



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03807
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro Se*

March 16, 2010

Decision

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

Applicant signed a security clearance application (e-QIP) on February 27, 2009. On October 28, 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 revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective for SORs issued after September 1, 2006.

In a response dated November 23, 2009, Applicant admitted the four allegations under Guideline F and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated December 31, 2009. Applicant received the FORM on January 11, 2010, but did not submit any additional information for consideration. The case was assigned to me on March 7, 2010. 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 24-year-old professional analyst working for a defense contractor. She began working for her present employer in January 2009. Prior to this position, she was unemployed for about three months. Applicant has a high school diploma and a bachelor's degree. She is single. In responding to the SOR, Applicant noted that she denied the applicability of Guideline F, but admitted she owed approximately \$19,365 on four delinquent credit cards.¹

In July 2006, Applicant's sister approached Applicant and their mother regarding an investment opportunity. Applicant called the contact person regarding the investment and was told that they would help her take out credit cards, from which cash advances could be made and applied to its investment strategy. Under this scheme, she was told she would be reimbursed and, eventually, make a profit from the investment. She proceeded on the plan, opening four credit card accounts. From those accounts, she took two cash advances of \$5,000 each and two cash advances of \$2,000 each. She then turned the \$14,000 over to the investment entity. In the interim, she never visited the entity's physical address and no evidence indicates she ever investigated the entity or its scheme.

Initially, Applicant made minimum payments on the cards and was reimbursed for her payments. In February 2007, however, she was unable to contact anyone at the investment entity. She then discovered neither her sister nor their mother could make contact with anyone from the investment group. Her sister informed the Federal Bureau of Investigation (FBI) later that month of their situation. They soon learned that a number of similar complaints had been received regarding the scheme. On behalf of her mother and Applicant, Applicant's sister worked with the FBI.

Since February 2007, Applicant has relied on her sister to work with FBI investigators. That same month, Applicant stopped making payments on the four credit cards, which she no longer uses. Without seeking counsel, she chose to await the outcome of the FBI investigation before she starts to pay off her debts. In the interim, she hopes that some of her money will be recovered. She has had no contact with any of the four credit card companies. When contacted by collection agents for three of the cards, she only informed them that she was a victim of fraud waiting for an FBI investigation to conclude.

Otherwise, Applicant lives within her means and her financial condition is stable. She has a total net monthly income of about \$2,647 and expenses amounting to about \$800. Regarding her assets, Applicant only notes a savings account with about \$800. She has no other delinquent debts. Applicant has not received financial counseling.

¹ The facts in the case are derived from interrogatories conducted in April 2009 and July 2009. See Ex. 5-6 (Interrogatories), respectively.

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 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. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

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.

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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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.”⁸ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”⁹ Here, Applicant admitted that she has approximately \$19,365 in delinquent debts. To date, those debts remain unpaid, none of the credit card companies at issue have been contacted since the accounts became delinquent in 2007, and her contact with collection agencies has been minimal. 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. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s debt was essentially incurred when she was the victim of fraudulent inducements by parties unrelated to her creditors.¹⁰ In the intervening three years, however, she has done little more than wait for the FBI investigation to conclude. 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) does not apply because she has not acted responsibly toward her creditors.

⁵ See *also* EO 12968, § 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

⁸ Revised Adjudicative Guideline (AG) ¶ 18.

⁹ *Id.*

¹⁰ There is no evidence that Applicant’s brief period of unemployment at the end of 2008 gave rise to any of the debts at issue.

Applicant opened credit cards and took cash advances in 2006, relying only on representations from her sister and a representative of the investment entity. She never visited the entity's physical address. There is no evidence she ever verified the business' legitimacy. When she discovered the investment scheme was most likely a scam, she relied on her sister to work with the FBI. She failed to contact her credit card companies directly, only informing subsequent collection agents that she was probably a victim of fraud that was being investigated.

Rather than make some arrangement with either the credit card companies or the collection agencies, she is waiting resolution of the FBI investigation in the hope she might recover some of her investment. By investing before investigating the entity that induced her to open credit cards, take out high cash advances, and turn the money over to it, she proceeded at her own peril. In continuing to neglect significantly high and delinquent account balances, she has similarly chosen to proceed without taking reasonably prudent actions to pay her creditors. There is no evidence that she has consulted a financial counselor or personally sought the advice of an attorney regarding her financial situation. While she must be commended for her compliance with the FBI's investigation, her total neglect of the credit cards companies and accounts at issue is troublesome. Neither 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), 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), nor FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies.

While Applicant's acquisition of delinquent debt may be mitigated, her continued neglect from February 2007 to the present of the four accounts at issue does not mitigate financial considerations security concerns regarding her present financial situation. Her net monthly income is about \$2,647 and she has expenses amounting to only about \$800. She should have sufficient remainder to arrange payment plans with her creditors pending resolution of the FBI investigation. Also of concern is the fact that she presented no evidence as to how she hopes to address her delinquent debt either in the near future or after the resolution of the FBI investigation. Consequently, her present ability to address the nearly \$20,000 at issue appears remote. Based on the few facts presented by the Applicant, she failed to meet her burden in mitigating finance-based 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):

(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.

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. Applicant is a young, educated woman who became an unfortunate and unknowing victim of a scam she did not first investigate. As a result, she was left with nearly \$20,000 in debt which has been delinquent for about three years.

Since acquiring that debt, Applicant has made minimal effort toward working with her creditors. The evidence reflects that her only initiative in this matter outside of any efforts with the FBI was in informing the collection agents of three of the four credit cards at issue that she was a likely victim of fraud. There is no evidence the fourth account holder was notified of her situation. Moreover, there is no evidence that she ever discussed with her creditors any strategies or plans to honor these debts which, although induced through fraud, were legitimately created through her own initiative and her lack of prior investigation. Were this fraud recently perpetrated or had Applicant personally sought the aid of a financial counselor or attorney, the situation might be different. Such neglect, however, has continued since February 2007, when Applicant first became aware that she was a likely victim of fraud. Unfortunately, based on the record, her situation demonstrates misplaced reliance and poor judgment. The clearly consistent standard indicates that security clearance determinations should err on the side of denials. Financial considerations security concerns remain. 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

Subparagraph 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