



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



In the matter of:)	
)	
)	ISCR Case No. 10-03837
)	
)	
Applicant for Security Clearance)	

Appearances

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

May 4, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On January 18, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 on September 1, 2006.

Applicant answered the SOR on February 8, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 2, 2011. DOHA issued a Notice of Hearing on March 11, 2011. I convened the hearing as scheduled on

April 4, 2011. The Government offered Exhibits (GE) 1 through 4. Applicant did not object and they were admitted into evidence. Applicant testified on her own behalf and offered Exhibits (AE) A through K, which were admitted into evidence without objections. DOHA received the hearing transcript (Tr.) on April 11, 2011.

Findings of Fact

Applicant admitted all allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 38 years old, single, and the mother of six children. She has worked for her current employer, a federal contractor, since October 2009. She attended college from July 2007 to December 2007 and from January 2008 to October 2008, and did not receive a diploma. She married in June 1992 and divorced in 1995. She has two children from the marriage, who are ages 19 and 18. She remarried in May 2005 and divorced in August 2009. She has two children from that marriage, who are ages 5 and 3. Applicant has two children from previous relationships; they are 21 and 14 year old.¹

Applicant stated: "I have been working pretty much alone without any support from my children's dad and my ex-husband."² Applicant's 21-year-old child married in 2010. Her father failed to pay regular child support and is approximately \$21,000 in arrears.³ The father of the 14-year-old child has consistently paid child support when he was living with Applicant. The child is currently living with his father, so Applicant does not receive nor does she pay child support for this child. Applicant's 18-year-old son began living with his father in January 2011. She received child support for the 18-and 19-year-old children from the father. She estimated he would pay an average of ten months a year. She does not receive child support for the 5-and 3-year-old children. They receive state funded medical assistance. She indicated that since she began working for her current employer she received a substantial pay increase.⁴

Applicant admitted she owes the debts in the SOR, but disputes certain aspects of some debts. The debts in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f, 1.h, 1.i, 1.j, 1.v, and 1.y are for medical accounts. Applicant stated she contacted the creditors because she believes in certain cases her insurance company is responsible for payment. She stated she requested the creditors resubmit their claims to the insurance companies. She is waiting for the creditors to verify the amount she may owe after they have resubmitted their claims. She believes some of the debts may have been satisfied by her insurer. Applicant did not provide any documented evidence of her efforts to resolve these debts

¹ Tr. 42-45, 54-57.

² Tr. 18.

³ AE I.

⁴ Tr. 45-54.

or proof that any of them have been paid. She did not provide information on how she is tracking her claims or any other actions she has taken regarding specific debts.⁵

The debts in SOR ¶¶ 1.p, 1.q, and 1.r are student loan debts. In Applicant's answer to the SOR, she indicated her intention was to make "income contingent arrangement payments ASAP." She stated she had intended to start repaying these debts in April 2011. She contacted the creditor in October 2009 requesting a deferment on the debts. She indicated she sent documents to the creditor, but she has not followed through on confirming if her request was granted. She has not contacted the creditor since October 2009. She has not made any other payments towards these debts. She stated: "I have been busy, honestly. I have not had an opportunity to actually get in touch with them. I, (sic) it was dropping the ball on my end and not on purpose."⁶

The debts in SOR ¶¶ 1.t and 1.u (\$2,853 and \$6,594) are federal student loans. She stated that the Internal Revenue Service (IRS) offset some of the debt from her 2010 income tax refund. She provided a document from the IRS showing that she was to receive a \$3,938 refund for tax year 2010 and they withheld \$568.97 and applied it to federal taxes she owed for 2008. The remainder was applied to her federal student loans. The balance owed is now \$6,078. She has not made any additional payments toward the debt.⁷

The debt in SOR ¶1.cc (\$976) is also for a student loan. Applicant spoke to the creditor sometime in either 2009 or 2010 and told them she intended to pay the debt. She has not made any payments.⁸

She did not provide any additional documentation to make this determination. Applicant stated that the debt in SOR ¶ 1.s for \$1,815 belongs to her ex-husband. She has not taken action to resolve it.⁹

The debt in SOR ¶ 1.b (\$360) is a cable bill. Applicant admits she owes the creditor. She has not paid or resolved the debt.¹⁰

The debt in SOR ¶ 1.g (\$77) is for a check on an account that had nonsufficient funds. In her answer to the SOR, Applicant indicated she would pay the debt by March 1, 2011. She stated she attempted to obtain information to pay it, but she has not

⁵ Tr. 32-35, 76-78; AE H.

⁶ Tr. 35-38; 78-82; AE E, F.

⁷ Tr. 83-85.

⁸ Tr. 85.

⁹ Tr. 40.

¹⁰ Tr. 86-87.

received paperwork from the creditor to tell her where to send the money. She explained the debt is two to three years old. The debt is unresolved.¹¹

The debt in SOR ¶ 1.k (\$432) is a credit card debt. Applicant stated she had a family of five living with her that she was helping to support. The debt belonged to Applicant, but her friend who was living with her said she would pay it, and then did not. The debt is unpaid.¹²

The debt in SOR ¶ 1.l (\$353) is for an overdraft on Applicant's bank account from about 2007. She has not contacted the creditor and the debt is not paid.¹³

The debt in SOR ¶ 1.m (\$332) is for a credit card. Applicant stated she made regular payments on the account during 2010 and has paid the balance down to amount alleged. She has not contacted the creditor, but anticipates paying the debt in the future.¹⁴

The debt in SOR ¶ 1.n (\$805) is a cable debt. Applicant admitted she owes the creditor, but disputes the amount. She stated she contacted the creditor, but has not resolved the debt. She is uncertain how old the debt is.¹⁵

The debt in SOR ¶ 1.o (\$843) is to a telephone company. Applicant admitted the debt, but stated she paid it in February 2010. She did not provide documentary evidence to support her claim.¹⁶

The debt in SOR ¶ 1.v (\$4,666) is for a car Applicant purchased in 2000. She stated the creditor repossessed the car when her check was in the mail to make her payment. She then paid what was required to get the car back, but there was confusion with her payment, so it was repossessed again in 2004 or 2005. She has not made any payments to resolve the debt.¹⁷

Applicant stated she was unaware of the judgment in SOR ¶1.w (\$2,085) until she was interviewed for her background investigation. It is a credit card debt. It remains unpaid.¹⁸

¹¹ Tr. 88-89.

¹² Tr. 30-32, 90-93.

¹³ Tr. 93-95.

¹⁴ Tr. 95-96.

¹⁵ Tr. 96-98.

¹⁶ Tr. 98-99.

¹⁷ Tr. 99-101.

¹⁸ Tr. 101-103.

The debt in SOR 1.x (\$409) is a telephone debt. Applicant stated in her answer to the SOR, that she would pay the debt on April 1, 2011. She indicated that she is attempting to prevent being evicted from her apartment, so she was not able to pay the debt. The debt in SOR ¶ 1.z (\$95) is paid.¹⁹

Applicant disputed the debts in SOR ¶¶ 1.aa and 1.bb (\$595, \$89) for unreturned library books. She stated she returned the books. She stated she disputed the debts on her credit report, but did not have documents to substantiate her dispute. The debts are unresolved.²⁰

The debt in SOR ¶ 1.dd (\$85) is for a check written on an account with nonsufficient funds. She believes the debt is from the last five years. She has not contacted the creditor, but intends to pay the debt in April 2011.²¹

The debt in SOR ¶ 1.ee (\$209) is for car insurance that was due either in 2009 or 2010. It has not been paid.²²

Applicant has a part-time job selling jewelry directly from a wholesaler. She began the job in August 2010. She estimated from August 2010 to November 2010, she earned about \$400 a month. From December 2010 through February 2011, she earned about \$100 to \$200 monthly. In March she earned about \$500 to \$600. She intended to use the profits from this business to help repay her delinquent debts, but has not done so.²³

Applicant stated a friend was helping her organize her finances. He agreed to contact the credit bureaus for her to collect information about her accounts and help her write letters to her creditors. She is not sure what happened, but he stopped assisting her. She has not taken other actions.²⁴

Applicant indicated she has had periods of underemployment and at times was not receiving sufficient child support payments.²⁵ She could not identify the specific periods when she was unemployed. She is now earning substantially more income than before, but has an expensive commute. She was on disability for about eight months

¹⁹ Tr. 39, 105-106; AE B.

²⁰ Tr. 39-40.

²¹ Tr. 106-107.

²² Tr. 107.

²³ Tr. 123-126, 129-130.

²⁴ Tr. 126-128.

²⁵ AE A, I.

while she was pregnant with her last child and received less pay.²⁶ Applicant intends to pay her delinquent debts. Now that she is earning more money she hopes to begin to do so. She went back to school so she could get a better job. She had to decide whether to pay certain bills or feed her family. She wants to be pay delinquent debts, but has been unable to do so in the past.²⁷

Applicant provided emails she received commending her outstanding customer support and her pleasant attitude.²⁸

Policies

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 used 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.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and has the ultimate burden of persuasion 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

²⁶ AE D.

²⁷ Tr. 27, 61-75, 116-118; AE A, D, I, J.

²⁸ AE K.

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 safeguard 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.” 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has 30 delinquent debts totaling approximately \$27,702 that are unpaid or unresolved that date from at least 2004 or 2005. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant has 30 delinquent debts that she has not paid or resolve. She has made a nominal effort in addressing her delinquent debts. I find AG ¶ 20(a) does not apply.

Applicant experienced periods of unemployment and was on disability receiving a reduced income during one of her pregnancies. She does not receive child support for her two youngest children. She is owed money from the father of her eldest child. These were conditions that were beyond her control. For AG ¶ 20(b) to be fully applicable, Applicant must have acted responsibly under the circumstances. Applicant has not presented sufficient evidence that she has been proactive in attempting to resolve her delinquent debts. She stated she contacted some creditors, but did not follow through on resolving the issue. Some debts she has not made attempts to resolve. I find AG ¶ 20(b) only partially applies.

There is insufficient evidence that Applicant has received financial counseling. She stated a person was helping her, but then she did not follow through on why the person had stopped assisting her. She has paid one debt for \$95. She has not made a good-faith effort to pay or resolve her debts and there are not clear indications that her financial problems are being resolved or under control. I find AG ¶¶ 20(c) and 20(d) do not apply. Applicant disputes some debts, but has not provided documented proof to substantiate her dispute and has not provided evidence of her actions to resolve the issue. I find AG ¶ 20(e) 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 the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but others warrant additional comment.

Applicant has six children and the two youngest live with her. She had periods when she was unemployed and was on disability receiving a reduced income. She has been employed by her current employer since October 2009. She has had a second job since about August 2010. Applicant paid one of the delinquent debts alleged in the SOR for \$95. The other 30 delinquent debts remain resolved and unpaid. Some are as small as \$50. Her efforts to resolve her financial problems have been minimal. Although she stated she intended to pay her debts during her background interview, she failed to provide sufficient evidence that she has taken action to do so. Applicant has failed to meet her burden of persuasion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

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.y:	Against Applicant
Subparagraph 1.z:	For Applicant
Subparagraphs 1.aa-1.ee:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge