



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



In the matter of:)	
)	
)	ISCR Case No. 10-03329
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

November 16, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On May 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing.¹ DOHA assigned the case to me on August 4, 2011. A notice of hearing was issued on September 8, 2011, and the case was heard on October 6, 2011. Department Counsel offered three exhibits (GE) 1-3, which were admitted without objection. Applicant testified on her own behalf and submitted four exhibits (AE) A-D at the hearing, which were admitted without

¹Before the hearing, Applicant received an amended SOR, adding three allegations. She responded to the amended SOR in a timely manner.

objection. I kept the record open at Applicant's request. She submitted documents which are marked AE E-F, and submitted into the record without objection. The record closed on October 20, 2011. DOHA received the hearing transcript on October 11, 2011. Based on a review of the pleadings, submissions, and exhibits, I find Applicant has not met her burden of proof on mitigation regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted the delinquent debts in the SOR with the exception of the largest account. Applicant is 59 years old. She is divorced and has one son who is 24 years of age. She received her undergraduate degree in 1974 and her master's degree in 1976. She worked for state government for almost 31 years. She worked as a government contractor from December 2009 until May 2010. (Tr. 36) Applicant is sponsored by the contractor pending completion of the security process.

Applicant purchased a home with her mother in approximately 2000. They were both named on the mortgage. They refinanced the house on several occasions. In 2007, Applicant's name was not kept on the mortgage. Her name was on the deed to the home. (Tr. 45)

Applicant is an only child. Her mother became very ill in 2004 and required nursing home care. Her mother lived in a nursing home for several years. However, Applicant did not believe that her mother received appropriate care. Applicant filed a law suit against the nursing home. When her mother could no longer stay in the home, Applicant retired early from a position that she held for almost 31 years (2007) and cared for her mother in their home. Her mother died in November 2008. (AE E)

The SOR lists four delinquent accounts totaling approximately \$587,000. The credit reports in the record confirm the debts. (GE 2) Applicant acknowledges that she has a past due mortgage but that her name is not on the current mortgage. (Tr.12) Applicant admits the other three accounts are consumer credit accounts. She has not paid them.

The debt alleged in SOR 1.a for a mortgage account that is past due in the amount of \$548,372 is the home mortgage of Applicant's deceased mother. Applicant has remained in the house since her mother's death. When the home was purchased in 2000, both names were on the mortgage. Applicant's credit was acceptable. The house was refinanced in 2007 with only Applicant's mother's name on the loan because of the huge reduction in Applicant's income. Applicant's mother fell behind in the mortgage payments sometime in 2008. After her mother died in 2008, Applicant did not make payments on the mortgage. In 2009, the mortgage company initiated foreclosure on the home. Applicant attempted to get help from a state program that dealt with home foreclosures. Applicant believes that she is not obligated to pay the mortgage because her name is not on the mortgage. (Tr. 52) Applicant obtained an attorney and joined a class action litigation in 2009 because of the belief that foreclosure procedures were not proper. (Tr. 54) The case was dismissed with prejudice in September 2011. (AE F)

Applicant's net monthly income is approximately \$1,135. (AE B) She is too young to receive social security benefits. She has been unable to find a permanent position despite her lengthy work history and her excellent research skills. (AE D). Applicant has not sought financial counseling. She is not able to engage in a debt consolidation plan at this time due to lack of income. Her son was helping her financially for a while, but he has moved to another state and is not able to continue that support. (GE 3)

At the hearing, Applicant acknowledged that she has delinquent accounts because her retirement income is not sufficient to cover her bills. She paid small amounts whenever she could when her son was helping her. She now covers her basic necessities. In fact, her family members were helping her with expenses. She does not want to file for bankruptcy. In 2010, she agreed to settle one of the delinquent accounts and to pay \$212 monthly for a total of \$7,659. She made a payment in October 2010, but she has not been able to maintain any payment plans. (Tr. 65)

Applicant submitted the docket sheet of the class action litigation as a post-hearing document. The status was noted as "Dismissed with prejudice" on September 13, 2011. Applicant did not elaborate or submit any other documentation as to what will occur in the future with the past-due mortgage account. Applicant was credible that she intends to pay her delinquent debts. At the hearing, she noted that perhaps a short sale would occur to sell the family home. (Tr. 58)

Applicant volunteers her services to various organizations. (AE A) She also tutors children in a local school system. She believes in giving back to the community. She has research skills and has edited books. (AE D) She works tirelessly with her church. (Tr. 34)

Applicant has received awards and recognition for professional work. She submitted several character references. Applicant is described as a respectful, responsible citizen. Applicant is dependable, cooperative and giving. She is honest and reliable. She is a role model for mothers in her community. (AE F)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). 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 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 U.S. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

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 classified information. Such decisions entail a certain degree of legally permissible 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

Analysis

Guideline F, Financial Considerations

The security concern 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.

Applicant has acknowledged delinquent debts. Her credit report confirms them. Applicant admitted that she has a past-due mortgage account. The home has gone to foreclosure. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant had financial difficulties due to her early retirement (2007) so that she could provide care for her gravely ill mother. When her mother died in 2008, Applicant did not pay the mortgage. She also has three delinquent consumer accounts. They are not resolved. She admits she does not have the income to make consistent payments. Consequently, 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.

Financial Considerations Mitigating Condition (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) is potentially applicable. As noted, Applicant retired in 2007 due to her mother's illness. She cared for her mother in their family home. She has not had the financial expertise to pay her delinquent accounts. She had help from her son but that is not available. She volunteers but does not have paid employment. She intends to pay her debt but is not able to do so now. She does not want to file for bankruptcy. Her lack of steady income did not permit her to maintain any payment plans. As to the mortgage, her responsibility is unclear. She has not paid the mortgage since 2008. It is not clear that she has acted reasonably under the circumstances. This mitigating condition does not apply.

FC MC AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant receives partial credit since she paid some small accounts before the hearing. However, 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. Her debts are not resolved and she has no plan in place.

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 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. 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 59 years old. Applicant worked in state government for almost 30 years. She retired early to care for her ill mother. She seems sincere and forthright. She intends to pay her bills. Her mother's illness and Applicant's early retirement and lack of employment after her mother's death, created the delinquent debts. She is praised as a good person. She wants to continue working. However, Applicant still has \$548,000 in debt. All doubts must be resolved in favor of the government.

Applicant has not submitted sufficient information to mitigate the security concerns raised in her case. She has not received financial counseling. She has not produced evidence to clearly show that her past-due mortgage account is being resolved or her debts are being reduced. Applicant has not mitigated the security concerns under the financial considerations guideline. Clearance is denied.

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.d:	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