



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



In the matter of:)	
)	
)	ISCR Case No. 10-03466
)	
Applicant for Security Clearance)	

Appearances

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

November 15, 2011

Decision

LAZZARO, Henry, Administrative Judge

Applicant obtained a Chapter 7 bankruptcy discharge in July 2001. She has since accumulated numerous delinquent debts, owed in the combined amount of \$21,895, that have either been charged off as bad debts or submitted for collection. Clearance is denied.

On March 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on March 29, 2011. She admitted all SOR allegations except those alleged in subparagraphs 1.b, 1.f, 1.i, 1.m, 1.o, 1.p, 1.q., and 1.r. Applicant requested a hearing.

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and the adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on August 29, 2011. A notice of hearing was issued on October 5, 2011, scheduling the hearing for October 19, 2011.² The hearing was conducted as scheduled. The Government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7 and admitted into the record without objection. Applicant testified but did not submit any documentary evidence. The record was held open to provide her the opportunity to submit documents in support of her testimony. Five documents were timely received, marked as Applicant's Exhibit (AE) 1-5, and admitted into the record without objection. Department Counsel's forwarding memorandum indicating she did not object to the documents submitted by Applicant was marked as Appellate Exhibit (App. Ex.) II and is included in the file.³ The transcript was received on November 3, 2011.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 48-year-old unemployed woman who has been offered a part-time position as a security guard by a federal contractor contingent upon her being granted a security clearance. She receives \$494 bi-weekly as unemployment compensation. Applicant was previously employed by the same federal contractor as an office manager from December 2009 until approximately July 2011. Applicant was employed by a different federal contractor as an administrative assistant from December 2007 until December 2009. In the security clearance application she submitted in January 2010, Applicant listed continuous full-time employment in a variety of jobs from April 2002 until October 2006. She listed that she was employed part-time as a criminal justice instructor at a college from October 2006 until she was hired by the federal contractor in December 2007.

Applicant graduated from high school in May 1982. She served on active duty in the U. S. Air Force from August 1982 until September 1986. She was awarded an other than honorable discharge from the Air Force in lieu of being referred to a court-martial based upon a period of being absent without leave (AWOL). Applicant was awarded an associate of arts degree in criminal justice in October 1994. She was awarded a bachelor of science degree in criminal justice in September 1999.

Applicant was married in July 1984. That marriage ended by divorce in May 1985. Applicant has one adult son from that marriage who has not been dependent on Applicant for support for many years. Applicant was involved in a long-term relationship with an individual that ended in about 2001.

Applicant filed for Chapter 7 bankruptcy protection in March 2001. She was awarded a Chapter 7 discharge in July 2001. Applicant testified the bankruptcy was necessitated

² Applicant waived the 15-day notice requirement on the record (Tr. 13-14).

³ App. Ex. I is a copy of a letter from a defense contractor offering Applicant a part-time position contingent upon her being granted a security clearance.

by the end of the long-term relationship which left her with most of the debt she and her “significant other” had accumulated. Applicant testified she believes about \$42,000 in debt was discharged by the bankruptcy.

The SOR lists 19 debts, owed in the combined amount of \$21,895, that have either been charged off as bad debts or submitted for collection. A review of Applicant’s credit reports discloses that many of those debts have been delinquent since 2005 and 2006. Applicant testified she has been making payments on the debts listed in SOR subparagraphs 1.b, 1.c, 1.d, 1.g, 1.h, 1.j, 1.s, and 1.t. She testified she has satisfied the debts listed in SOR subparagraphs 1.f, 1.m, and 1.r. She claims that she is disputing the debt listed in SOR subparagraph 1.e, which is based on a claim for damage to an apartment she rented. She testified her sister is in possession of the automobile that was alleged to have been repossessed in SOR subparagraph 1.o, and that her sister is making payments on that debt. Applicant admits she has not made any payment on the debts listed in SOR subparagraphs 1.i, 1.k, 1.l, 1.n, 1.p, and 1.q.

The record was held open to provide Applicant the opportunity to submit documentation in support of her testimony that she had satisfied some of the delinquent debts alleged in the SOR and that she was making payments on other of those debts. In response to that offer, Applicant submitted four statements from one bank, and one statement from an account at some unidentified institution. Those documents contain numerous black-outs of entries, including virtually all account balances, and handwritten entries asserting that some of the otherwise unidentified withdrawals represent payments on accounts alleged in the SOR. Most of the handwritten entries claiming withdrawals that represent payments on accounts listed in the SOR are in amounts ranging from \$5 to \$30. Only one entry in any of the documents can definitively be stated to apply to a debt alleged in the SOR (see: AE 3, check payment in the amount of \$200, dated 9/19). Applicant failed to submit any documentation establishing that any of the delinquent accounts have been satisfied or that she has disputed the account listed in SOR subparagraph 1.e.

Applicant attributes her delinquent medical debts to medical conditions she suffered several years ago while uninsured. She attributes the remainder of her delinquent debt to financial assistance she provides to her mother and younger sister, and to “Poor choices, bad judgment. Not making a whole lot of money.” (Tr. 42)

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person’s eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Guideline F (financial considerations) with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁴ The Government has the burden of proving controverted facts.⁵ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁶ although the Government is required to present substantial evidence to meet its burden of proof.⁷ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁸ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁰

No one has a right to a security clearance¹¹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹² Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹³

Analysis

Guideline F, Financial Considerations

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. . . . (Adjudicative Guideline [AG] 18)

Applicant discharged about \$42,000 in debt in a 2001 Chapter 7 bankruptcy. She has since accumulated \$21,895 in delinquent debt that has either been charged off as bad debt or submitted for collection. The SOR lists 19 delinquent accounts, some of which have

⁴ ISCR Case No. 96-0277 (July 11, 1997) at 2.

⁵ ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, Item E3.1.14.

⁶ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁷ ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

⁸ ISCR Case No. 98-0761 (December 27, 1999) at 2.

⁹ ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

¹⁰ ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, Item E3.1.15.

¹¹ *Egan*, 484 U.S. at 528, 531.

¹² *Id.* at 531.

¹³ *Egan*, Executive Order 10865, and the Directive.

been delinquent since 2005 and 2006. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts* and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant testified her Chapter 7 bankruptcy was caused by the end of a long-term relationship that left her with the bulk of the debt she and her “significant other” had accumulated. She testified her delinquent medical accounts were the result of medical conditions which required treatment while she was without health insurance. However, she rather quickly found herself in financial distress following the bankruptcy discharge. Further, her medical conditions occurred a number of years ago and she failed to submit adequate proof that she has made any significant effort to resolve those debts. Accordingly, Applicant is entitled to only partial application of Mitigating Condition MC 20(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.*

Applicant’s financial problems are long-term, ongoing, and unlikely to be resolved in the foreseeable future. She testified she has satisfied several accounts, but she failed to submit any documentation in support of that testimony despite the record being held open specifically to provide her that opportunity. She testified she has been making payments on many accounts, but the records she submitted indicate that at best she has only been making nominal payments on a few accounts that will hardly make a dent in the almost \$22,000 of delinquent debt alleged in the SOR. Thus, the following mitigating conditions do not apply: MC 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*; MC 20(c): *. . . there are clear indications that the problem is being resolved or is under control*; and MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. The remaining mitigating conditions have no applicability to the facts of this case.

Considering all relevant and material facts and circumstances present in this case, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, the whole-person concept, and the applicable disqualifying and mitigating conditions, I find Applicant failed to mitigate the financial considerations security concern. Her history of financial irresponsibility has not been overcome and there is no basis to opine that she will assume a financially responsible lifestyle in the foreseeable future. Applicant has neither overcome the case against her nor satisfied her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance. Guideline F is decided against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegation 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-t:	Against Applicant

Conclusion

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 a security clearance for Applicant. Clearance is denied.

Henry Lazzaro
Administrative Judge

