



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



In the matter of:

ISCR Case No. 09-05241

Applicant for Security Clearance

Appearances

For Government: James F. Duffy, Esquire, Department Counsel

For Applicant: *Pro se*

October 29, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant and her spouse acquired debts totaling over \$820,000. She presented limited documentary evidence to establish financial responsibility in the acquisition of the debts, good-faith efforts in the resolution of the debts, or a current track record of financial responsibility. There are no clear indications that her financial problem are being resolved or are under control. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application on April 16, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On April 9, 2010, DOHA issued Applicant a Statement of Reasons (SOR) which specified the basis for its decision - security concerns raised under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).²

Applicant answered the SOR on April 22, 2010. She elected to have her case decided on the written record in lieu of a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated June 8, 2010, was provided to her by transmittal letter dated June 9, 2010. Applicant received her copy of the FORM on June 14, 2010. Applicant was given 30 days from the date she received the FORM to submit any objections, and information in mitigation or extenuation. She did not respond, and the case was assigned to me on August 11, 2010, to determine whether a clearance should be granted or denied.

Findings of Fact

Applicant admitted the four SOR allegations. Her admissions are incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 39-year-old administrative assistant employed by a defense contractor since January 2009. She finished high school, and graduated from a business trade school in June 1991. She married her spouse in June 1993, and they have two children, ages 17 and 13.

According to her April 2009 security clearance application, she worked for her current employer from January 1996 until June 2003, when she became a stay-at-home mom. Her employer placed her on a "casual status" from June 2003 until December 2005, when she was terminated due to her inability to work sufficient hours. She was unemployed from December 2005 until December 2008. Applicant went on vacation to Jamaica for three days in February 2002; The Bahamas for three days in February 2005; and a seven day Caribbean cruise in March of 2005. Applicant stated she was granted access to classified information at the secret level in 2002. There is no evidence she has ever compromised or caused others to compromise classified information.

In her security clearance application, Applicant disclosed that in the last seven years she had been over 180 days delinquent on some debts and that she was currently 90 days delinquent on other debts. She stated the amount of debt involved near \$76,500. She listed the following delinquent debts under her name as pending resolution under her debt relief program: AT&T (\$21,715); Bank of America (\$11,523); and Capital One (\$2,842). She listed the following debts under her husband's name:

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

Discover (\$8,060);³ Bank of America (\$12,778); Chase (\$11,440); and American Express (\$8,067).

Applicant also disclosed a defaulted home equity loan with a bank for \$80,000 (SOR ¶ 1.d, opened in November 2005), which was “pending settlement;” and a primary mortgage loan that was delinquent over 180 days for \$704,035 (SOR ¶ 1.c, opened in October 2005), which was under review for a loan modification.

In May 2009, Applicant was questioned by a background investigator about her delinquent loans and her overall financial situation. During the interview, she stated that in October 2006, her husband lost her job. She claimed that prior to October 2006, he was earning between \$180,000 and \$250,000 per year.

After October 2006, Applicant and her husband used his 401(k) retirement savings and their credit cards to pay for their day-to-day living expenses, mortgage, and other debts. In February 2007, her husband started his own business, which improved with time, but the earnings from his business were not sufficient to pay their expenses and outstanding delinquent debt. In December 2008, her husband contracted with a debt relief company to help them negotiate with the credit card companies and settle their delinquent accounts. She estimated the total credit card debt for the accounts enrolled in the debt relief program was \$76,520. She claimed they have been making monthly payments of \$1,372 to the debt relief program since December 2008.

Applicant also stated that in 2008, they contacted an attorney (a friend of the family) to help them renegotiate the terms of their mortgage (SOR ¶ 1.c) and their home equity loan (SOR ¶ 1.d). In January 2009, Applicant started her part-time job with her current employer, earning nearly \$1,700 per month. She claimed her spouse’s business continues to grow and he is now bringing home nearly \$5,000 per month. She failed to submit any documentary evidence to support most of her claims.

During her background interview, Applicant averred she and her spouse were in the process of reestablishing themselves financially, that they were current on all their financial obligations, and that they were making timely payments on their debts, except for their mortgage and home equity loan. Applicant’s September 2009 personal financial statement indicated she had a household net income of \$6,554; with monthly expenses of \$2,515; and the monthly payment of two debts for \$2,010 (debt relief program for \$1,372, and car payment of \$638 (on a total debt of \$24,000)). She claimed a net monthly remainder of \$2,029. Applicant also indicated that the total value of the mortgage in foreclosure was \$704,000, and that the home equity loan totaled \$80,000.

In her September 2009 response to DOHA interrogatories, Applicant included a chart indicating her debts under the debt relief program, the debts’ current balance, and their status. The chart included the following debts: Discover (\$10,682) (SOR ¶ 1.b, opened in March 2003), according to Applicant in settlement negotiations; Amex-gold

³ Applicant’s credit report indicates she was an authorized user on this account.

(\$8,522), in settlement negotiations; GC Services Capital One (\$3,627), settled for \$1,451; AT&T (\$24,847) in settlement negotiations; Bank of America (\$14,620) in settlement negotiations; Bank of America (\$13,636) settled for \$2,200; and Chase (\$11,440) in settlement negotiations. She also submitted a chart of her alleged monthly payments of \$1,372 to her debt relief program, indicating payments made from December 2008 until August 2009. Her evidence is inconclusive as to whether the payments were actually made to a debt relief program and the extent of actual payments made to her creditors.

Applicant failed to address her mortgage foreclosure of \$704,000 and her delinquent home equity loan for \$80,000. In her response to the interrogatories, Applicant failed to include documentary evidence of recent statements or vouchers from creditors indicating that her accounts were being resolved or the manner of the resolution. She included documentary evidence that one of her properties was pending sale after its foreclosure. Both accounts are unresolved.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec.

Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

The SOR alleges, and Applicant admitted, she and her spouse acquired four debts totaling nearly \$823,000 that are currently delinquent. One of the debts concerns a mortgage for \$704,000 that was foreclosed. Another debt concerns an \$80,000 delinquent home equity loan, and the last two SOR debts allege delinquent credit cards. Additionally, the record shows Applicant is individually or jointly liable for her delinquent accounts with AT&T (\$24,847) and Bank of America (\$14,620). AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's sparse favorable evidence fails to fully raise the applicability of any mitigating condition. Her financial problems are ongoing and her evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence to establish circumstances beyond her control contributing to her inability to pay her debts, e.g., her husband's period of unemployment and underemployment, her period of unemployment, and the slow start of her husband's business. Notwithstanding, Applicant's documentary evidence is not sufficient to corroborate many of her claims (i.e., her husband's income before he was let go) and show that she and her spouse acted responsibly in the acquisition of their debts, that they made good-faith efforts to resolve their debts,⁴ and that they have a track record of financial responsibility. AG ¶¶ 20(b) and (d) do not apply.

AG ¶ 20(c) does not apply because there are no clear indications that her financial problem is being resolved or is under control. She presented some evidence that she received some financial counseling through her debt relief program; however, the sparse evidence fails to indicate the extent of her financial counseling. Considering

⁴ I give Applicant partial credit because in December 2008, she and her husband contracted with a debt relief company to help them negotiate with the credit card companies and settle the delinquent accounts.

the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the limited documentary evidence of efforts to resolve her legal financial obligations, Applicant's information is insufficient to establish that her financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

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 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.

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. AG ¶ 2(c). I have incorporated in my whole-person analysis my comments on the analysis of Guideline F.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for her work history for a government contractor. She is considered to be a valuable employee since she was rehired by her current employer. In December 2008, she and her spouse contracted with the services of a debt resolution company to help them resolve some of their debts. These factors show some responsibility.

Notwithstanding, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant's sparse documentary evidence failed to show financial responsibility in the acquisition of the debts, good-faith efforts to resolve her financial problems in a timely manner, or a current track record of financial responsibility. The sparse mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial considerations.

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
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Subparagraphs 1.a - 1.d:	Against Applicant
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Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge