



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 09-07056
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

June 23, 2011

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On June 24, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On February 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an

administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Applicant answered the SOR on March 9, 2011, and elected to have her case decided on the written record in lieu of a hearing.

A complete copy of the file of relevant material (FORM), dated April 19, 2011, was provided to her by letter dated April 25, 2011. Applicant received the FORM on May 2, 2011. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. She did not submit any materials, comments, or objections in response to the FORM. The case was assigned to me on June 14, 2011.

Procedural Matters

Amendment of SOR

Department Counsel moved to amend SOR ¶¶ 1a, 1h, and 1i to add the words “on your credit report dated January 31, 2011” before the words, “in the approximate amount of . . .” in each allegation.

He further moved to amend SOR ¶ 1b to read:

You are indebted to [name of creditor], a creditor identified as medical account #MACSQPMS111843094 on your credit reports of July 7, 2009 and January 31, 2011. As of the date of this Statement of Reasons, it remains unpaid.

Without objection from the Applicant, I granted Department Counsel’s motion.

Findings of Fact

Applicant admitted all of the 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 42-year-old senior software engineer, who has been employed by a defense contractor since March 2009.¹ She was awarded a bachelor’s degree from a university in December 1997. No further information regarding Applicant’s education background is available. Applicant was previously married two times and is currently married to her third husband. She was married to her first husband from October 1986 to October 1993 and married to her second husband from September 1996 to January 2007. Those marriages ended by divorce. She married her third and current husband in March 2007. She has three adult children. Applicant did not serve in the armed forces.

¹ The source for Applicant’s biographical information is derived from her May 2009 e-QIP unless otherwise stated.

Financial Considerations

Applicant disclosed several adverse areas regarding her financial history in her May 2009 e-QIP. These areas included disclosure that she had bills or debts turned over to a collection agency, that she had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed, and that she had been over 180 days delinquent on her debts. (Item 4.) In August 2009, Applicant was interviewed by an Office of Personnel Management (OPM) investigator. During that interview, the investigator discussed in detail Applicant's financial situation with her. The investigator reviewed Applicant's debts from her credit reports and discussed the circumstances that led to her indebtedness. (Item 5.)

During her OPM interview, Applicant attributed her financial problems to her divorce from her second husband. She agreed to take on the credit card debt because she was the primary holder on the credit cards. Applicant claims that she did not take her second husband off her credit cards immediately after their divorce and he continued to use the credit cards, amount unspecified. Because their divorce decree held Applicant responsible for credit card debt, she was required to pay credit card debt her ex-husband ran up. Applicant also used her credit cards to supplement her income and her moving expenses. She conceded "maxing out" some of her credit cards because she did not monitor her moving expenses. Applicant also incurred uncovered medical bills related to covering pregnancy expenses for two of her teenage daughters. Other medical bills Applicant mentioned in her OPM interview were those related to a horseback riding accident she sustained and kidney problems for one of her daughters. Her current employer offers "great health care." (Item 6 (205).)

Applicant further stated in her OPM interview that her plan was to pay off her debts through a non-profit debt consolidation service. At the time of the interview, she had arranged to have \$973 per month debited from her checking account paid directly to this service. (Item 6 (204).)

Applicant's SOR alleges 24 debts totaling approximately \$60,405. (SOR ¶¶ 1a – 1x.) In Applicant's March 2011 SOR Answer, she acknowledged the SOR debts were hers; however, she wished to make the point that the debts were incurred before she was divorced adding that her income was "almost cut in half" by the divorce as her ex-husband almost made as much as she did at the time they were divorced. Apart from her divorce-related debts, she claims to be current on her living expenses. She stated when her background investigation began, she was optimistic that she would be able to pay off her debts. She conceded that she cannot pay off her SOR debts and have enough money to meet her living expenses. She summarized her current plan stating that her SOR debts "will roll off my credit report in 3-4 years and I will make no attempt to pay them at this time." (SOR Answer, Item 3.)

Applicant presented no evidence that she has participated in financial counseling or that she is following a viable budget. Her November 2009 personal financial statement reflects a net monthly remainder of \$2,620. (Item 6 (207).) As assets,

Applicant listed \$50 in her savings account and no other assets such as money in a checking account, real estate, stocks, bonds, car, etc. (Item (207).) As of April 2011, Applicant presented no additional documentary evidence of efforts to contact creditors, settle debts, make payments, or otherwise resolve her financial obligations.

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 the evidence establishes that Applicant owes 24 debts totaling approximately \$60,405. These debts have been ongoing for several years and remain unpaid or unresolved. 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 such as her divorce from her second husband and various medical bills. Applicant's medical problems, lack of insurance, and reduction in income no doubt contributed, in part, to her current situation. Notwithstanding, Applicant's presented little or no documentary evidence showing that she acted responsibly in the acquisition of her debts, that she made good-faith efforts to resolve her debts, or that she has a track record of financial responsibility. AG ¶¶ 20(b) and (d) do not apply.

AG ¶ 20(c) does not apply because Applicant did not receive financial counseling and there are no clear indications that her financial problems are being resolved or are under control. Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the limited evidence of efforts to resolve her 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). My comments in the Analysis section are incorporated in this whole-person analysis.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for the years she was able to maintain financial responsibility. The record supports the notion that Applicant and her husband are good and decent people, who have worked hard their adult lives.

Notwithstanding, security concerns remain about Applicant's current financial responsibility. Applicant's 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. Her failure to address the remaining SOR debts indicates she is financially overextended. 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
Subparagraphs 1a – 1x:	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 eligibility for a security clearance to Applicant. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge