



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-06540
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

August 31, 2010

Decision

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

On April 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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).

In an April 30, 2010, answer to the SOR, Applicant admitted seven of the nine allegations set forth under Guideline F and denied the two allegations raised under Guideline E. She also requested a hearing before an administrative judge. DOHA assigned the case to me on July 2, 2010. The parties proposed a hearing date of August 5, 2010. A notice setting that date for the hearing was issued on July 15, 2010. I convened the hearing as scheduled. Applicant gave testimony and presented no documents. Department Counsel offered six documents, admitted as exhibits (Exs.) 1-6 without objection. The parties were given until August 18, 2010, to submit any additional materials. The transcript (Tr.) of the proceeding was received on August 10, 2010. On August 18, 2010, Department Counsel forwarded three documents received from

Applicant on August 17, 2010. They were accepted into the record as Exs. A-C without objection. The record was then closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden mitigating security concerns related to Guideline F. Clearance denied.

Findings of Fact

Applicant is a 42-year-old financial budget analyst working for a defense contractor. She has worked for the same employer for approximately three years. Applicant earned a high school diploma and completed 32 credit hours of collegiate study. She is married and has no children.

In 2001, the same year she married, Applicant's parents' health began to decline. In order to help them, she began giving them "large sums of cash" to help them meet numerous medical expenses.¹ In 2005, Applicant bought a house. Soon thereafter, the economy and local real estate market began to sour. Applicant's home value started to decrease. Meanwhile, the monthly payments on her home loan jumped from about \$1,900 to about \$3,500.² The increase significantly impacted Applicant's available income, forcing her to choose which bills she could pay each month. In order to meet her mounting obligations, she withdrew about \$10,000 from her 401k retirement account to satisfy some of her debts. She advised her mortgage lender of her efforts to meet her obligations.³ In 2007, she also left her job as an account payable administrator in favor of a better paying job. The following year, it was determined that the occupant of Applicant's position needed to maintain a security clearance. At some point in 2008, she completed a security clearance application, but was later told she had used the wrong form or format.⁴ In January 2009, she rushed to complete an electronic questionnaire for investigations processing (e-QIP).⁵

At the time, she was familiar with the security clearance application format and process, having previously applied for a security clearance in about 1997. She was unfamiliar, however, with the electronic format. Although she knew she had credit issues and knew that her credit would be checked, she "just kind of flipped through" the application and did not enumerate what her delinquent accounts were, assuming her

¹ Tr. 14, 28.

² *Id.*, 25-27. At purchase, the house was valued at approximately \$300,000. Comparable homes in the neighborhood are currently selling for about \$150,000. Applicant is currently negotiating a home loan modification.

³ Tr. 18.

⁴ Tr. 19.

⁵ The SOR, at allegations ¶¶ 2.a and 2.b, references a January 26, 2009, Standard Form 85P. This is an error. The January 26, 2009, application was an e-QIP. See Tr. 84-85.

credit would be discussed in detail during the investigatory process.⁶ Applicant's omission was "an accident."⁷

At issue in the SOR are nine allegedly delinquent accounts. Applicant admits responsibility for seven of those debts, but denies she is liable for the debts noted in SOR allegations ¶¶ 1.c and 1.f.⁸ The status of those accounts is as follows:

1.a – Judgment (\$5,058) – *Unpaid*. This debt represents a loan taken by Applicant to help pay for her 2001 wedding. She stopped making payments on the loan in about 2003 or 2004, when she no longer had sufficient funds to make the payments.⁹ Applicant believes the debt was ultimately satisfied, but she provided no evidence of payment.¹⁰

1.b – Judgment (\$910) – *Unpaid*. Applicant offered no documentary evidence showing that she has addressed this balance.¹¹

1.c – Mortgage (\$238,000), Past due (\$1,638) – *Current*. Applicant was past due on her primary home loan mortgage for the home she purchased in 2005.¹² This mortgage is for 60% of the total loan taken for the home purchase. Applicant provided evidence showing that her account is current, with her next payment due on September 2, 2010.¹³

1.d – Charged-off Mortgage (\$58,500) – *Unpaid*. This debt represents 40% of the home loan mortgage assumed for the 2005 house purchase. While the account remains unpaid, Applicant testified the mortgagor has been flexible in working with her.¹⁴ She submitted a copy of a written offer from the mortgagor to settle the balance on payment of \$8,782.57 if such payment was made by November 27, 2009.¹⁵ Applicant provided a copy of correspondence to the mortgagor confirming her request for a temporary

⁶ Tr. 19-20.

⁷ Tr. 20, 87-88.

⁸ See Answer to the SOR, dated Apr. 30, 2010.

⁹ Tr. 32.

¹⁰ Tr. 32-38.

¹¹ Tr. 40-42.

¹² Tr. 43.

¹³ Ex. A (Statement, dated Aug. 13, 2010).

¹⁴ Tr. 53-54.

¹⁵ Ex. C (Letter, dated Nov. 10, 2009)

cessation or reduction in mortgage payments, but presented no evidence of payment or payments.¹⁶

1.e – Charged-off Credit Card balance (\$3,652) – *Unpaid*. Applicant stopped making payments on this card in 2006.¹⁷ She believes the original balance was for about \$1,000 to \$1,500. Applicant last contacted the company in 2009.¹⁸ She was told that the entire balance was due, and that a settlement could not be arranged.

1.f – Collection account (\$899) – *No evidence of payment*. Applicant stopped paying on this account in the mid-2000s. She testified that she paid this account off previously, but she provided no evidence of payment or that the balance is currently either reduced or at zero.¹⁹

1.g – Collection account (\$3,890) – *No evidence of payment*. Applicant stopped paying on this account in the mid-2000s. Applicant testified that she had made telephonic contact with this creditor, informing it of her financial situation.²⁰ Applicant provided no evidence of a payment or a proposed repayment plan in response to an offer to accept three payments of \$1,000 to settle the debt.²¹

1.h – Student loan (\$1,500) – *Unpaid*. This loan was taken in 1999. Although she has not been enrolled as a full-time student since that time, Applicant testified this loan remains in deferral.²² She provided no evidence, however, of a deferral status.

1.i – Charged-off Account (\$5,316) – *Unpaid*. For her honeymoon, Applicant tried to defray expenses by accepting a free trip to a resort property with a time-share component. During the honeymoon, she bought a time-share. She stopped making payments on the time-share in 2006 and thought the share was to be resold. She has no evidence that the debt has been reduced or forgiven.²³

Applicant and her husband have not been on a vacation in several years. They live frugally, but do not have a written budget.²⁴ Applicant received financial counseling.

¹⁶ Ex. B (Letter, undated).

¹⁷ Tr. 58.

¹⁸ Tr. 59-60.

¹⁹ Tr. 62-63.

²⁰ Tr. 69-70.

²¹ Tr. 70.

²² Tr. 71, 75-76.

²³ Tr. 77-78.

²⁴ Tr. 79.

She was advised to declare bankruptcy.²⁵ The record shows that Applicant fully detailed her finances during the investigatory process that followed her e-QIP submission.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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 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. . . ." ²⁶ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²⁷

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 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 applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites

²⁵ *Id.* Applicant does not want to pursue bankruptcy because she wishes to eventually honor her debts.

²⁶ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

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

for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁸ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁹

Based upon consideration of the evidence, Guideline F (Financial Considerations) and Guideline E (Personal Conduct) are the most pertinent to this case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F – Financial Considerations

Under Guideline F, “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 an 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.”³⁰ The guideline sets out several potentially disqualifying conditions. Here, Applicant acquired eight delinquent debts and was past due on a mortgage. This financial situation raises security concerns. Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations) apply. With these conditions raised, the burden shifts to Applicant to overcome the case against her and mitigate security concerns.

Almost all of the debts acquired by Applicant became delinquent in the mid-2000s. While there is evidence that her main home loan is now in regular payment status, there is no documentary evidence showing she has attempted to address the majority of the accounts remaining. Such evidence is insufficient to raise 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).

The majority of Applicant’s delinquent debts arose in the mid-2000s, when Applicant became financially burdened while helping her ailing parents, and she acquired both a home and a time-share property in excess of her available income. Her home value was impacted by the downturn in the real estate market in the mid-2000s. To help meet her obligations, she eventually sought and secured a better paying job. To the extent her financial problems stemmed from her contributions to her parents’

²⁸ *Id.*

²⁹ *Id.*

³⁰ AG ¶ 18.

illnesses and the decline in her home value, 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) applies in part.

Applicant received formal financial counseling and provided both testimony and evidence of trying to work with some of her creditors. As a result, her past due mortgage appears to be addressed. There is no evidence, however, indicating the current status of the debts noted at SOR allegations ¶¶ 2.g, 2.h, or 2.i, regarding which Applicant asserts she has made progress in working with her creditors. The rest remain unaddressed or unpaid. To date, none of the delinquent debts have been repaid, put into repayment, or formally disputed. She has yet to structure a workable, written budget. Such facts obviate application of FC 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), but raise, in part, FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

Applicant may now be in regular repayment on her largest home loan payments, but the documentary evidence regarding the other debts is sorely lacking. There is no evidence that either of the two judgments have been satisfied or otherwise addressed. There is no evidence that her second mortgage holder has reacted to her letter regarding her present financial circumstances. There is no documentary evidence showing that her student loans, after over a decade, are still in deferral, or that her time-share interest has been sold. Finally, there is no documentary evidence indicating that any of the remaining debts have been adequately addressed or satisfied. Although Applicant has received financial counseling, she simply appears to still be financially incapable of making even minor payments on the remaining debts at issue. Given such circumstances, financial considerations security concerns remain unmitigated.

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because “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.”³¹ In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.³² Here, personal conduct concerns were potentially raised when Applicant failed to identify her delinquent debts and judgment on her e-QIP. If such a failure was deliberate, such omissions would be sufficient to raise Personal Conduct Disqualifying Condition AG ¶ 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,

³¹ AG ¶ 15.

³² *Id.*

determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities). Consequently, the burden shifts to Applicant to mitigate the resultant security concerns.

Applicant credibly testified that she did not intentionally mislead or falsify when she failed to note any debts or judgments on her security clearance application. Her explanation and the facts show that she had sufficient past experience with the investigatory process to know that her finances would be checked. In her rush to complete the appropriate form, she neglected to detail her finances. Her neglect in elaborating on her finances was an accident. Absent evidence that her omissions were intentional or fraudulent, the disqualifying condition cited must fail. However, if a disqualifying condition did apply, Personal Conduct Mitigating Condition AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) would apply. Absent evidence of intentional falsity or omission, personal conduct security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant 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, as well as the "whole-person" factors. Applicant is a credible, mature, and professional woman who chose not to file bankruptcy so that she could honor her debts. Her home valuation was adversely impacted by the recent downturn in real estate. She voluntarily aided her parents when their health began to decline.

While Applicant should be commended for her wish to honor her financial obligations and for showing of generosity, such overtures cannot dismiss some of her unfortunate financial choices. Her acquisition of a home that appears to have been outside of her financial reach, as well as a time-share purchased while on a honeymoon she thought would be virtually cost-free, demonstrate a clear lack of financial planning. Her voluntary abandonment of other debts once she became financially strapped in the mid-2000s is only accentuated by the fact that most of those debts remain largely unaddressed. Her current financial distress is even more striking given the fact she is a professional working in the field of finance. Most of the debts at issue are unaddressed or unresolved; the status of some of the debts remains unclear and unresearched. Moreover, there is no indication when Applicant might be able to start satisfying some or all of her delinquent debts. She presented no financial plan or strategy for addressing all of her debts in the near future, and she has not drafted a personal budget. Given such considerations, financial considerations security concerns remain unmitigated.

It is clear that Applicant is familiar with the security clearance application investigatory process, and that she knew her credit report would be examined. While a budget analyst might be expected to pay more attention to detail, Applicant credibly testified that her failure to enumerate her delinquent debts and judgments on her security clearance application was an oversight. Lacking evidence of fraud or falsity, personal conduct security concerns are mitigated.

The burden in these cases is placed squarely on the Applicant. As note above, the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. In light of the unmitigated security concerns related to Applicant's finances, however, clearance is 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	For Applicant
Subparagraph 1.d	Against Applicant
Subparagraph 1.e	Against Applicant
Subparagraph 1.f	Against Applicant
Subparagraph 1.g	Against Applicant
Subparagraph 1.h	Against Applicant
Subparagraph 1.i	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a	For Applicant
Subparagraph 2.b	For 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. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge