



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



In the matter of:)	
)	
)	ISCR Case No. 10-01984
)	
Applicant for Security Clearance)	

Appearances

For Government: J. Theodore Hammer, Esq., Department Counsel
For Applicant: *Pro se*

February 7, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On September 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 on September 1, 2006.

Applicant answered the SOR on October 12, 2010, and requested a hearing before an administrative judge. The case was assigned to me on December 7, 2010. DOHA issued a Notice of Hearing on December 13, 2010. I convened the hearing as

scheduled on January 18, 2011. Applicant affirmed that she received the Notice of Hearing 15 days before the hearing. The Government offered Exhibits (GE) 1 through 4. Applicant did not object and they were admitted. Applicant testified on her own behalf. She offered Exhibits (AE) A through C, which were admitted without objections. DOHA received the hearing transcript (Tr.) on January 26, 2011.

Findings of Fact

Applicant admitted the SOR allegations except ¶ 1.g. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 37 years old. She completed high school and a technical school. She married in 1997, and divorced in November 2004. She has one child from the marriage who is 11 years old. She has another child from a previous relationship who is 17 years old. Both children live with her. She receives \$492 child support for her younger child, but none for the older child.¹

Applicant attributed her financial difficulties to a costly divorce in 2004. She stated the marital debts were resolved through the divorce and she was debt-free, except for her attorney's fees, which were approximately \$55,000. She received \$17,000 from the divorce that she used to pay her attorney's fees. She lived with her sister for a few months after she and her husband separated, and then met her fiancé in November 2003. She began living with him and he paid for most of her living expenses for a period, in an attempt to help her financially. Her fiancé helped her pay her attorney's fees. She stopped living with him in about May 2007, when he moved out of the country. He would send her \$500 to \$600 a month, if they were getting along. They maintained their relationship for a period, but it finally ended in approximately May 2008. She then transferred the lease on the residence where they lived to her name only. She assumed the monthly rental payments of \$1,850. She still resides in the home. She does not receive any money from him.²

Applicant presently earns approximately \$78,920 annually. She has been steadily employed since May 2006. From September 2001 to September 2003, she was employed. She was unemployed from September 2003 to August 2004. She did some temporary work from July 2004 to October 2004. She started a new job in November 2004, and remained there until May 2006, when she started working with her current employer, as a senior project manager. Her fiancé was unemployed from about December 2004 to January 2006, and Applicant supported him during this time. Applicant stated she has had some medical problems that required her to pay

¹ Tr. 28-31.

² Tr. 31-44.

copayments and other medical expenses. She did not articulate any specific amounts or provide any other information about payments she made.³

The debt in SOR ¶ 1.a is for a leased car. Applicant's fiancé could not obtain credit so she leased a BMW car in her name in August 2004. She made a \$1,500 down payment. Her fiancé was to make the payments on the lease. He stopped making the payments when he moved out of the country in late 2007. She returned the vehicle to the car dealership. The amount owed is \$3,983. Applicant has not contacted the creditor to resolve the debt. She stated she spoke with her former fiancé about sending her money to pay for the debt. He sent her \$5,000, but she used it to repay her father who had loaned her money. She stated she intends to repay this debt, but stated she thinks it will take forever.⁴

The debt in SOR ¶ 1.b (\$4,720) is for a cell phone. Applicant agreed to the contract in July 2007. She purchased it for her fiancé and she believed the contract was for unlimited data usage. She learned that using the phone overseas incurred high roaming charges. She contacted the creditor before she received the first bill to ensure she did not receive excess charges. She stated she repeatedly disputed this account with the creditor. She asked her former fiancé to pay the bill, but he did not. She stated he disputed it also. She received bills from the creditor for half of the original charged amount for four months and then the account went to collection. She stated later her credit report showed the full amount owed. She stated she disputed the account with the credit bureau (CB) online. She stated she received letters from the CB with a current history for the debt with information on why she owed the debt. She believed the creditor misunderstood her dispute, but she did not follow-up on contacting the creditor to resolve the debt. Applicant did not provide any documents to support her disputes.⁵

The debt in SOR ¶ 1.c is a credit card debt (\$1,368). Applicant opened the account in the fall of 2004. She did not have the money to pay it, and it became delinquent in 2005. In June 2010, she contacted the creditor and made arrangements to pay the account in October 2010. She was provided with a three-option settlement offer. She hopes to use her tax refund to pay the lump-sum option. She has not paid the debt.⁶

Applicant stated she does not know the basis for debt in SOR ¶1.d (\$416). She stated she called the phone number on the credit bureau report and discussed the debt. No one could tell her basis for the debt. She attempted to get the CB to help her dispute the debt. She did not provide supporting documentation. It remains unpaid.⁷

³ Tr. 19-28, 96, 105-106.

⁴ Tr. 61-68.

⁵ Tr. 76-82.

⁶ Tr. 82-87.

⁷ Tr. 87-88.

The debt in SOR ¶ 1.e (\$3,818) is for a computer Applicant purchased in May 2005. She stopped making payments on the debt in November 2006, but did not know why. She has made no attempt to contact the creditor to pay or resolve the debt.⁸

The debt in SOR ¶ 1.f (\$150) is a medical debt. Applicant believes this may be a double charge by her insurance company for her deductible. She has not resolved the debt.⁹

The debt in SOR ¶ 1.g (\$4,489) is for a loan Applicant secured in June 2004 to pay her attorney's fees. She denied she owes this debt. She stated she believes she should have been credited for payments, and it should be about \$2,000. She stated she requested an explanation from the creditor and did not get one. There was confusion about whether this debt was the same debt she was referring to in her dispute or if it was a different debt with the same creditor. She stated she disputed it on her credit report and contested the debt. She stated a court date was scheduled to resolve the debt, but the creditor failed to appear and the case was dismissed without prejudice. She wrote to the creditor detailing her dispute. Because there are several accounts with the same creditor, it is unclear which debt Applicant is actually referring to. She did provide documentation that she disputed the debt she believes is listed in SOR ¶ 1g.¹⁰

Applicant stated that in January 2008 she contacted a debt consolidation company to assist her in resolving her delinquent debts. She completed some information online and was advised that the proposed plan could not include two of her delinquent debts. She wanted all of her debts in the same plan. She did not do anything else to follow-up with that company. In the past month, she began to research new consolidation companies to set up a plan. Her plan was to start paying her delinquent debts when the bill for her son's braces was paid. However, in October 2010, her car stopped working, so she needed to buy a new car and had to delay paying her delinquent debts. She stated she used \$1,000 for a down payment and financed \$21,000 for the car. She has not been able to pay the delinquent debts because she now has a car payment and higher insurance payments. Applicant stated she has a budget, but it does not include all of her expenses. She attempts to abide by the budget. She has considered taking a loan from her retirement account. She stated she did not think she was doing great financially, but she was getting by. She stated she has a plan to try and consolidate her debts. She does not believe it will be a quick process. She stated how busy her days are and she is trying to take care of her children. She thought she was doing a good job trying to follow up on her debts, but it is tedious and not fun. She has not written letters to her creditors, except for one. She intends to repay her delinquent debts, but acknowledged it will take some time.¹¹

⁸ Tr. 89-91.

⁹ Tr. 91-93.

¹⁰ Tr. 45-61; GE 3, 4.

¹¹ Tr. 18-19, 68-75, 94-103.

Applicant provided a copy of a letter of appreciation and an email acknowledging her accomplishments, knowledge, and professionalism.¹² She also provided two photographs that appear to be of awards presentations.¹³

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon 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

¹² AE A, B.

¹³ AE C, D.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

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

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that are unpaid or unresolved. They have been delinquent for several years. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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 delinquent debts are unpaid and unresolved. I find they are numerous and ongoing. Applicant failed to provide a current credible plan for how she intends to resolve her debts. I find her debts are not the result of circumstances making them unlikely to recur. Therefore, AG ¶ 20(a) does not apply.

Applicant attributed her financial problems due to attorney's fees she owed after her 2004 divorce and medical bills. These could be attributed to conditions that were beyond her control. However, for AG ¶ 20(b) to be completely applicable, Applicant must have acted responsibly under the circumstances. Applicant stated that her fiancé assisted her in paying some of her attorney's fees. She has been gainfully employed since 2006. She incurred additional debts since her divorce, to include a leased car, credit card debt, a debt for a computer she failed to pay, and a phone for her fiancé. Although Applicant may have initially had financial problems after her divorce, she has not provided sufficient evidence to show she has acted responsibly since then in maintaining her finances. I find AG ¶ 20(b) does not apply.

Applicant contacted a debt consolidation company to help her organize and repay her debts. She was told they could not include two debts in the plan. She failed to follow through with them to resolve the remaining debts or in the alternative to find a different company. There is no evidence Applicant has recently received financial counseling or has initiated a good-faith effort to resolve her debts. She has a budget, but it is incomplete. There is insufficient evidence to conclude Applicant's financial problems are being resolved or are under control. I find AG ¶¶ 20(c) and 20(d) do not apply.

Applicant disputed the debt in SOR ¶ 1.g. She provided documents to support her attempt to dispute and resolve the debt. Although there is some question about whether the debt she disputed is the one actually alleged in the SOR, I am not convinced the Government has met their burden in identifying the specific debt in their evidence. Applicant in good-faith believed the actions she took were for the debt in SOR ¶ 1.g. I find AG ¶ 20(e) applies to this debt.

Applicant disputed other debts, but failed to provide documented proof to substantiate the basis of the dispute, or to show what she has done to resolve the debts. She believes certain charges are incorrect, but she has failed to follow through with the creditors to resolve them. She leased a car and signed a contract for a cell phone for her fiancé. He provided her with some money for the car, but she used it to pay a different debt. She disputed the cell phone charges, but failed to follow through to resolve it when it appeared on her credit bureau report. She was offered a settlement agreement on a credit card debt, but has not acted on it because she needed to buy a car. She believes a medical debt is a double charge, but has not contracted the creditor or resolved it. Applicant has not provided documentation to substantiate that her disputes on her remaining delinquent debts are reasonable. I find that AG ¶ 20(e) only applies to the debt in SOR ¶ 1.g.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant experienced financial problems after her 2004 divorce due to attorney's fees she owed. She subsequently incurred additional debts that she failed to resolve. Except for the debt in SOR ¶ 1.g, she has not provided any information that she has arranged payment plans to resolve her delinquent debts. Certain debts she disputes, but she has not followed through on disputing them with the creditors. She acknowledged that contacting the creditors and addressing the debts is a tedious process. Applicant did not provide a current, credible plan on how or when she will pay or resolve her debts. Applicant failed to meet her burden of persuasion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security

clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for 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 1.a-1.f:	Against Applicant
Subparagraph 1.g:	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. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge