



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



In the matter of:)	
)	
)	ISCR Case No. 09-07012
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

February 8, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On August 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR, admitting six of eight delinquent debts, and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated December 9, 2010.¹ Applicant received the FORM on December 16, 2010, but did not submit a response to the FORM. On January 31, 2011, the Director, DOHA, forwarded the case for assignment to an administrative judge. I

¹The Government submitted twelve items in support of its case.

received the case assignment on February 1, 2011. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet her burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations). She denied all allegations under Guideline E (Personal Conduct).

Applicant is a 46-year-old employee of a defense contractor. She graduated from high school in 1982 and received her undergraduate degree in 1986. Applicant is married and has one child. She has served as an active US. Navy reservist since 2001, and has held a security clearance since 2003. She has worked for her current employer since March 2007. (Item 5)

Financial

The SOR lists delinquent accounts, including a 2009 judgment, collection accounts and voluntary repossessions, totaling \$46,813. Applicant admitted six of the delinquent debts and the credit reports confirm them. (Items 7-9)

In May 1992, Applicant filed for bankruptcy under Chapter 7. The bankruptcy was discharged in May 1992. (Item 12) There is no information in the record as to the origin of the debts or the circumstances surrounding the bankruptcy. Applicant acknowledges the bankruptcy, but notes that it is not "on her credit" and was 18 years ago. (Item 11)

After Applicant's bankruptcy discharge in 1992, she filed another bankruptcy in February 1998 for \$73,000. (Item 11) There is no information in the record as to the origin of the debts or the circumstances surrounding the bankruptcy.

Applicant noted in her response to the SOR that she failed to live within her means and satisfy debts and obligations, but she blamed it on her husband's seasonal employment and the general economic climate. Applicant did not provide any details about her husband's business. She noted that she is now moving closer to removing some debts and is current with her daily expenses. She also admitted that she has been employed full time since March 2007. (Item 4)

Applicant claims that she is in repayment status for the debts alleged in the SOR but did not submit evidence of her regular payment plans or receipts for payment except for one. She claims that the judgment (\$12,039) alleged in SOR 1.a is the result of a voluntary repossession of a vehicle that was used in her husband's business. She advises that she is paying \$75 a month to satisfy the debt and believes her balance is approximately \$9,900. She also notes that this is a duplicate of the debts alleged in SOR 1.c and 1.f. She has officially disputed the account in 1.c as noted on her 2010 credit report. (Item 7) In addition, the account in 1.f has been sold or transferred to

another company. It appears that is possible that the accounts could be duplicates, but Applicant has not provided documentation to support the claim.

Applicant states that the debt alleged in SOR 1.b is paid and was the result of a health-related accident. She stated that she did not know about the debt prior to seeing the credit report. She submitted a receipt, dated September 7, 2010, for this debt of \$402. (Item 4) Her most recent credit report shows that the account is paid. (Item 7) The debt alleged in SOR 1.d for a credit card is in a monthly repayment status of \$57.60, and that she began paying on September 15, 2010. However, Applicant did not submit any documentation.

Applicant explained that she is indebted for another voluntary repossession when she and her husband were "self employed" in a lawn care business. His customer base changes each year and the income is not predictable. She claims that she is repaying the debt (\$50 a month) for this debt in SOR 1.e.

Applicant's 2010 monthly net income was \$3,313, which includes her husband's income of \$1,500. After monthly expenses, there is a net remainder of \$850 in disposable income. She did not provide any evidence of financial counseling.

Personal Conduct

Applicant completed her security clearance application in May 2007. She answered "No" to section 28 concerning her financial indebtedness in the last seven years. She states that she did not intentionally mislead the government about any delinquent debts that were 90 or 180 days delinquent. She elaborated that she misunderstood the question believing that her voluntary vehicle repossessions were not considered delinquent debts. It also appears from the credit report that some payments were made on her vehicle as late as 2007.

When Applicant completed the security clearance on May 16, 2007, she could not have reported the judgment alleged in 2009 (SOR 1.a) because it had not yet occurred. The 2007 credit report in the record shows the majority of accounts "pays as agreed." It does not list the account alleged in SOR 1.d. In fact the only account that Applicant shows on the 2007 credit report is the repossession alleged in SOR 1.e. This lends credence to her belief that she had nothing to report in section 28. I find that Applicant omitted information but did not intentionally falsify her security clearance application. Omission alone is not sufficient for the Government to prove this controverted fact.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied

in conjunction with the factors listed in the adjudicative process. An 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." An 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.

The United States Government (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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 of 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." ⁵ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

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 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that she filed for Chapter 7 bankruptcy in 1992 and 1998. She acknowledged that she currently has delinquent debts that have not been paid and are ongoing. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant had a fresh start in 1999 after filing for Chapter 7 bankruptcy. She was employed from 2000 until 2006 with a company. She again encountered financial problems in 2006. She still has unresolved debts. Also, she has not provided information concerning resolution of the debts. She admits that she has not lived within her means. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) does not apply.

Financial Considerations Mitigating Condition (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) does not apply. Applicant did not provide details about her self-employment with her husband's business in 2006 and 2007 and how it impacted her finances. After that she was steadily employed on a full-time basis. This may have exacerbated Applicant's ability to meet her obligations, but she has not provided any information that she

⁷ *Id.*

immediately addressed her debts. She has not provided information about an income reduction in employment due to seasonal business. She did not provide specifics or a nexus to the current financial problems. These events, no doubt, impacted her finances. However, there is no evidence that she acted responsibly under the circumstances. She allowed the delinquent debts to remain unpaid until 2010. There is no record of any attempts to resolve her debt until after she received the SOR.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has not provided evidence of any consistent payment plans. She asserts that she entered a repayment plan but has not provided documentation to support this claim. She has paid the medical account in SOR 1.b. in September 2010. Her failure to provide information about financial counseling obviates the applicability of FC MC AG ¶ 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).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Under AG ¶ 16(a), a disqualifying conditions exists when there is "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities." Under AG ¶ 16(b) a disqualifying condition exists when "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."

Applicant answered "No" to question 28 concerning any delinquencies in the past seven years. As noted, certain debts had not yet occurred when she completed the May 16, 2007 security clearance application. She believed that her voluntary repossession did not count as a delinquent debt. She explained her confusion about the vehicle that was used in conjunction with her husband's business. Although she omitted material information, I do not find against Applicant under personal conduct.

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 an applicant's

conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

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 46 years old. She has served as a Navy reservist since 2001 and has held a security clearance. She has had financial difficulties in the past and filed for bankruptcy which is a legal means to resolve debt. However, after 1998, Applicant had a fresh start. She did not fully explain how the self employment and her husband's lawn care business impacted on her finances. Part of her financial difficulties stem from that time in 2006, but there are not sufficient facts to determine a nexus between then and her current financial problems. She also did not provide sufficient documentation about her payments or repayment plans except the medical account. This was paid in September 2010.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and carry her burden in this process. She failed to offer evidence of financial counseling. She failed to provide documentation regarding actual payments. I do find her reasons and explanations credible for the allegation concerning falsification of her security clearance.. Accordingly, Applicant has mitigated the security concerns under the personal conduct. She has not mitigate the concern under the financial considerations guideline. 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:	For Applicant
Subparagraphs 1.c-1.h:	Against Applicant
Paragraph 2., Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 is denied.

NOREEN A. LYNCH.
Administrative Judge