



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



In the matter of:)	
)	
)	ISCR Case No. 10-04453
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David A. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

February 14, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On October 20, 2010, 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. DOHA assigned the case to me on December 14, 2010. A Notice of Hearing was issued on December 23, 2010, and the case was heard on January 18, 2011. Department Counsel offered four exhibits, which were admitted without objection as Government Exhibits (GE) 1-4. Applicant testified and submitted exhibits AE A through AE G at the hearing, which were admitted. I kept the record open at Applicant's request, and she submitted AE H through S, which were admitted into the record without objection. DOHA received the transcript (Tr.) On January 26, 2011. Based on a review of the pleadings, testimony,

and exhibits, I find Applicant failed to meet her burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. She graduated from high school in 1983. Applicant is divorced and has four children. Applicant is not certain that she has previously held a security clearance. (Tr. 43) She has worked for her current employer since August 2009. (Tr. 34)

Financial

Applicant was unemployed on various occasions for two or three month periods. After her divorce in 2000, Applicant was the sole support for her children. (Tr. 45) She did not receive any child support from her ex-husband. She worked as much as she could. She also attended college in the evening to better her job opportunities. From 2003 until 2005, Applicant attended a college. Applicant acknowledges that she obtained student loans for the program. (Tr. 45) She did not complete her courses due to a family emergency.

In 2005, Applicant's mother died. Applicant was deeply upset and depressed. She discontinued her college courses. (Tr. 36) She found it difficult to organize her financial affairs. She acknowledged that she did not open the mail or pay her bills. (Tr. 47) Applicant admitted that she did not file her taxes for three years. She believed that one could wait for three years before filing the annual tax form. She contacted a tax accountant to help with the situation. (Tr. 51) She stated that she paid the accountant to help her file her taxes, but he did not file the taxes because she has a \$45,000 tax lien and a \$16,000 tax lien. (Tr. 51) She does not believe that she owed such huge amounts. (Tr. 26)

The SOR lists 27 delinquent accounts totaling \$80,000. The debts include tax liens, student loans, medical bills, and judgments. The credit reports confirm these debts. (GE 2, 3, and 4) Applicant notes that she paid some small debts that are not listed on the SOR. (AE R and AE S) She submitted documents showing a release of two state tax liens from 2002 and 2005. (AE B and C) Applicant is paying a medical and hospital bill that is not listed on the SOR. She and her daughter had some medical problems that were not covered by insurance.

Applicant contacted a credit consolidation company to help her with her delinquent bills in July 2010. She paid them an initial fee of \$288, but they did not help her dispute some debts or organize her debts. (Tr. 66)

She is not sure what amount she owes the college college. (Tr. 26) She made payments on her student loans in 2003. She believes she was paying \$50 monthly. (Tr. 37; AE G) The college is no longer in operation. Applicant does not know how much she owes but does not believe it is \$16,000 as reported in the 2006 judgment. She

acknowledged that she signed many forms, but had no clear idea of the number of loans or the amounts.

The SOR lists almost \$42,000 in student loans with various collection companies. (SOR 1.e, 1.j., 1.k, 1.l, 1.p., and 1.q) She was adamant that she has been trying to find out how to resolve the issue and exactly what she owes on the student loans. (Tr. 50) It does appear that several of the allegations for the various student loans are duplicates. However, the issue is not yet resolved. She hopes that the U.S. Department of Education will aid her in resolving the issue. (Tr. 100) She submitted a letter dated January 21, 2011, from a collection unit that appeared to be a loan rehabilitation agreement for two loans from 2003 for a total of \$7,393. (AE J) The U.S. Department of Education is also holding a claim for a defaulted student loan in the amount of \$4,109 which will be collected by treasury offset. (AE E)

Applicant stated that she did not have the “know how” to resolve her credit issues and is doing the best she can. (Tr. 126) Applicant admitted that she is overwhelmed and disorganized. She has tried to obtain help since her depression in 2005 to deal with her financial issues. She finds it difficult to trust the various agencies that proclaim to help with finances due to her past experience. She is trying to handle these debts and work two jobs. She has obtained her credit report. Her latest credit report confirms that she has officially disputed the account in SOR allegation 1.j for \$1,273. (GE 3) At the hearing, she also admitted that she has no idea what the accounts in SOR 1.r, 1.s, and 1.aa represent. (Tr. 31)

Applicant intends to pay her debts and tax liens. She obtained the services of the community tax center in November 2010 to investigate the status of the federal tax liens listed in SOR 1.b and 1.c. that total approximately \$62,600. (AE F) Applicant gave the tax center a power of attorney so that they could act on her behalf. She entered into an agreement with them to resolve the tax liens. She paid an \$800 fee for their investigation. (AE F) It is not clear from the documentation, but it appears that she has agreed to pay them \$312 monthly until December 25, 2011, for a total of \$4,850. However, this may be part of a larger “resolution fee” and not the offer in compromise to settle the tax liens. She has made the first payment has made the first payment of \$300. (AE G). She believes the total settlement or offer in compromise to IRS is for \$3,000. (Tr. 53)

Applicant submitted documentation showing that certain accounts relating to SOR allegations 1.d. (\$168), 1.o (\$683); and 1.t (\$664) have been settled. (AE A and D) Other accounts she believes she has paid but does not have any documentation.

Applicant submitted a handwritten sheet noting a possible payment plan with the collection company for debts in (SOR 1.h and 1.i). A copy of a money gram for \$187 and \$105 was attached, but the dates were not legible. (AE I) Applicant stated that she has not receive a formal letter of repayment from the company. (Tr.70)

Applicant submitted receipts of payment (money orders) for SOR allegations 1.w, 1.x, 1.y, and 1.v. (AE L through) O) These miscellaneous debts were incurred due to an

unpaid carry-out bill, parking ticket and public storage unit. The dates and amounts were not legible.

Applicant's 2009 pay was approximately \$23 an hour from one job. She was not sure what her monthly net income is. She does not believe she has much of a net remainder at the end of the month. She started working a second job but the hours are not certain. She has no health insurance. She has not received any financial counseling. (Tr. 86) She did not present a budget, but she explained that she is restricting her spending on cable and internet. She hopes to borrow against her retirement fund to pay more debts. (Tr. 114)

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 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

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

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ 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.

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 currently has delinquent debts and judgments. She has had the delinquent accounts since 2005. She also failed to file taxes for three years and has tax liens. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), FC DC AG ¶ 19(c) (a history of not meeting financial obligations), and FC DC AG 19(g) (failure to file income taxes) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁶ *Id.*

Applicant is still unsure of the amount she owes in student loans. She has almost \$60,000 in tax liens. She has unresolved debt for some accounts and does not yet have a payment plan in place. 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) does not apply. As noted, Applicant was divorced in 2000. She had some unemployment and was the sole support of her children. She attended college, but was not able to complete the course due to her mother's death. Applicant acknowledges that she did not open the mail or pay her taxes after her mother's death because she could not focus and became depressed. Much of this was out of her control. These 2006 events, no doubt, impacted her finances. However, there is no evidence that she acted responsibly under the circumstances for several years. She allowed the delinquent debts to remain unpaid for several years.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply in full. Applicant has made attempts to obtain help with her delinquent accounts. She tried to get help in July 2010 but that was not successful. She intends to pay her debts and is now beginning some repayment plans. However, at this time a concrete plan is still in the future. Her failure to provide information about financial counseling obviates the applicability of 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). She does not have much money left at the end of the month. She is still unsure about what she really owes and admits she is not organized. She may be on the right track but she has not med her burden in this case.

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 47 years old. She is the mother of four children. After her divorce in 2000, she worked hard to support her family. She attempted to better her job opportunities by attending college. She obtained student loans. She did not complete the program due to her mother's death in 2005. The college is no longer in existence and she has been trying to find out what she owes. She did not open her mail or file taxes for three years. She acknowledges that she is not organized and despite her good efforts she does not have her finances under control. She did pay an accountant to help her with her tax liens, but that was not successful through no fault of her own. She is on the right track, but at this time she has not met her burden in this case.

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 through 1.aa:	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