



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



In the matter of:)	
)	
)	ISCR Case No. 09-04423
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

May 12, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On January 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 22, 2010, and requested a hearing before an administrative judge. The case was assigned to me on March 12, 2010. DOHA issued a Notice of Hearing on March 17, 2010. I convened the hearing as scheduled on April 15, 2010. The Government offered Exhibits (GE) 1 through 9.

Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through T, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 23, 2010.

Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶¶ 1.c, 1.m, and 1.n. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. She was married from 1989 to 1995, and has a 19-year-old child from the marriage. The child has lived with her father since 2001 and is now in college. Applicant also has two children, ages 13 and 14, from a prior relationship, who live with their father. Applicant has a high school education and has attended college, but did not earn a degree.¹

Applicant was unemployed from November 2001 to February 2002. She was unemployed from February 2005 until sometime in 2006 (she could not recall the exact month). She stated she was homeless from March 2006 to June 2006. She was unemployed from May 2007 to July 2008, and again from March 2009 to June 2009. Applicant was interviewed by an Office of Personnel Management (OPM) investigator on September 5, 2008. She stated she intended to pay her delinquent debts when she got a job.²

Applicant admitted that she owes the debt in SOR ¶ 1.a (\$755) for an electric bill owed since 2002. She was collecting unemployment benefits while living in an apartment and could not pay the bill. She could not afford to pay the bill even after she obtained employment. She sent a letter to the creditor on February 26, 2010, promising to pay \$30 on the 16th of each month, beginning in April 2010. No payments had been made at the time of her hearing.³

The debt in SOR ¶ 1.b (\$424) is a medical debt. She incurred the debt in 2009 and has not paid it. She intended to begin payments on April 16, 2010. Applicant provided documentation that she has paid many medical bills. She believes some of the medical bills did not belong to her. However, she acknowledged this one belongs to her.⁴

¹ Tr. 64-66, 78.

² Tr. 30, 50.

³ Tr. 25-32; AE I.

⁴ Tr. 30-34; AE I.

The debt in SOR ¶ 1.c (\$215) was for telephones services delinquent for approximately a year and a half. It is paid.⁵

The debts in SOR ¶¶ 1.d (\$946) and 1.e (\$717) are student loans. Applicant incurred the debts in 2003. She stopped paying the debts when she was laid off from her job. She made a \$1,300 payment in February 2009, and the amount alleged is the remainder owed. In 2006, the loans were deferred and she made reduced payments of \$30 a month. She has not made any payments since June 2009, because she was unemployed and was paying other bills. She sent the creditor a letter and promised to pay \$60 a month beginning on April 16, 2010. The debts remain unpaid.⁶

The debt in SOR ¶ 1.f (\$1,550) is for a car Applicant purchased in 2006. She was working, but not earning enough money to afford the payments. The car was repossessed after she missed two payments. She sent the creditor a letter promising to begin payments of \$50 a month on April 16, 2010. The debt remains unpaid.⁷

The debt in SOR ¶ 1.g (\$643) is for a bank account that was closed and checks that had not cleared. She believes the amount owed is \$462 since May 2007. She sent the creditor a letter promising to pay \$75 a month beginning on April 16, 2010. The debt remains unpaid.⁸

The debt in SOR ¶ 1.h (\$2,778) is owed to an apartment complex for unpaid rent. Applicant moved from the apartment in 2002 because she did not have a job and broke the lease. She began repaying the debt 2008. She made four payments of \$115 since October 2008, the last one occurring on March 6, 2010. She provided a copy of an installment agreement dated March 12, 2010, with the creditor in which she agreed to pay \$115 every ten days on the present balance of \$2,432. The debt remains unresolved.⁹

The debt in SOR ¶ 1.i (\$6,073) is for child support arrearages. Applicant has not lived with the father of her two younger children since 2001. He had custody of the children. She had a verbal agreement with the father for child support. In 2006, he petitioned the court for support and was awarded child support of \$274 a month and arrearages. The state child support division garnished Applicant's wages for a period of time. Her wages are not presently being garnished. The child support amount was never reduced when she was unemployed. She currently pays \$68 for the arrearages owed. She does not have a current child support order and she only pays the arrearage. Applicant explained that she and the father of her two younger children have another

⁵ Tr. 35-36; AE K, O.

⁶ Tr. 36-44; GE 2; AE K, I.

⁷ Tr. 44-47; AE I.

⁸ Tr. 47-51; AE I, J.

⁹ Tr. 51-59; AE K, Q

verbal agreement. She provides clothes for the children twice a year as a means of support. She stated the only support order she has is one for arrearages, of which the current balance is \$5,560.¹⁰

The judgment in SOR ¶ 1.j (\$1,790) is for damages for a car accident that occurred in May 2004. Applicant did not have car insurance. She caused the accident and went to the victim's house and gave him a check for \$600 for the damages. On her security clearance application (SCA), she stated the victim cashed the check and she did not know why there was a judgment against her.¹¹ She admitted the police investigated the accident and she was cited and fined for not having insurance. In her OPM interview, she stated the victim gave her an estimate of the damages as \$1,800 and she gave him a check for that amount. She said the check was cashed. She has attempted to get a copy of the check, but has been unsuccessful. She never received a summons. The judgment has not been paid and she intended to begin payments on April 16, 2010.¹²

The debt in SOR ¶ 1.k (\$691) is for a bank account that was closed in 2007, on which Applicant had an outstanding balance. Applicant intended to begin paying \$75 a month on the account beginning on April 16, 2010. Applicant stated that her identity was stolen and this could be a result of that. She did not question the bank regarding the validity of the debt.¹³

The debt in SOR ¶ 1.l (\$4,689) is for a hospital bill from 2008. Applicant did not have health insurance. She spoke to the creditor and promised to pay \$50 a month beginning on April 16, 2010. She made one payment of \$50 on March 6, 2010.¹⁴

Applicant denied the judgment in SOR ¶ 1.m (\$3,010) in her answer to the SOR, stating she did not know what the account was about and it was "the first I heard of this account." At her hearing, Applicant acknowledged that the creditor is a private school where her oldest child attended in 1994. She explained she was never notified of the judgment. She has not contacted the creditor, but plans to do so in the future and make payment arrangements.¹⁵

Applicant denied that she was arrested in 1998 for issuing bad checks under \$200. She stated she was not found guilty of this offense. She believed someone was using her identity and wrote a check. She recalled that she had a check returned from a

¹⁰ Tr. 22-24, 59-64; 66-82; GE 2, 8; AE S.

¹¹ GE 1.

¹² Tr. 93-102.

¹³ Tr. 102-112.

¹⁴ Tr. 112-114; AE I, K.

¹⁵ Tr. 114-117.

store and she went to the store and paid the check. She contacted the county to inquire if she had a criminal record and her record was clean.¹⁶

Applicant admitted that she and her husband filed for Chapter 7 Bankruptcy in 1995 and had their debts discharged. She attributed her financial problems at that time to her youth.¹⁷

Applicant explained that she will make payments on many of her debts on April 16, 2010, because that is the day she gets paid. She confirmed that she filed her 2009 federal income tax returns. She owes \$1,400. She set up a payment plan of \$100 a month to pay the amount. She acknowledged that she is accountable for all of her debts.¹⁸

Applicant has no money in a savings or a checking account. She does not have any investment or retirement accounts. She has a monthly budget that she prepares each month showing what bills she intends to pay. She has been sending her 19-year-old daughter about \$300-\$400 a month since June 2009 to help with college expenses.¹⁹

Applicant provided a written statement that says she believed some of the bills on her credit report did not belong to her. She notified all three credit bureaus and requested an identity theft notice on her accounts. She stated that she paid bills she did not believe belonged to her because of her security clearance issues.²⁰

Applicant provided a reference letter from a manager. The manager described Applicant as a responsible employee who consistently exceeded expectations in the performance of her job duties.²¹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are considered in evaluating an applicant's eligibility for access to classified information.

¹⁶ Tr. 117-121; AE N.

¹⁷ Tr. 121-123.

¹⁸ Tr. 124-125.

¹⁹ Tr. 53, 79-80, 82, 91.

²⁰ AE M.

²¹ AE L.

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, 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 and has the ultimate burden of persuasion to obtaining a favorable clearance 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 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant has a history of being unwilling or unable to meet her financial obligations since 2002. She has debts that remain unpaid and delinquent. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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 behavior is recent because her delinquent debts remain unpaid. She paid one debt, made inconsistent or sporadic payments on others, and promised to institute payments on many in the future. At this point, it is too early to conclude that her

financial problems are unlikely to recur. I find mitigating condition AG ¶ 20(a) does not apply.

Applicant experienced extended periods of unemployment that drastically affected her ability to pay her debts. Her unemployment was outside of her control raising the application of AG ¶ 20(b). In order for that mitigating condition to be fully applicable, Applicant must have acted responsibly under the circumstances. In this case, Applicant made some effort to make payments on some of her delinquent debts, but in general, she has only promised to make payments in the future and has not yet established a consistent record of making the promised payments. She agreed to make monthly payments of \$115 on the debt in SOR ¶ 1.h and provided documentary proof of four payments made since October 2008, which reflects an inability to comply with the terms of the agreement. At this time, I am uncertain that she is willing and able to consistently make all the payments she has promised to numerous creditors. I find AG ¶ 20(b) only partially applies.

There is no evidence that Applicant received financial counseling. She stated she prepares a budget each month. She has paid one debt, made sporadic payments on a few others, and promised to begin paying others in the future. She has approximately \$23,000 in delinquent debts that remain unpaid. She also has a payment plan with the Internal Revenue Service to pay her 2009 taxes. There are not clear indications that Applicant's financial problems are being resolved or under control. Applicant has not initiated good-faith payments with her creditors to resolve her debts. She agreed to make monthly payments, but without a detailed budget and proof of consistent monthly payments, it is uncertain whether she will be able to fulfill her agreements. At this juncture, it is too early to conclude that Applicant's financial problems are under control. I find AG 20 ¶¶ 20(c) and 20(d) do not apply. Applicant disputed that certain debts were valid or belonged to her. However, she did not provide documented proof for the basis of her dispute or any action she took to resolve the issues. Therefore, I find AG ¶ 20(e) does not apply.

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 relevant 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. Applicant is a high school graduate. She and her former husband had their debts discharged in bankruptcy in 1995. Applicant experienced extended periods of unemployment. She has approximately \$23,000 in delinquent debts. She made promises to begin making monthly payments on most of her debts, but at the time of the hearing she had not started the payments. Applicant does not have a realistic formulated financial plan for resolving her delinquent debts. Applicant needs time to resolve them, formulate a reasonable repayment plan, and establish an extended record of fiscal responsibility. At this time, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the Financial Considerations guideline.

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-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge