



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 09-08710
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

April 29, 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 August 17, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On June 2, 2010, 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* (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) effective within the Department of Defense for SORs after September 1, 2006.

Applicant answered the SOR on June 25, 2010, and DOHA received her answer on June 28, 2010. Department Counsel was prepared to proceed on July 20, 2010. The case was assigned to another administrative judge on July 27, 2010, and was reassigned to me on August 8, 2010. DOHA issued a notice of hearing on September 7,

2010, scheduling the hearing for September 29, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 4, which were received without objection. The Applicant did not offer any exhibits at her hearing, but did testify on her own behalf. I held the record open until October 13, 2010, to afford her the opportunity to submit additional evidence. Applicant did not submit additional evidence post-hearing. DOHA received the hearing transcript (Tr.) on October 7, 2010. The record closed on October 13, 2010.

Findings of Fact

Applicant admitted SOR ¶¶ 1a to 1g, 1j to 1o, and 1q to 1s; and denied SOR ¶¶ 1h, 1i, and 1p. Her admissions are incorporated as findings of fact.

Background Information

Applicant is a 33-year-old security administrative assistant, who has been employed by a defense contractor since June 2009. She has an interim secret clearance. Successfully vetting for a security clearance is a condition of her continued employment. (GE 1, Tr. 12-14.)

Applicant graduated from high school in May 1996. She attended community college for the fall semester 2003. She married in January 2004 and divorced her husband in October 2006. Applicant has two sons ages 12 and 3, who reside with her. The father of her 12-year-old son is required to pay \$237 in monthly child support; however, Applicant added that he is “[a]lways behind.” Applicant has a relationship with a “significant” other, who lives with her and is the father of her three-year-old son. She did not serve in the armed forces. (GE 1, Tr. 14-19, 47-48.)

Financial Considerations

Applicant’s SOR cites 20 allegations under this concern.¹ Broken down, the allegations consist of 19 debts totalling \$31,198. The 20th allegation cites a 2001 arrest for writing a bad check. Of those 19 debts, 15 are collection accounts, 2 are charged-off accounts, 1 is a judgment, and 1 is a warrant for writing a bad check. These debts have been accruing for many years, beginning as early as 2001 or before, and are ongoing. (GE 3.) Applicant attributes her ongoing financial problems to being a single mother working low-wage jobs, uncovered medical expenses, lack of consistent child support, and a period of unemployment. (GE 2(l-8), Tr. 54.) She was unemployed from December 2008 to June 2009. (GE 1, Tr. 57.) Her younger son has significant medical problems to include polycystic kidneys, fibrosis of the liver, asthma, high potassium, and gastroesophageal reflux disease. He receives Supplemental Security Income from Social Security. (Tr. 47-48, 54.)

¹ The SOR mistakenly lists two separate allegations under 1k.

Applicant appeared at her hearing poorly prepared to discuss her debts, and it became clear shortly after the hearing commenced that she had done little if anything to make any headway in addressing her indebtedness. She did discuss the limited progress she made on four debts – her student loan account that had been placed in collection in the amount of \$3,453, a collection account for \$134 for writing a bad check to her city of residence, a collection account for \$129 owed to a utility company, and a 2007 arrest for writing a \$160 bad check to her local court. As a result of writing a \$160 bad check to her local court, she was ordered to pay the full check amount and court costs. (SOR ¶¶ 1h, 1o, 1q, 1r.) As a result of her writing the \$134 bad check to her city of residence, she was fined and ordered attend to a finance class. (SOR ¶ 1s.) She has been paying down her student loan at a rate of \$25 or \$50 a month, depending on what she can afford. Attached to her February 2010 Response to DOHA Interrogatories was a February 2010 statement from the student loan creditor indicating her loan balance had been paid down to \$2,829.27. She stated with sufficient certainty that the remaining three debts had been paid. (GE 2(I-15), Tr. 27-29, 35-38.)

She provided little or no evidence that she contacted her creditors or that she made any attempt to resolve her financial situation. She has not sought formal financial counselling. She provided no documentation that showed she had paid or did not owe the debts she denied. At her hearing and while the record remained open post-hearing, she did not submit any documentary mitigating evidence. (Tr. 20-41.) She does not have any credit cards, nor does she have a savings account. Applicant does not have a retirement plan. At the hearing date, she had \$11 in her checking account. (Tr. 45-46.) With her current income, Applicant is only able to maintain the bare necessities such as food, clothing, and shelter. Apart from her student loan, which she is slowly paying down, and three other debts she has paid, the other debts remain unpaid. Given her current situation, she acknowledged that she is unable to pay these debts. (Tr. 51-52.)

Character Evidence

In her SOR Response, Applicant submitted a reference letter from a coworker. Her coworker stated that Applicant was an excellent worker and a problem solver as well as possessing a work ethic, energy, and creativity. Her coworker recommended her for “any endeavor [Applicant] chooses to pursue.” (SOR Response.)

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

Financial Considerations

Under Guideline F, the concern is that an Applicant's 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.)

Applicant accumulated 19 debts totaling \$31,198. She has made progress on four debts. However, the remaining 15 debts have not been paid or remain unresolved. Applicant's history of indebtedness is well documented and has been ongoing since at least 2001. AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations" apply.

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

- (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; and
- (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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. Therefore, her debt is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

Under AG ¶ 20(b), Applicant receives partial credit because she was unemployed preceding her current employment. This misfortune no doubt impacted her ability to pay bills. However, to receive full credit under this mitigating condition, Applicant has to demonstrate that she acted responsibly under the circumstances. There is no evidence that Applicant remained in contact with her creditors or tried to make minimum payments during this time.²

AG ¶ 20(c) is not applicable because Applicant did not seek financial counseling. Furthermore, her finances are not under control. Likewise, there is not sufficient evidence in the record to establish full mitigation under AG ¶ 20(d).³ Applicant's unemployment covered a relatively short span of her lengthy period of indebtedness. Applicant offered little or no evidence that she had made or is making a good-faith effort to repay her creditors or otherwise resolve her debts. Applicant receives some credit for attempting to pay down the arrearage on her student loans and for paying four of her smaller debts. AG ¶ 20(e) is not applicable. Although Applicant disputes the validity of several of the debts she denied, she provided no documentation that she contacted the creditors in question or that she disputed the validity of the debts on her credit reports.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

² "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

³ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

(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).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. Applicant's financial indebtedness is ongoing. I recognize that Applicant has been faced with several life challenges; however, her financial problems did not occur overnight nor can they be pinpointed to a particular event or occasion. They have been ongoing since at least 2001, before the birth of her second son and before her lay off. I was also concerned with the lack of financial situational awareness she demonstrated during her hearing. I consider her 2001 arrest for writing a bad check mitigated given the passage of time as well as the fact she complied with all court imposed punishment. With regard to the remaining unresolved debts, Applicant demonstrated that she has not reached a state of financial responsibility, nor is she likely to reach such a state in the near future. After weighing the disqualifying and mitigating conditions and all the facts and circumstances in the context of the whole-person concept, I conclude she has not mitigated security concerns pertaining to financial considerations.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has not fully mitigated or overcome the Government's case. For the reasons stated, I conclude she is not eligible for access to classified information.

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 – 1g:	Against Applicant
Subparagraph 1h:	For Applicant
Subparagraph 1i – 1n:	Against Applicant
Subparagraph 1o:	For Applicant
Subparagraph 1p:	Against Applicant
Subparagraphs 1q – 1s:	For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge