



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-07844
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

April 22, 2010

Decision

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

Applicant signed a security clearance application (e-QIP) on July 8, 2009. On February 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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 current Adjudicative Guidelines (AG).

In a response notarized on February 9, 2010, Applicant admitted six of the 12 allegations raised under Guideline F and denied the sole allegation raised under Guideline E. She also requested the matter be decided on the written record in lieu of a hearing. On March 11, 2010, Department Counsel submitted a File of Relevant Material (FORM), which included nine attached items. Applicant received the FORM on March 18, 2010, and responded with a letter dated March 31, 2010. The case was assigned to me on April 14, 2010. 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 denied.

Findings of Fact

Applicant is a 51-year-old administrative specialist. She has worked for the same defense contractor for over five years. In choosing an administrative determination, she provided scant information regarding her personal life or financial situation.

Applicant is a high school graduate. She was married in 1980 and had two children, both of whom are now grown. In 1982, she started work as a self-employed day care provider. In 1999, she divorced and cared for her children as a single mother “with little support.”¹ She remarried later that year. The couple divorced in 2000 after she realized her new husband had financial issues.² In 2003, she left day care for a managerial position, which she kept until she began her current employment.

When Applicant submitted her e-QIP in July 2009, she did so without first consulting her credit report.³ At the time, she was unaware of its contents.⁴ She was also unaware of any adverse judgments or delinquent debts. Therefore, she denied having any adverse judgments or having had any debts delinquent for over 180 days within the preceding seven years. She similarly denied being 90 days delinquent on any current debts.

On August 12, 2009, Applicant was interviewed about issues regarding her finances. Specifically, she was asked about collection accounts and a judgment reflected on her credit reports. She was “unaware” of the delinquent accounts and did “not recall any information” about the several derogatory entries noted, although she commented that they may have originated during her first marriage.⁵ She recalled incurring a debt related to a van that was voluntarily repossessed in 2004, on which she had ceased making payments.⁶ During the interview, Applicant stated that she “liked to spend money,” attributed the debts at issue as arising because of non-specified “event’s beyond [her] control,” stated that her financial situation was otherwise “good,” and noted that “no one would question [her] ability to live within [her] means.”⁷ She also

¹ FORM, Item 6 (Interrogatory, Personal Declaration, Aug. 12, 2009) at 7.

² Response to the FORM, dated Mar. 31, 2010.

³ FORM, Item 4 (Response to the SOR, notarized Feb. 9, 2010).

⁴ *Id.* See also Response to the FORM, dated Mar. 31, 2010.

⁵ FORM, Item 6, *supra*, note 1, at 7. See also Response to the FORM, dated Mar. 31, 2010.

⁶ FORM, Item 6, *supra*, note 1, at 7.

⁷ *Id.*

stated that it was her intention to “stay on time” with her bills.⁸ In addition, she mentioned that she had not received financial counseling or pursued debt consolidation.⁹ As her final comment on the issue, Applicant stated, “[m]y financial predicament is under control, my current debts satisfied.”¹⁰

In response to the SOR, Applicant admitted debts noted in the SOR under allegations ¶¶ 1.a, 1.b, 1.e, 1.f, 1.g, and 1.i. These debts range from about \$46 to approximately \$8,111. In sum, they represent over \$11,900 in delinquent debt. She submitted no evidence of attempts to address these debts. In addition, she denied knowledge of the debts noted in allegations ¶¶ 1.c, 1.d, 1.h, 1.j, 1.k, and 1.l, representing about \$2,022 in delinquent debt. There is no evidence she has formally disputed these alleged debts or otherwise attempted to address them. Applicant now attributes her debts to “financial difficulties incurred in the past (7 years ago). . . while [she] was employed as a day care provider. . . .”¹¹

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, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s over-arching 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

⁸ *Id.*

⁹ *Id.*

¹⁰ Response to the FORM, dated Mar. 31, 2010.

¹¹ *Id.*

by applicant or proven by Department Counsel. . . .”¹² The burden of proof is something less than a preponderance of evidence. The burden of persuasion is on the applicant.¹³

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 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.” The “clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁵ A security clearance denial does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines established for issuing a security clearance.

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 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.”¹⁶ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”¹⁷ Here, Applicant admitted that she has nearly \$12,000 in delinquent debt. The evidence indicates that her debt could be closer to \$14,000. Therefore, 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.

¹² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁵ *Id.*

¹⁶ AG ¶ 18.

¹⁷ *Id.*

Applicant depicted herself as a single mother receiving “little support” who liked to “spend money.” The varying income often associated with day care providers may have affected her ability to earn sufficient funds to cover her expenses, thus leading to the creation of her debt. She failed, however, to provide a satisfactory explanation as to how these debts first became delinquent, then neglected, or why they continue to be neglected. Financial Considerations Mitigating Condition 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 stated that she is in good standing with her present obligations. Since learning of the delinquent debts when she met with investigators in August 2009, however, she has made no apparent effort to address any of the obligations at issue. This includes one admitted debt as minor as \$46. Furthermore, she demonstrated no attempts to dispute or otherwise investigate the debts she does not recognize. Moreover, Applicant has not received financial counseling or sought any professional assistance in helping her address these issues. Consequently, neither Financial Considerations Mitigating Condition (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), 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), nor FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Financial considerations security concerns remain unmitigated.

Guideline E - Personal Conduct

Under Guideline E, security concerns arise 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.”¹⁸ 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.¹⁹ Here, personal conduct concerns were raised when Applicant denied having been subject to any adverse judgments or having had any debts delinquent for over 180 days in the seven years preceding her execution of her e-QIP. Similar concerns arose when she denied currently being 90 days delinquent on any debts. Such allegations, if substantiated, are 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,

¹⁸ AG ¶ 15.

¹⁹ *Id.*

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

Under the facts presented, there is no evidence that Applicant intended to conceal or mislead when she denied having any applicable debts. Indeed, her comments during her August 2009 interview indicate that Applicant, at the time, thought her financial situation was “good.” Absent actual evidence that she intentionally falsified her answer to e-QIP questions regarding her finances, and in light of both her comments and the scant evidence of record, application of AG ¶ 16(a) does not apply. Under these circumstances, however, I find that application of AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment) is sufficient to mitigate the personal conduct security concerns alleged.

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 AG 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 a mature woman who completed high school, was a self-employed day care provider for many years, and has worked as an employee in a professional setting for at least seven years. Twice divorced, she has raised two children. Some of her debt appears to have originally been acquired because of insufficient spousal aid and fluctuating income as a day care provider, a career she sustained until about seven years ago. Some of her debt also seems to have been created because she “liked to spend money.” The issue is not so much her acquisition of debt, but the neglect of that debt over the past several years.

Applicant was first informed of the derogatory accounts at issue after she completed her e-QIP. She learned of these debts in early August 2009, over eight months ago. She presented no evidence that any effort has been exerted to address her admitted debts or to dispute those debts she denies. While she adequately mitigated personal conduct security concerns, her failure to provide explanations and evidence regarding both her debts and her overall financial situation leave financial considerations security concerns unmitigated. Clearance 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
Subparagraphs 1.a - 1.l	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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge