



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



In the matter of:)	
)	
)	ISCR Case No. 10-02194
)	
Applicant for Security Clearance)	

Appearances

For Government: William T. O’Neil, Esquire, Department Counsel
For Applicant: *Pro se*

October 4, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on December 18, 2009. On January 20, 2010, she was interviewed by an investigator from the U.S. Office of Personnel Management and provided information about her financial obligations. On April 4, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 issued after September 1, 2006.

Applicant responded to the SOR on May 23, 2011, declined a hearing, and requested that her case be adjudicated on the written record. The Government compiled its File of Relevant Material (FORM) on June 13, 2011. The FORM contained documents identified as Items 1 through 8. By letter dated June 17, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on July 10, 2011. Her response was due on August 9, 2011. She submitted additional information within the required time period. On September 20, 2011, the case was assigned to me for a decision. I marked the material Applicant submitted in response to the FORM as Item A and admitted it to the record without objection.

Findings of Fact

The SOR contains ten allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.j.). In her Answer to the SOR, Applicant denied all ten allegations. (Item 1; Item 4.)

The facts in this case are established by the record submitted by the Government and by information provided by Applicant. The record evidence includes Applicant's Answer to the SOR; her 2009 e-QIP; her personal subject interview, dated January 20, 2010; her responses to DOHA interrogatories;¹ her credit reports of February 25, 2011 and January 5, 2010; and her response to the FORM. (See Items 4 through 8; Item A.)

Applicant is 51 years old, widowed, and the mother of four children, aged 27, 22, 14, and 13. She is employed by a federal contractor as a supply technician, and she seeks renewal of a security clearance. (Item 5.)

Applicant served in the U.S. military from 1980 to 1995. She received an honorable discharge at the completion of her military service. She was first awarded a security clearance in 1983. Since leaving the military, she has served several tours as a government contractor in a war zone. Her service in this capacity began around 2007 and has continued to the present. During this time, she has also had brief periods of unemployment. (Item 5.)

The SOR alleges that Applicant is responsible for ten delinquent debts totaling approximately \$17,041. In her answer to the SOR, Applicant denied the ten debts and asserted that they had all been resolved. All of the delinquent debts are reported on Applicant's credit reports of February 25, 2011 or January 5, 2010. On her e-QIP, Applicant reported that she had had property repossessed, wages garnished to satisfy a debt in 2008, and accounts or credit cards suspended, charged-off or cancelled for failure to pay as agreed. (Item 4; Item 7; Item 8.)

¹Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on January 20, 2010. On February 9, 2010, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that she had read the summary of the interview and found it to be true and correct. (Item 6.)

In her interview with an authorized investigator, Applicant stated that a \$4,100 credit card debt, later alleged at SOR ¶ 1.f., went into collection status in 2004. She told the investigator that the debt was satisfied when the creditor took possession of her federal tax refund for an unspecified year, and she then wrote a check to the creditor for remainder due. Applicant told the investigator that she could provide documentation to corroborate payment in full. Applicant failed to provide documentation to corroborate payment. Her credit report of January 5, 2010 showed the debt in collection status. Her credit report of February 25, 2011 showed the account with a zero balance, with the notation that it had been transferred or sold. (Item 6; Item 7; Item 8.)

In her Answer to the SOR and in her response to the FORM, Applicant provided documentation establishing that the debts alleged at SOR ¶¶ 1.a. (\$980),² 1.d. (\$9,006), and 1.g. (\$854) had been resolved. While she asserted that the remaining seven delinquent debts alleged on the SOR had also been resolved, she failed to provide documentation to corroborate her assertions. (Item 4; Item A.)

In her response to the FORM, Applicant stated that because she had paid all of the accounts alleged in the SOR, her financial delinquencies should have no bearing on her eligibility for a security clearance. She attributed some of her delinquent debts to her generosity in co-signing the financial obligations of others, who then failed to pay their debts. (Item A.)

In response to DOHA interrogatories, Applicant provided a personal financial statement. Applicant listed a \$6,208 net monthly income from her salary as a contractor. She also reported that she received \$861 in military retirement pay each month. Applicant listed the following monthly fixed expenses: rent, \$1,275; groceries, \$150; clothing, \$150; utilities, \$640; life and other insurance, \$31; and child care, \$800. Applicant's fixed monthly expenses total \$3,046. Her net monthly remainder is \$4,203. She listed no assets and no debt payments. (Item 6 at 3.)

In January 2010, when she was interviewed by an OPM investigator, Applicant stated that her financial problems began in 2003 when she left a job in an unsafe neighborhood and was then unable to find full-time work. She stated that she had been unable to recover financial stability since that time. She told the investigator that she had never received any debt counseling and had about \$25,000 in savings. She also told the investigator that she intended to contact all of her creditors immediately to make payment arrangements. (Item 6 at 12-13.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the*

² This debt was identified as a medical bill on Applicant's credit report of February 25, 2011. (Item 7.)

Navy v. Egan, 484 U.S. 518, 528 (1988). As Commander in Chief, the President 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s 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.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 protect or 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.” 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 relating to the guideline 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant denied allegations of financial delinquency and claimed to have satisfied all ten delinquent debts alleged on the SOR. She provided documentation to corroborate payment of the debts alleged at SOR ¶¶ 1.a., 1.d., and 1.g. Those three debts are concluded for Applicant.

However, Applicant failed to establish that the remaining seven unsatisfied debts were not hers. Moreover, she denied all of the debts, even though they were listed on her credit reports, and she provided no evidence to show she had resolved them.³

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan.7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the

³ When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. “That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern.” See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted.) Applicant's history of delinquent debt is documented in her credit reports, her e-QIP, her interview with the OPM investigator, and her SOR response. The evidence is sufficient to raise financial considerations disqualifying conditions identified at AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "the conditions that resulted in the financial problem were largely beyond the person's control, [such as] loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that 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" (AG ¶ 20(c)); that "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" (AG ¶ 20 (d)); or that "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." (AG ¶ 20(e)).⁴

Applicant merits credit for resolving three of the ten delinquent debts alleged on the SOR. At the same time, the record reflects that she has a history of financial delinquencies which are recent, on-going, and occurred under circumstances that are likely to recur. She told the OPM investigator that her financial problems began in 2003, and, since that time, she had been unable to recover her financial stability. However, she failed to provide documentation that her unresolved financial delinquencies were the result of conditions or circumstances beyond her control. On her personal financial statement, she reported no debt payment despite a net monthly remainder of over \$4,200. She failed to provide documentation to establish that she had paid or had active payment plans for seven of the ten delinquent debts alleged on the SOR.

In her January 2010 interview with an OPM investigator, Applicant stated that she would contact all of her creditors immediately and make payment arrangements. However, over eighteen months later, she failed to provide documentation that seven of her ten debts had been resolved. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her

⁴A sixth possible mitigating circumstance applies when "the affluence resulted from a legal source of income." (AG ¶ 20(f)). This mitigating circumstance is not relevant in this case.

outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999).

The record does not reflect that Applicant has sought consumer credit counseling that could provide her with strategies for managing her income and resolving her delinquent debts. I conclude that AG ¶ 20(d) applies in part in mitigation to the facts of Applicant's case. I also conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(e) do not apply in mitigation to the security concerns raised by the facts in this case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all 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.

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. Applicant is a mature adult who has a substantial income and a net monthly remainder of over \$4,000. Her financial statement reflects that she does not allocate any income to debt repayment. While she asserted that she had paid all of the delinquent debts alleged on the SOR, she failed to provide documentation to establish that she had paid or otherwise resolved seven of her delinquent debts. The record does not reflect that she has sought consumer credit counseling. She attributed some of her financial problems to voluntarily assuming financial responsibility for others, who then failed to honor the debts she co-signed with them. Her current financial situation raises security concerns about her judgment and reliability.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial delinquencies. If her employer concurs, Applicant can reapply for a security

clearance one year after the date that this decision becomes final. If she wishes, she can produce new evidence that addresses the Government's current security concerns.

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 1.a.:	For Applicant
Subparagraphs 1.b. - 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraphs 1.e. - 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraphs 1.h. - 1.j.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge