



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-03668

Appearances

For Government:
Jeff Nagel, Esq., Department Counsel

For Applicant:
Pro se

May 31, 2012

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on July 1, 2009. (Government Exhibit 1.) On December 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 1, 2011, and requested decision without a hearing (Answer). Applicant subsequently requested a hearing before an administrative judge. (Transcript (Tr.) 9.) Department Counsel was prepared to proceed on August 31, 2011. This case was assigned to me on January 20, 2012. DOHA issued

a notice of hearing on January 24, 2012. I convened the hearing as scheduled on February 10, 2012. The Government offered Government Exhibits 1 through 8, which were received without objection. Applicant testified on her own behalf, and submitted Applicant Exhibits A through D, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit E, which was admitted without objection. DOHA received the transcript of the hearing on February 21, 2012. The record closed on March 8, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 54 and divorced. She has a Bachelor's degree in Information Technology Management. She is employed by a defense contractor and seeks to retain a security clearance in connection with her employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because she is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. The SOR contains 48 allegations (1.a to 1.vv). Applicant denied subparagraphs 1.q, 1.s, 1.t, 1.u, 1.y, 1.z, and 1.rr. All of the remaining allegations were admitted. She also submitted additional information to support her request for a security clearance.

Applicant's financial difficulties began in approximately 2004. Starting about that time, she was out of work for almost two years due to breast cancer surgery and resulting complications. (Tr. 36-39.) She also had an automobile accident in 2009, which caused additional medical bills and other expenses. (Tr. 39-42.) There were also problems related to a tax debt, which will be further described below.

The SOR sets out 48 delinquent debts, which total \$113,786. The existence and status of these debts is supported by credit reports concerning Applicant dated August 4, 2009; June 17, 2010; September 17, 2010; December 3, 2010; and August 31, 2011. (Government Exhibits 4, 5, 6, 7 and 8.) For ease of discussion, the debts will be grouped into several distinct categories: tax debts, medical debts, and other debts. The current status of these debts is as follows:

Tax debts. The SOR alleges that Applicant owes back taxes to both the state and Federal governments.

Applicant admits owing back Federal taxes, as set forth in subparagraphs 1.a, 1.b, and 1.c., in the amount of approximately \$32,572. In 2002 Applicant was laid off from her employment and received a lump-sum severance package. Taxes were not taken out and eventually the IRS began collection action. In addition, her ex-husband was supposed to pay other Federal taxes pursuant to their divorce decree. He did not

do so, left the country, and Applicant assumed responsibility. Applicant testified that her tax refunds are being used to pay her past-due tax debt. (Tr. 42-45, 51-52.) She submitted an IRS "Annual Installment Agreement Statement" from July 12, 2010. (Applicant Exhibit D.) The statement shows Applicant owing \$45,209 in back taxes for tax years 2000 through 2008, with the exception of 2001. She did not submit more current information showing her current status with the IRS.

Applicant denied owing a tax debt to her state of residence in the amount of \$2,695. (Subparagraph 1.y.) A tax lien in that amount was filed in March 2006, as shown in Government's credit reports, and a public records judgment and lien search attached to interrogatories signed by her on November 23, 2010. (Government Exhibit 3 at 21-23.) In Government Exhibit 3 Applicant states, "Once my acct becomes up to date the lien will be removed." Applicant testified that she had no knowledge of any such lien, did not recall seeing the public records search, and was getting refunds from the state for her taxes. (Tr. 45-46, 71-72, 96.) No further information was provided by Applicant.

Based on all of the available evidence, I cannot find that Applicant is successfully resolving any of the alleged tax debts. Subparagraphs 1.a, 1.b, 1.c, and 1.y are found against Applicant.

Medical debts. The SOR alleges Applicant owes a considerable amount of delinquent medical debt. Most of this debt is related to her cancer surgery and subsequent treatment. These 29 debts are found in subparagraphs 1.d through 1.j, 1.l through 1.p, 1.aa through 1.ff, 1.hh through 1.pp, 1.ss, and 1.tt. The total amount of the past-due indebtedness is alleged to be \$18,349.¹

Applicant stated she made arrangements about a year ago with the medical center where she receives care to consolidate her delinquent medical bills and make a single payment to the medical center. She further stated that many of the debts that had been forwarded to collection agencies had actually been eventually paid by her insurance. (Tr. 48-50, 54-58, 87-91, 98-99; Government Exhibit 3 at 2.)

Applicant was able to identify some of the accounts that were consolidated by the medical center. They are 1.bb, 1.cc, 1.ee, 1.oo, and 1.tt, which are all with the same collection agency. These debts total \$4,844. (Applicant Exhibit E at 1.) There may well have been other debts that were consolidated by the medical center, but with the state of the evidence it is not possible to identify any more with specificity.

One of Applicant's exhibits is an Agreed Monthly Payment Plan from the medical center. It showed that as of February 2011 Applicant owed approximately \$1,286. No more current information was submitted from the medical center by Applicant.

Applicant stated that after the hearing she went to the medical center and "asked for a statement of my account going back to 2008. . . . The statement they sent me

¹These debts are all specifically identified in the SOR as being medical debts. There may be other debts of a medical nature that were not identified as such, as will be described further under "Other debts," below.

listed [too] much personal information concerning the [visits]. I only wanted the account number, amount billed with the outstanding balance.” She further stated, “The total amount . . . I owe them is roughly about \$1,500. I should have them all paid in full around October or November. I usually pay them \$200.00 a month and I am keeping up with current service as they come up.” (Applicant Exhibit E at 4-5.)

Applicant was given an opportunity to submit detailed information about all of the medical debts listed in the SOR. With the exceptions noted above, she did not do so. Applicant argues that she has consolidated and paid almost all of her medical debt. This may well be true, but Applicant did not support her statements with documents, even though she had considerable time both before and after the hearing to do so. Based on the state of the evidence available to me, I must find that Applicant has not resolved these debts.

Other debts.

1.k. Applicant admitted owing a telephone bill in the amount of \$318. She testified that she could not remember the debt, was attempting to contact the creditor about the debt, and that it was unpaid. (Tr. 59-60.) No further information was submitted. This debt is unresolved.

1.q. Applicant denied owing a bill to a creditor in the amount of \$2,177. She testified that this appeared to be a medical bill that had not yet been submitted to the insurance company for payment. She did not know if the hospital had submitted the bill for payment. (Tr. 60-62.) No further information was provided. This debt is unresolved.

1.r. Applicant admitted owing a bill to a creditor in the amount of \$261. She testified that she could not remember doing anything with that bill. (Tr. 62-63.) No further information was provided. This debt is unresolved.

1.s. Applicant denied owing a mobile telephone bill in the amount of \$480. She testified that this was her son’s telephone, but she was a co-signor on the account and therefore responsible. She has not made any payments on the account. (Tr. 63-64.) No further information was provided. This debt is unresolved.

1.t. Applicant denied owing a debt to a creditor in the amount of \$653. She has consistently denied owing this bill, saying, “I tried to figure out who it was and I couldn’t figure out who that was.” (Tr. 14-15, 65.) (See Government Exhibit 3 at 5.) Based on the state of the record, and Applicant’s consistent denials, this subparagraph is found for Applicant.

1.u. Applicant denied owing a creditor \$20,390 for a repossessed automobile. According to Applicant, this repossession occurred after she had an accident in this automobile in 2009. The vehicle was repossessed while she was in the hospital, and the value was only \$6,000 to \$8,000. No settlement has been reached on this account. (Tr. 65-70.) No further information was provided. This debt is unresolved.

1.v. and 1.w. Applicant admitted owing the U.S. Department of Education \$26,572, and \$1,345, for delinquent student loans. She has a payment agreement concerning these two debts. She had money taken from her paycheck for two years, and now is current on her payment agreement, as shown by her latest statements. (Tr. 52-53; Applicant Exhibit B.) These debts are being resolved.

1.x. Applicant admitted owing a bill to a creditor in the amount of \$542. Applicant stated that she believes this to be a medical bill that was pulled back to be submitted to the insurance company. (Tr. 70-71.) No further information was provided. This debt is unresolved.

1.z. Applicant has consistently denied owing \$5,280 for a judgment filed in 2004. This allegation concerns a property dispute Applicant had with the owners of a condominium she was renting. According to Applicant, she was found liable and the court immediately took the money out of her bank account. (Tr. 36, 72-75.) This judgment appears only on Government Exhibit 4, the earliest credit report in the record. It does not appear on the four subsequent credit reports, or on the judgment and lien search found in Government Exhibit 3. Based on all of the available evidence, this allegation is found for Applicant.

1.gg. Applicant admitted that she owed a debt to a cable company of \$522 for unreturned equipment. She testified that she eventually returned the equipment, had a receipt for the return, and would provide it to me after the hearing. (Tr. 75-77.) No further information was provided. This debt is unresolved.

1.qq. Applicant admitted owing a telephone company \$187 for a past-due bill. In her Answer, she stated, "Pd." next to it. She testified, "I have paid by it. So it's a possibility that I paid that one." (Tr. 79-80.) No further information was provided. This debt is unresolved.

1.rr. Applicant denied owing a telephone company \$162 for a past-due bill. She testified, "I'll have to find out. . . . My bill was never \$160. . . . But I'm not sure." (Tr. 80-81.) No further information was provided. This debt is unresolved.

1.uu. Applicant admitted owing a library debt in the amount of \$49. Applicant has paid that debt in full and it is resolved. (Tr. 81; Applicant Exhibit C.)

1.vv. Applicant admitted owing her state Employment Development Department \$962 for an overpayment that resulted in a judgment. The judgment and liens search found in Government Exhibit 3 shows that judgment was released. (Tr. 81-82.) This debt is resolved.

Applicant has moved into a smaller apartment, leases a cheaper automobile, and has made other personal changes to allow her to pay her debts off faster. (Tr. 69-70, 84-86.) Applicant had more than a year since issuance of the SOR in December 2010 to prepare for her hearing. During her testimony, she often showed a lack of specific knowledge concerning her many debts. Applicant owed \$113,786 in delinquent

consumer debt: \$34,861 of that debt has been paid or resolved; and \$78,925 remains unresolved. Even giving Applicant the benefit of the doubt with regards to her medical debts only reduces the remaining indebtedness to \$60,576.

Applicant provided no evidence concerning the quality of her professional performance, or the duties and responsibilities involved in her work. She also provided no evidence from any acquaintances, coworkers, supervisors, or family members concerning her character, or her reputation for trustworthiness, responsibility, or integrity.

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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. 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, by her own admission, and supported by the documentary evidence, had considerable delinquent debts that she could not pay over a considerable period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.”

The evidence shows that neither of the above mitigating conditions apply to Applicant. As discussed above, her delinquent debts are several years old, and only

recently has she even begun to negotiate settlements or make any payments. I have considered the fact that Applicant was out of work for close to two years between 2004 and 2006 with breast cancer. However, she presented insufficient evidence to show that she has behaved responsibly under the circumstances since she returned to work. Even taking into account the 2009 accident and its medical bills, there is insufficient evidence that Applicant has her debts under control. As stated, she was often disorganized in her testimony, and her documentary evidence was fragmentary. It is Applicant's burden to show that her financial situation has changed for the better. She has not met that burden.

Applicant has not received financial counseling. There is also insufficient evidence to show that her current financial situation is stable. Accordingly, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

Applicant has paid several of her debts. There is also some evidence that her delinquent medical debts are under control. However, she does not have a long track record of being financially stable. As stated above, looked at in the best light for her, Applicant continues to owe over \$60,000 in delinquent debts and had no coherent plan for how to pay them. Based on the particular facts of this case, at this time, I cannot find that she has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d).

Applicant does dispute the fact that she owes some of these debts. As stated above, I found her arguments persuasive in several cases. Accordingly, 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 apply with regard to those particular debts.

Applicant has begun to get her financial house in order, and I have considered that fact in making my decision. Given the fact that she remains excessively indebted, and the fact that she had not yet made arrangements to pay all of them by the time the record closed, she has not met her burden. Paragraph 1 is found against Applicant.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant's financial difficulties were caused in part by her medical condition. Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. As stated above, she has resolved a considerable portion of the past-due indebtedness. However, she has been extremely slow to resolve the debts, and several large debts are still unresolved. Based on the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a likelihood of recurrence (AG ¶ 2(a)(9)).

If she resolves all of her delinquent debts, and shows the ability over a longer period of time to maintain financial stability, she may be eligible for a security clearance in the future. She is not eligible now.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation. Accordingly, the evidence supports denying her request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant

Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	For Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	For Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	Against Applicant
Subparagraph 1.cc:	Against Applicant
Subparagraph 1.dd:	Against Applicant
Subparagraph 1.ee:	Against Applicant
Subparagraph 1.ff:	Against Applicant
Subparagraph 1.gg:	Against Applicant
Subparagraph 1.hh:	Against Applicant
Subparagraph 1.ii:	Against Applicant
Subparagraph 1.jj:	Against Applicant
Subparagraph 1.kk:	Against Applicant
Subparagraph 1.ll:	Against Applicant
Subparagraph 1.mm:	Against Applicant
Subparagraph 1.nn:	Against Applicant
Subparagraph 1.oo:	Against Applicant
Subparagraph 1.pp:	Against Applicant
Subparagraph 1.qq:	Against Applicant
Subparagraph 1.rr:	Against Applicant
Subparagraph 1.ss:	Against Applicant
Subparagraph 1.tt:	Against Applicant
Subparagraph 1.uu:	For Applicant
Subparagraph 1.vv:	For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge