



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 09-08430
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

February 3, 2011

Decision

TUIDER, Robert J., Administrative Judge:

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

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 4, 2009. On May 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and 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 June 9, 2010, 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 August 30, 2010, was provided to her by cover letter dated September 2, 2010. Applicant received her copy of the FORM on September 8, 2010. She was given 30 days from the date she received the FORM to submit any objections, and information in mitigation or extenuation. She did submit additional information within the 30 day period. The case was assigned to me on October 28, 2010.

Findings of Fact

Applicant admitted SOR ¶¶ 1c – 1f, 1h, 1j – 1l, 1o, 1r, 1t – 1u, 1w – 1x, and 1aa. She denied the remaining 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 39-year-old graphic artist and designer, who has been employed by a defense contractor since September 2008.¹ Information contained in the FORM indicates that she has taken college courses part-time “off and on” from 1990 to 1996. (Item 7.) She does not have a college degree. Applicant married her husband in October 1998 and does not report having any dependents. She is a first-time applicant for a security clearance.

Applicant’s SOR lists 29 debts, of which 7 are judgments. The other 22 debts include collections, charged-off and past-due accounts. The total amount of debt alleged is \$30,244. These delinquent debts are substantiated by Applicant’s August 2009 e-QIP; her November 2008, August 2009, and March 2010 credit reports; her February 2010 response to interrogatories; and reports of public records. Her record of indebtedness began as early as 2003 and has been ongoing. (Items 4 – 10.) In Applicant’s June 2010 SOR response, she stated: “The debts that I have denied are ones I feel I have paid off or are incorrectly posted to my credit report.” (Item 2.) Applicant did not submit any documentary evidence in her SOR response or in her response to FORM substantiating her claim of debts that she denied were paid off or incorrect.² (Item 2, Response to SOR.) However, Applicant’s March 2010 credit report

¹ Background information is derived from Applicant’s e-QIP unless otherwise stated.

² Department Counsel addressed various shortcomings in Applicant’s June 2010 SOR Answer, in particular, her lack of documentation for debts she claimed were resolved. Applicant did not address the lack of documentation issue in her Response to FORM. She did include a three page narrative, a copy of her June 2010 Social Security Statement, a copy of a September 2010 cashier’s check in the amount of \$629 to a creditor, a copy of three receipts to a creditor, a copy of September 2010 correspondence to her Congresswoman asking for assistance with her security clearance, a September 2010 Contractor’s Progress, Status, and Management Report, and a September 2010 bank statement reflecting four

indicates that the judgment debts listed in SOR ¶¶ 1b and 1z are satisfied. (Item 10.) There is no comparable evidence in the record to refute the other delinquent debts alleged. And, as noted in *fn 2*, Applicant's additional evidence submitted in her Response to FORM is of little help identifying SOR creditors, if in fact, they are SOR creditors.

In Applicant's February 2010 interrogatory response, she indicated that: (1) she was diagnosed with cancer requiring nine surgeries causing her to miss work and ultimately lose her job in the time period of 2003 to 2004; and (2) her husband had a heart attack in June 2004 and fell from a ladder at home in December 2006 and broke his neck, also resulting in his loss of work. (Item 7.) Applicant reported periods of unemployment from February to August 2004, from January to February 2006, and from February to March 2007. (Item 4.) Applicant also sought financial counseling from March 2008 to July 2008. She reported paying \$3,000 in six payments of \$500 to the company providing financial counseling for credit repair and to have some of their outstanding accounts settled. Her recent credit report does not reflect a positive change in her financial situation. Applicant believes she was "scammed" during this process. (Item 7.)

Applicant's personal financial statement submitted in February 2010 reflects a net monthly income of \$4,511.60 and total monthly expenses of \$3,815. (Net remainder is \$696.60.) She also lists a \$700 monthly car payment as a monthly debt and it is unclear whether this amount is included in her monthly expenses. (Item 8.) If her car payment is not included in her monthly expenses, she would have a negative net monthly remainder. Applicant did not address this discrepancy in her Response to FORM. Applicant repeated throughout this process that she intends to pay her debts. (SOR Response, Items 7 and 8, Response to FORM.)

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).

payments to a creditor. Unfortunately, Applicant did not indicate on any of the documents purporting to pay bills what SOR creditor, if any, was being addressed.

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

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.

Since approximately 2003, Applicant accumulated at least 29 separate debts totaling just over \$30,000. Seven of those debts are judgments. Her history of indebtedness is well documented. 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 precludes full application of these mitigating conditions except for AG ¶ 20(b). Furthermore, if approximately one-half of her debts were resolved as she claims, she failed to provide documentation substantiating her claim. Her financial problems are ongoing and her evidence fails to show they occurred under such circumstances that they are unlikely to recur and do cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented evidence to establish circumstances beyond her control contributing to her inability to pay her debts. Such circumstances include her

unemployment following her cancer diagnosis in 2002 and her three periods of unemployment in 2004, 2006, and 2007. Additionally, her husband had a heart attack in 2004, sustained a broken neck in 2006, and lost work. These events are most unfortunate and significant. Applicant asserts that she was doing the best she could under the circumstances to pay down her debts and remain financially solvent. AG ¶ 20(b) applies.

Applicant receives partial credit under AG ¶ 20(c). In 2008, she participated in financial counseling, but there is no evidence that her financial situation improved. For this mitigating condition to apply, an Applicant must show there are clear indications that the problem is being resolved or is under control. From the evidence presented, Applicant's financial situation is not being resolved and is not under control.

Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the lack of documentary evidence of efforts to resolve her financial obligations, Applicant's information is insufficient to establish that her financial problems are unlikely to recur. The AGs ¶¶ 20(d) and (e) are not reasonably supported by Applicant's evidence. She did not submit sufficient documentary evidence of correspondence or similar evidence to show a good-faith effort on her part to repay her creditors or otherwise resolve her debts. I am unable to connect what little documentary evidence she submitted in Response to FORM with any debts alleged. Applicant's claim that approximately one-half of the debts alleged are not valid or have been paid or settled is unsubstantiated. Again, she has not submitted documented proof to support her claim that her disputed debts are not valid.

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). I have incorporated in my whole-person analysis my analysis under Guideline F.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for her work history and work as a government contractor. These factors show a level of responsibility.

Notwithstanding, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant has failed to show good-faith efforts to resolve her financial problems in a timely manner. The sparse mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. In fairness to the Applicant, she may well have resolved one-half of her debts and she may be on the road to recovery. However, with the evidence she submitted she failed to demonstrate that she has achieved financial responsibility. 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
Subparagraph 1a:	Against Applicant
Subparagraph 1b:	For Applicant
Subparagraphs 1c – 1y:	Against Applicant
Subparagraph 1z:	For Applicant
Subparagraphs 1aa – 1cc:	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 for Applicant. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge