts with another company. She contacted this company about three months prior to the hearing. No consolidation plan had been formed at the time of the hearing. (Tr at 46, 50, 59-65)

She was given the opportunity to provide a copy of the debt consolidation plan after the hearing. She provided a notice of privacy statement dated July 31, 2009, from the new company with whom she is attempting to consolidate her debts, but provided no evidence that the consolidation plan was currently in progress. (AE A at 19)

Applicant provided several training certificates and two favorable reference letters. The reference letters describe her as “a consummate professional”, “a pleasure to work with,” and indicates that she “provides superior customer service.” (AE A at 15-18, 20-21)

Although not alleged in the SOR, the report of investigation revealed that Applicant abused crack cocaine from 2005 to 2006. She used crack cocaine at least once a week. She used crack cocaine with her sister, who is now deceased. In September 2006, she was arrested for possession of cocaine after she purchased a \$20 bag of crack cocaine. She was ordered to complete a drug program and take urinalysis once a week. She successfully completed the program. (Gov 1, question 24A; Gov 2 at 9-10) I conclude that Applicant’s drug use created additional financial problems for Applicant and/or prevented her from resolving her debts during the time she abused drugs. I also considered this information under the whole person factors

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 when determining 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.

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 as to 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 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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has had financial difficulties for several years. The SOR alleged 11 delinquent accounts, an approximate total balance of \$46,832. Her two largest debts involve a \$32,500 mortgage foreclosure and a \$10,488 automobile repossession. During the hearing, it was discovered that Applicant owes a state tax debt for tax year 2004. The amount of the debt is unknown.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden

of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. Applicant has had financial problems for several years. Most of the delinquent accounts remain unresolved. While Applicant looked into the options of credit counseling or consolidating her debts, she provided no proof that she entered into a debt consolidation plan at the close of the record. It is unclear whether Applicant owes any money after her mortgage foreclosure. Applicant's past financial history and her unresolved debts raise questions about her reliability, trustworthiness, and good judgment.

FC MC ¶ 20(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) partially applies. Applicant's financial problems began when she moved away from an abusive relationship. She also provided for her granddaughter for the past six years, supports her 27-year-old son, and sends her mother \$60 each month. Leaving her abusive partner is a circumstance that was beyond her control that contributed to her financial situation. However, she failed to establish that she acted responsibly under the circumstances. It has been nine years since Applicant moved away from her abusive partner. She has had sufficient time to get control of her financial situation. While not alleged in the SOR, Applicant's background investigation revealed that she abused crack cocaine from 2005 to 2006. Her drug use more than likely contributed to her financial problems and was within her control. While circumstances beyond her control contributed to her financial problems, she has not acted responsibly with regards to resolving her delinquent accounts.

FC 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) does not apply. While Applicant sought financial counseling this past summer, she has yet to establish a debt consolidation plan. It is likely that her income is insufficient to resolve her delinquent accounts. Applicant's financial problems are unlikely to be resolved in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debt alleged in SOR ¶ 1.b. The debt alleged in SOR ¶ 1.a may be resolved, but there is insufficient information to conclude the debt is paid. Applicant is attempting to consolidate her debts in order to resolve her remaining accounts. However, the record evidence is insufficient to conclude that Applicant has established and implemented a debt consolidation plan to resolve her delinquent accounts. Overall, she has not made a good-faith effort to

resolve her delinquent accounts. Applicant has not mitigated the concerns raised under Guideline F.

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. I considered Applicant's separation from her boyfriend in 2001, her financial difficulties, and the additional support she provides to her family members. Applicant has encountered financial problems for a long time. While she was researching the possibility of entering into a debt consolidation plan to resolve her debts, at the close of the record, she had no plan in place to resolve her delinquent accounts. She did not mitigate the concerns raised under financial considerations and did not meet her ultimate burden of persuasion to obtain a favorable clearance decision.

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:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against 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:	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 interests to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge