



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-02788
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

October 20, 2010

Decision

LYNCH, Noreen A. Administrative Judge:

On July 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 for SORs issued after September 1, 2006.

On July 26, 2010, in a notarized response, Applicant requested an administrative determination, and in her answer to the SOR, admitted each of the allegations under the Financial Guideline, in SOR ¶ 1 except for four debts (¶¶ 1.b, 1.d, 1.f and 1.h). Department Counsel submitted a File of Relevant Material (FORM), dated September 2, 2010.¹ Applicant received the FORM on September 10, 2010. She submitted additional information in a timely manner. On October 6, 2010, the Director, DOHA,

¹The Government submitted eight items in support of its case.

forwarded the case for assignment to an administrative judge. The case was assigned to me on October 7, 2010. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet her burden to mitigate the security concern raised. Security clearance is denied.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. She graduated from high school in 1973. (Item 1) Applicant is married and has four adult children. She educated her children and all four graduated from college. She has held a security clearance for 26 years. She has worked for her current employer since 1995. (Item 1)

Applicant experienced financial difficulty in 1999 when her husband lost his job. There is information in the record concerning delinquent accounts at that time and Applicant's responses. She had no intention of paying certain charged-off accounts. She noted that they had received a recent car loan for \$15,000. (Item 7) The 1999 financial statement listed a net monthly remainder of \$842.

According to Applicant, until about four or five years ago, Applicant and her husband were maintaining monthly accounts. (Answer to FORM) In 2005, Applicant's husband was terminated from his job due to a company restructure. He found employment making \$10 an hour, substantially less money than he was making in his former job. Applicant's husband was laid off from that position approximately eleven months after starting the job. (Enclosure to FORM)

Applicant noted that her husband has now found steady employment in his career field of printing. She does not mention dates or income. She also noted, that like everyone else, living expenses have increased. She further noted that "we have had some medical problems to top it off."

Applicant noted in her answer to the SOR that "she was maintaining monthly payments until the laws changed and the minimum payments were increased tremendously until we were unable to pay what was required." She also explained that her first priority is to pay her home mortgage.

Applicant states that she and her husband have pursued avenues to correct the financial problems. She noted that she wrote letters to each creditor and asked for reduced payments, but they were unwilling to work with her and sent the accounts to collection. She consulted with her employer assistance program. She explained that she was told to seek legal advice and contact a consumer credit counseling service. She does not want to file for bankruptcy.

In June 2009, Applicant contacted a consumer credit counseling service. After reviewing her listed monthly net income of \$4,484 and her total living expenses of \$5,997, Applicant had a negative monthly remainder of \$1,513. The company could not enroll Applicant in the debt management program due to the monthly deficit. The company suggested legal advice.

The SOR alleged thirteen delinquent debts for unpaid/collection accounts totaling \$37,967. (Item 6) In her answer to the SOR, she admitted \$27,364 in delinquent debt. Applicant provided no information that she has paid or has a plan for the delinquent debts, with the exception of two that are explained.

Applicant asserted that she is paying the two debts listed in the SOR, ¶ 1e and 1.g, on a monthly basis.² She submitted a copy of a coupon that showed an amount due of \$150 to a law firm. There is no indication of payment. She also noted that she paid one account, but did not provide any documentation to support the claim.

In her answer, Applicant stated that she resolved two debts (SOR ¶ 1.b and 1.h) and received a 1099C from the creditor and that she claimed this income on her taxes for 2009. (Item 4) She submitted no documentation for this assertion.

Applicant responded to the FORM by saying that “it is true that I am over extended but I do not have an intentional unwillingness to pay my debts.” She noted that she found the FORM to be derogatory and inflammatory to her character. She emphasized that she has been with her employer for over 25 years with a security clearance. She does not believe because she has financial problems that her trustworthiness should be questioned.

Applicant chose to rely on the written record. She was clear that she did not wish to appear at a hearing. She recognized that she had “severely delinquent credit card accounts and her first priority is her home mortgage. She refers to her husband’s loss of employment twice. She stated that she has handled her financial problems the best she knows how and has not received any bailout.”

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. 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 overarching 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

²In her answer to the SOR, Applicant stated that she was making payments on 1.d and 1.f.

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 by applicant or proven by Department Counsel. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

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 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁸ *Id.*

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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." It also states that "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 admitted that she has approximately \$27,364 in delinquent debt. The debts have been ongoing and are not resolved.

Financial Considerations Mitigating Condition (FCMC) 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) does not apply.

FC MC 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. As noted, Applicant explained that her husband was unemployed in 2005 and had to work for a reduced salary and then experienced another termination. He now has steady employment. Applicant has been steadily employed for 26 years. She referred to higher living expenses, but did not explain why she has not made more payments on her SOR debts. She revealed a negative monthly remainder, but provided no information on where her income is spent. She also noted in 1999 that since the accounts were charged-off, she would not pay them. Her husband's unemployment alone is not sufficient for mitigation. Applicant has not acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has been steadily employed for 26 years. She stated that she is making payments on two accounts and paid one but provided no documentation to prove payments had been made or what her plan will be to resolve the debts. She did try to establish a debt management program in 2009, but did not have sufficient income. There is no indication the financial problems will not recur. 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) does not apply. FC MC AG ¶ 20(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) does not apply.

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 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. 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 long-term employee for a contractor. She has held a security clearance for many years without incident. However, she has a number of delinquent debts that have not been resolved. Nor is there a plan in place to address the debts. Applicant's husband's unemployment impacted their financial status, but she notes that he is now employed in his career field. Applicant does not wish to file for bankruptcy. She believes that her character should not be questioned in light of the delinquent debts totaling \$27,000. She has not met her burden in this case, as she has failed to provide evidence of debt resolution or payment.

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.m:

Against 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. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge