



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

In the matter of:)
)
) ISCR Case No. 09-06011
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

April 22, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 4 May 2010, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me 3 August 2010, and I convened a hearing 25 August 2010. DOHA received the transcript 3 September 2010.

¹Consisting of the transcript (Tr.), Government's exhibits (GE) 1-4, and Applicant's exhibits (AE) A-F. AE F was timely received post-hearing.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant denied the SOR allegations. She is a 51-year-old security officer employed part-time by a defense contractor since May 2002. She was also employed as a security officer by another defense contractor full-time since May 2007. She has not previously held a clearance, but requires one for her work with this employer. She is not currently employed with this second defense contractor, but is eligible for rehire if she gets her clearance. Except for the unemployment described below, she has been continuously employed as a security officer since May 2001. She has three children with her first husband, but was divorced during the pertinent time periods covered by this case. She remarried in December 2009.

The SOR alleges, and Government exhibits (GE 3-4) substantiate, 12 delinquent debts totaling over \$400,000. The delinquent accounts consist of three charged-off accounts, seven collection accounts (one of which is a delinquent second mortgage) and two home mortgages in foreclosure.

Applicant attributes her financial problems to being unemployed from February 2007 to August 2007 as a result of injuries she sustained in a slip-and-fall accident. Her finances got out of control and she has had minimal success in getting them back in order.

The delinquent debt at SOR 1.a (\$772) has been in collection since October 2009 and involves a rent dispute over a security deposit. Applicant paid \$25 on the debt in February 2010. By May 2010, the account balance had grown to nearly \$1,400, when she settled the account for \$1,000. She paid \$600 down, and was to make two monthly payments of \$200 in May and June 2010 (Answer). However, she was unable to make the scheduled payments, although she paid \$100 in July 2010 (AE D). She claimed (Tr. 103) that she would be able to pay the remaining \$300 by the end of August 2010, but provided no proof of payment in her post-hearing submission (AE F).

The delinquent debt at SOR 1.b (\$11) was the balance on a medical debt after insurance paid its portion of the bill. Applicant paid the debt in February 2010 (GE 2). Applicant settled the cable bill at SOR 1.c (\$189) for an undisclosed amount in May 2010 (Answer). In May 2010, Applicant made a \$69 payment on the delinquent electric bill at SOR 1.d (\$545)(Answer). She appears to have made a pre-authorized payment of \$119 in July 2010. Applicant claims without corroboration (Tr. 44) that the account is current, and that she made a \$200 payment in July 2010, reducing the balance to \$189.³ Applicant paid the debt at SOR 1.e (\$136) in full in February 2010 (Answer).

³However, the only July 2010 payment of \$200 documented by Applicant (AE D) refers to an account not alleged in the SOR, not her electric bill. She appears to have made a \$100 payment on this unalleged account in early July 2010 (AE F) and she also made a \$100 payment in August 2010, after the hearing.

Applicant claimed (Tr. 48-49) that she had begun a repayment plan on SOR debt 1.f (\$1,617)⁴ in 2008, had stopped payments temporarily because of more pressing needs, and had resumed paying \$50 per month in January 2009. Her June 2009 credit report (GE 3) tends to support that claim. The creditor reported that the account was now current, but had been 60-days past due four or more times, with a balance of \$1,542. Applicant suggested that she had continued to make regular payments directly to the original creditor and had reduced the balance to \$1,200, but the evidence belies that claim. In her April 2010 credit report (GE 4), the account had been charged off in April 2010 with a balance of \$1,617. The reported date of last activity was May 2009, the same date reported in the June 2009 credit report. Applicant documented a \$50 payment in late July 2010 on a balance of \$1,517 and a \$50 payment in late August 2010 on a balance of \$1,367.⁵ However, by 2010, the account was handled by a collection agent, contrary to Applicant's claim (Tr. 50) that she was dealing directly with the original creditor.

In June 2009, the creditor at SOR 1.g (\$1,239) offered to settle the account for \$716 (GE 2) conditioned on payments in July 2009 (\$127), August 2009 (\$206), early September 2009 (\$204), and late September 2009 (\$179). However, Applicant did not have the funds to take advantage of the settlement offer. She made a \$150 payment in July 2010 (AE B), leaving a balance of \$550.⁶

Applicant paid \$414 on SOR debt 1.h (\$1,792) in February 2010 (GE 2). In May 2010, the creditor agreed to settle the remaining balance (now grown to \$2,200) for additional monthly payments of \$331 paid in May 2010, June 2010, July 2010, August 2010, and September 2010. However, she could not meet the established schedule. She started a month late, made the first payment in late June 2010, the second in early July 2010, and the third in late July 2010 (AE F), as scheduled.⁷ Nevertheless, the record does not reflect when or if the last payments were made. The August 2010 payment was due before the record in this case was closed, yet Applicant provided no proof of payment. Applicant settled SOR debt 1.i (\$160) by paying \$135 in May 2010 (Answer).

The remaining three debts [1.i (\$46,495), 1.j (\$334,442), and 1.k (\$15,982 past due on a \$209,600 mortgage)] concern two houses Applicant bought in 2006. In

⁴Based on an April 2010 credit report (GE 4).

⁵Applicant documented no other payments on this account. At best, the stated balances suggest Applicant may have made payments in late April 2010, late May 2010, and late June 2010, in addition to the two payments she documented.

⁶However, the creditor's letter is dated March 2010.

⁷Unfortunately, the July 2010 bank statement that documents two of the three payments also shows that Applicant had three checks returned for insufficient funds, each of which incurred a \$35 dollar overdraft fee. Further, the bank statement showed that she also had five other checks returned for insufficient funds over the previous six months for which she paid the same overdraft fee.

January 2006, she bought her first house for about \$266,000. She put \$10,000 down, and secured the remainder with a \$209,600 first mortgage (1.k) and a \$46,495 second mortgage (1.l). She bought this house to live in with her children. She bought a second house in August 2006 as an investment, putting no money down on a \$334,442 mortgage (1.j). She hoped to rent the house for a while and then sell it for a profit, the proceeds of which she planned to use to pay her children's college expenses.

Unfortunately, Applicant is not financially sophisticated and had no financial education. She had problems keeping her investment property rented, and all three loans had escalator or balloon provisions that would increase her costs over time. Her injury and subsequent unemployment in February 2007 put an end to her real-estate ambitions. Nevertheless, Applicant tried to keep the loans current and worked with her creditors.

In January 2009, Applicant reached an agreement with her second mortgage holder to bring her delinquent account current by making monthly payments in January, February, March, and April 2009. She was unable to make the scheduled payments, but in April 2009 she reached an agreement with both her first and second mortgage holders for a short sale of the property within certain limits. In June 2009, Applicant contracted to sell the house (at a figure that met the lender's limits), conditioned on a satisfactory inspection. The record does not show if the buyer found the property unsatisfactory, but the buyer did rescind the sale.

The first mortgage holder foreclosed on the property, and sold the house at auction in late 2009. The deficiency was about \$138,000, but Applicant states that neither the first nor second mortgage holders have contacted her, so she does not know what continuing liability she may have.

The first mortgage holder on her investment property also foreclosed, and the property was scheduled to be auctioned in May 2009 (AE E). Applicant states that the mortgage holder has not contacted her, so she does not know if there was a deficiency on the house sale.

Applicant's credit reports show several accounts (not alleged in the SOR) that were previously past due, but which were now current. In her answer and her exhibits, she documented other delinquent debts that she had satisfied or brought current. It appears that she began addressing her debts around the time she met with the government investigator in June 2009, although she may have taken some action before then. She has not obtained financial counseling or taken any financial management training. She presented no evidence of a budget.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented.

Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has a history of financial difficulties going back several years.⁹ Although she has made some progress on her debts, that progress is insufficient to overcome the security concerns raised by her financial situation.

The mitigating factors for financial considerations provide insufficient help to Applicant. Her financial difficulties are both recent and multiple.¹⁰ The problems are largely due to circumstances beyond her control (unemployment), although one can question the wisdom of a person with little financial experience or training buying two houses within seven months of each other.

Applicant's efforts to address her debts have been mixed. She appears to have started addressing her delinquent accounts well before the SOR was issued, because the credit reports and Applicant's exhibits show several accounts that were delinquent but are now current. She paid debt 1.e before the SOR was issued. She paid or settled

⁸See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁹¶19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

¹⁰¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

debts 1.b, 1.c, and 1.l after the SOR was issued. She settled debt 1.a, made the lump-sum payment required by the agreement, but then could not make the two final payments as scheduled. She made a partial payment in July 2010, but did not pay the balance by the end of August as she indicated she could.

Applicant claimed in her answer to have paid debt 1.d, but documented only partial payments, one in May 2010, one in July 2010. She claimed also to have paid debt 1.f. The record reflects that she made some payments on the account in 2009 and had brought it current, but by May 2010 the account was again delinquent, had been charged off by the original creditor, and referred to collection. Applicant documented two \$50 payments in July and August 2010 that reduced the outstanding balance only a bit lower than the amount alleged in the SOR.

Applicant had a settlement offer of more than 50% from the creditor for debt 1.g in June 2009, with four payments from July 2009 to September 2009. She made one payment in July 2010. She reached a settlement agreement with the creditor for debt 1.h in May 2010, but was unable to start payments as scheduled. However, it appears that she has caught up through July 2010.

Applicant's three mortgages (1.i, 1.j, and 1.k) remain unresolved to the extent that she has not shown that she has no remaining liability to the mortgage holders after the foreclosure sales. She had acted to address two of the mortgages through a short sale, but the sale fell through. This exemplifies her efforts to address the debts alleged in the SOR: Applicant pursues (belatedly in some instances) a good-faith resolution of a debt only to find that she is unable to begin payments on time, or to make all the payments required, or to retain complete records of her payments. In this regard her efforts to deal with her delinquent debts are only partly satisfactory.¹¹ She has had no credit counseling or financial management training, and does not appear to have a budget covering her day-to-day finances and her repayment plans. Despite the progress she has made, she paid overdraft fees on eight returned checks in the first seven months of 2010. This suggests that substantial progress remains to be made to bring her financial problems under control.¹² The payments that have been paid have been paid largely in a timely, good-faith manner,¹³ but her inability to see some of the repayment plans through to completion demonstrates just how much her finances remain unsettled. I resolve Guideline F against Applicant. Consideration of the whole-person factors yields no different result.

¹¹ ¶20.(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

¹² ¶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;

¹³ ¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a–d:	Against Applicant
Subparagraph e:	For Applicant
Subparagraphs f–l:	Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge