



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



In the matter of:)	
)	
SSN: ¹)	ISCR Case No. 09-06519
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro se*

June 11, 2010

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concerns created by her history of financial irresponsibility and the false information she provided in the security clearance application she submitted in July 2009. She has failed to take any meaningful action to resolve the debts listed in the Statement of Reasons (SOR). Her testimony and the evidence she presented give little reason to anticipate she will resolve those debts in the foreseeable future.

¹ Applicant's social security number was incorrect as listed in the original SOR. On motion of Department Counsel, without objection from Applicant, the SOR was amended on its face to list Applicant's correct social security number.

On November 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.² The SOR alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on January 4, 2010. She admitted SOR allegations 1.a, 1.b, and 1.f, denied all other allegations, and requested a hearing.

The case was assigned to me on February 18, 2010. A notice of hearing was issued on March 12, 2010, scheduling the hearing for April 13, 2010. The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5 and admitted into the record without objection. Applicant testified and submitted two documentary exhibits that were marked as Applicant's Exhibits (AE) 1 and 2 and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documentation in support of her case. One document was timely received, marked as AE 3, and admitted into the record without objection. The transcript was received on April 27, 2010.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 41-year-old woman who has been employed aboard a military base as a material handler by a defense contractor since July 2009. Applicant graduated from high school in May 1987. She worked full-time as an hourly employee from November 1997 until May 2004, and as a project manager from May 2006 until January 2007. She worked at a variety of part-time jobs between May 2004 and May 2009.

Applicant was married in August 1992, and that marriage ended by divorce in January 2010. Applicant has three children from this marriage, ages 16, 14, and 10. Applicant and her ex-husband share joint custody of the children who divide their residence time equally between Applicant and her ex-husband. Neither parent is required to pay child support or alimony to the other. The terms of the divorce included sale of the marital residence and an equal division of the proceeds of the sale. Applicant's share of those proceeds was \$7,200. Applicant is also to receive one-half of the couple's 2009 income tax refund, which will be \$2,600. The divorce decree allocated each person those debts that were acquired in their individual names and a home equity loan to Applicant.

The SOR alleges two credit card debts (subparagraphs 1.a and 1.b), totaling \$12,212, that have been charged off as bad debts. A lawsuit was filed against Applicant on March 29, 2010, for the largest of those two accounts owing in the amount of \$11,477 (AE

² This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and the adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

2). Applicant admits she is responsible for both of these debts. She has not made any payments on either debt.

The SOR alleges two accounts that have been submitted for collection (SOR subparagraphs 1.c and 1.d), totaling \$1,566. A comparison of the various account numbers contained in Applicant's credit bureau reports (GE 4 and GE 5) discloses these accounts originated as delinquent credit card accounts. Applicant agreed to a repayment plan on the account listed in SOR subparagraph 1.d in April 2010 (AE 1). However, she had not made any payments on that account as of the date of the hearing. Applicant testified she is uncertain what the account listed in SOR subparagraph 1.c relates to and she has, therefore, not made any attempt to satisfy that account because she is attempting to obtain documentation verifying that she is responsible for the debt (Tr. 36-37).

The next two accounts alleged in the SOR (subparagraphs 1.e and 1.f) are accounts that have been submitted for collection in the total amount of \$425. The underlying accounts on those debts are returned checks that were made payable to two different merchants. Applicant has not done anything to satisfy either of those accounts.

Applicant disputes the final account listed in the SOR (subparagraph 1.g) which is owing in the amount of \$150. In a statement she provided in August 2009 (GE 2), Applicant stated this account arises from a cell phone service early cancellation fee that the company had agreed to waive. She testified in a similar manner at the hearing (Tr. 21). The account remains unresolved.

Applicant attributes the delinquent debts listed in the SOR to her ex-husband's failure to pay them. While she acknowledges that the debts were opened in her name and allocated to her in their divorce, Applicant claims her ex-husband was solely responsible for handling the family finances during the course of their marriage and she had no idea that he was not making payments on these debts. However, she also acknowledged that the largest debt, owing in the amount of \$11,477 (SOR subparagraph 1.a), represents a debt from a credit card she opened in or about April 2003, and which she stopped using in 2007 because: "I quit using it because I was trying - - we went through and closed all of our accounts because I wanted to get out of my credit card debt." (Tr. 49)

Applicant did not disclose any of her delinquent debts in the security clearance application she submitted in July 2009 (GE 1). She attributes her failure to disclose the accounts to her claim that her ex-husband was solely responsible for the family finances and that she was unaware he had not been paying these bills. She also claimed that while she was aware of one delinquent debt, she had discussed that debt with her employer's security officer, and he informed her not to list it in the security clearance application because: "she did not have all of the proper information to list the debts." (GE 2) Her employer's security officer submitted a memorandum wherein he admits he advised her to leave one subsection of section 26 blank in the security clearance application she submitted (AE 3). However, instead of leaving any subsection blank, Applicant answered "No" to every question inquiring about delinquent debts.

Applicant's net monthly income is approximately \$1,800 - 1,900 (Tr. 43). Her net monthly expenses are about \$2,130 (Tr. 43-44). Applicant does not have any savings, other

than the money she recently received from the sale of the marital residence and the money she expects to receive from an income tax refund.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Guideline F (financial considerations) and Guideline E (personal conduct), with their disqualifying and mitigating conditions, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.³ The government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵ although the government is required to present substantial evidence to meet its burden of proof.⁶ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁷ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

³ ISCR Case No. 96-0277 (July 11, 1997) at 2.

⁴ ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

⁷ ISCR Case No. 98-0761 (December 27, 1999) at 2.

⁸ ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

⁹ ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, Item E3.1.15.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id.* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

Analysis

Guideline F, Financial Considerations

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. . . . (Adjudicative Guideline [AG] 18)

Applicant has multiple accounts that have either been submitted for collection or charged off as bad debts. The total owing on those accounts is \$14,353. The largest of those debts resulted in a lawsuit being filed against Applicant in March 2010. Applicant has entered into a repayment agreement on one debt, but has not made any payments on any of her delinquent accounts. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant attributes all her delinquent debt to her ex-husband assuming sole responsibility for the family finances and then failing to pay her bills without her knowledge. However, as she admits, the largest debt arose from a credit card that was issued in her name and which she stopped using in 2007 because: ". . . we went through and closed all of our accounts because I wanted to get out of my credit card debt." (Tr. 49) Her testimony makes clear that she was aware of the large credit card debt as far back as 2007 after a discussion with her then husband about the credit card debt she was accumulating. Accordingly, Mitigating Condition (MC) 20(a): *the behavior . . . 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*; and 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* do not apply.

Applicant has been aware of the delinquent debt since at least when she was questioned in August 2009 (GE 2). Shortly before the hearing, Applicant received \$7,200 from the proceeds of the sale of the marital residence which could have been applied to satisfy all but the largest debt listed in the SOR by the date of the hearing. Instead, Applicant had not made any payment on any of the debts as of that date. Therefore, 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*; and MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* do not apply.

Applicant disputes one debt listed in the SOR. However, she failed to present any evidence in support of her assertion that the creditor had agreed to waive the charge that underlies that debt and/or that the debt is erroneously listed in her credit bureau reports. Accordingly, MC 20(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 does not apply.

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG 15)

Applicant deliberately failed to disclose her delinquent debts in the security clearance application she submitted in July 2009. Her testimony that she was unaware of those debts because her husband was solely responsible for the family finances and she was unaware that he was not paying her bills is not credible in view of her admission that they discussed her need to control her credit card debt as far back as 2007. Her employer's security officer confirms he instructed Applicant to leave a subsection of section 26 blank in the security clearance application she submitted. However, Applicant did not leave any subsection blank but, instead, affirmatively denied that she had any delinquent accounts. DC 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. I have considered all mitigating conditions and none apply.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant failed to mitigate the financial considerations and personal conduct security concerns. She has not overcome the case against her nor satisfied her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance. Guidelines F and E are decided against Applicant.

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-g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a-c:	Against Applicant

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 or continue a security clearance for Applicant. Clearance is denied.

Henry Lazzaro
Administrative Judge

