



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



In the matter of:

ISCR Case No. 10-05108

Applicant for Security Clearance

Appearances

For Government: Ray T. Blank Jr., Esquire, Department Counsel

For Applicant: *Pro se*

September 6, 2011

Decision

RIVERA, Juan J., Administrative Judge:

Applicant acquired 10 debts, totaling over \$104,000, that have been delinquent for a number of years. She presented no documentary evidence to establish financial responsibility in the acquisition of the debts, or of good-faith efforts in the resolution of the debts in a timely manner. Although she has made some recent efforts to resolve her financial problems, at this time, her efforts are insufficient to establish a track record of financial responsibility, or that her financial problems are under control. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 18, 2010. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

Applicant's request for a security clearance. On April 1, 2011, DOHA issued Applicant a Statement of Reasons (SOR) alleging security concerns raised under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).²

Applicant answered the SOR on April 30, 2011. She elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated June 3, 2011, was provided to her by cover letter dated June 13, 2011. Applicant received her copy of the FORM on June 22, 2011. She responded to the FORM on July 19, 2011, and included a one-page, updated response to the SOR, and a one-page document indicating she contacted a certified consumer credit counseling company. The case was assigned to me on August 17, 2011, to determine whether a clearance should be granted or denied.

Findings of Fact

Applicant admitted all SOR allegations, with explanations. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 42-year-old administrative assistant employed by a defense contractor since January 2010. She graduated from high school, but has no college education. She married her spouse in February 1990, and they have a seven-year-old daughter.

Applicant's SCA employment record indicates that from June 2000 until November 2009, she worked for a large hotel chain as an administrative assistant for the hotel's vacation club. She was unemployed from November 2009 until December 2009. She started working for her current employer in January 2010. This is her first security clearance application.

In her March 2010 SCA, Applicant disclosed that she had financial problems, including debts turned over for collection, cancelled credit cards, and debts currently over 90 days delinquent. In April 2010, Applicant was interviewed by a Government background investigator about her delinquent debts and her overall financial situation. During the interview, she explained that she had been unable to make minimum payments in many of her debts because her husband lost his job in August 2007, and had been unemployed. In January 2008, he found a job in sales and worked for commissions, but his income fluctuated depending on the sales. Additionally, she claimed she was laid off twice.³

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

³ In her 2010 SCA, Applicant only indicated a one-month unemployment period from November to December 2010.

Applicant averred she contacted some of her creditors and attempted to make payment plans, but many of them did not want to work with her and set up small payment plans. She stated that she was doing her best to meet her financial obligations, but most of her earnings were being used to pay for her day-to-day living expenses and that she did not have the economic means to pay for both her necessities and her delinquent debts.

In her answer to the SOR, Applicant acknowledged that when she and her husband had good-paying jobs they were living beyond their financial means without concern for a possible economic downturn.⁴ She stated that most of the delinquent accounts were her husband's accounts, but she also was an authorized user on those accounts. She is extremely embarrassed about her financial situation and promised to pay her delinquent financial obligations. Applicant averred she was now working a steady job, and that her husband recently acquired a steady job that was not dependent on commissions. She anticipated getting control of her financial situation sometime in the near future, and she promised to pay her delinquent debts as soon as possible. In her July 2011 answer to the FORM, she stated that she contacted a consumer credit counseling company to help her resolve her financial problems. She anticipates paying off her delinquent debt in 40 months.

Applicant's background investigation disclosed the 10 delinquent debts alleged in the SOR totaling over \$104,000, many of which have been delinquent for a number of years. Her documentary evidence established that she entered into payment plans with the creditors alleged in SOR paragraphs:

1.a This is a delinquent account owing \$12,481. She made \$150 payments in October 2010, November 2010, December 2010, January 2011, February 2011, and March 2011.

1.c This is a delinquent account owing \$9,514. She made \$100 payments in December 2010, January 2011, February 2011, and March 2011.

1.f This is a delinquent account owing \$2,178. She made \$25 payments in December 2010, January 2011, and two payments in March 2011.

1.g This is a \$24,972 debt for delinquent mortgage payments for a \$203,000 mortgage in foreclosure. Applicant entered into a mortgage modification plan that required her to pay \$1,371 for three months starting in May 2011, to qualify for the mortgage modification plan. She claimed she made the May payment in April 2011. She presented no documentary evidence of such payment.

⁴ Applicant disclosed in her March 2010 SCA that she took one-week long vacations to Aruba in April 2005, May 2005, and February 2006. She also took a seven-day vacation to Cancun in August 2006.

Concerning the remaining SOR debts in ¶¶ 1.b (\$16,628); 1.d (\$6,243); 1.e (\$18,459); 1.h (\$7,221); 1.i (\$5,768); and 1.j (\$1,513), in April 2011, Applicant sent a letter to each of the creditors in which she included a \$25 payment as a “good-faith payment” with a promise to continue her payments in the near future.

Applicant’s November 2010 personal financial statement indicates a combined monthly income of approximately \$4,500. Her monthly expenses total \$3,200. She listed monthly debt payments totaling \$1,158, for a net monthly remainder of \$110.

In her response to the FORM, Applicant presented no updated information concerning her household monthly income, living expenses, or the debts she pays on a monthly basis. Applicant presented little documentary evidence of any debt payments, contacts or negotiations with creditors, debt disputes, or of any efforts to otherwise resolve her delinquent SOR debts since she acquired them until October 2010. In the March 2010 SCA, Applicant promised to pay the debt alleged in SOR ¶ 1.f, starting in February 2010. She presented no evidence of any contacts with the creditor or payments made until December 2010, when she made a \$25 payment.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

The SOR alleges, and Applicant admitted, she acquired 10 debts totaling over \$104,000 that have been delinquent for a number of years. Applicant attributed her financial problems to her and her husband’s living beyond their financial means without regard for the economic consequences. AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's sparse favorable evidence fails to fully establish the applicability of any mitigating condition. Her financial problems are ongoing and the evidence fails to show that they occurred under such circumstances that they are unlikely to recur. On the contrary, her financial delinquencies are the result of her spending beyond her financial means. AG ¶ 20(a) does not apply.

Applicant presented some evidence to establish circumstances beyond her control contributing to her inability to pay her debts, e.g., her and her husband's periods of unemployment and underemployment. Notwithstanding, Applicant's documentary evidence is not sufficient to show that she acted responsibly in the acquisition of her debts, that she made good-faith efforts to resolve her debts, and that she currently has a track record of financial responsibility. Her recent contacts with creditors and the establishment of payment plans are a good start. However, it is too soon for her last minute and limited efforts to be considered as a track record of financial responsibility. AG ¶¶ 20(b) and (d) do not apply.

AG ¶ 20(c) does not fully apply. Since October 2010, Applicant has taken some steps to contact her creditors and she established payment plans with some of them. Notwithstanding, Applicant has a significant delinquent debt of around \$104,000. She is making minimum payments on most of her debts. Considering the number of debts, the aggregate total of the debts, and the interest accruing in those debts, I cannot find that there are clear indications that her financial problems are being resolved or under

control. She presented evidence that she recently contacted a credit counseling company, but there is no evidence that she received financial counseling. Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the limited documentary evidence of efforts to resolve her legal financial obligations, Applicant's information is insufficient to establish that her financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts 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 the applicant's conduct and all the relevant 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.

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. AG ¶ 2(c). I have incorporated in my whole-person analysis my comments on the analysis of Guideline F.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for her work history for a Government contractor. She disclosed her delinquent debts and the cause of her financial problems in her SCA.

Considering the record as a whole, I find that security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant's sparse documentary evidence failed to show financial responsibility in the acquisition of the debts, good-faith efforts to resolve her financial problems in a timely manner, or a current track record of financial responsibility. The limited mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. Applicant failed to mitigate the security concerns arising from her 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.c, and 1.f:	For Applicant
Subparagraphs 1.b, 1.d, 1.e, and 1.g - 1.j:	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 eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge