



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



In the matter of:)	
)	
)	ISCR Case No. 10-05277
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

April 21, 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 November 4, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 6, 2010, and requested a hearing before an administrative judge. The case was assigned to me on January 25,

2011. DOHA issued a Notice of Hearing on February 16, 2011. I convened the hearing as scheduled on March 14, 2011. The Government offered Exhibits (GE) 1 through 3. Applicant did not object and they were admitted into evidence. Applicant testified and offered Exhibits (AE) A through F which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 22, 2011.

Findings of Fact

Applicant admitted all of the allegations in SOR except ¶ 1.a. Department Counsel amended SOR ¶ 1.t by deleting the dollar amount of \$55 and changing it to \$20. In addition, Department Counsel noted that SOR ¶¶ 1.h, 1.a.c, 1.a.i, 1.a.m, and 1.a.n are duplicate allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 24 years old. She graduated from high school in 2005. She married in October 2005, when she was 19 years old. She and her husband separated in June 2007, and they were divorced in February 2009. They have no children.¹

Applicant grew up in foster care where she lived from age 11 through 18. After graduating from high school, in August 2005, she began work for a government agency and received a Secret security clearance. Her husband was working at that time. She resigned from her job in October 2006 and moved with her husband to another state. From October 2006 to March 2007, she was working for a temporary employment agency. She moved back to her home state in March 2007, and worked two jobs for two to three months. She was rehired in June 2007 by the government agency where she had been previously employed and remained there until November 2007. Applicant left employment because she was going through her divorce and was dealing with its emotional impact. She attempted to go back to work with her former employer, but there was no job available. She was unemployed from November 2007 to May 2009. She lived with her younger sister's foster family during this time. They helped her put her life back on track. She was hired by her current employer in May 2009.²

Applicant owes approximately \$66,000 in delinquent debts. When she was married, her husband worked for a few months and then was unemployed. He did not work the remainder of their marriage. They incurred joint debts. Applicant takes full responsibility for their joint debts. Applicant's husband was irresponsible in his spending habits. She was attempting to pay the bills during this time. She acknowledges she is responsible for satisfying the debts. Their divorce decree does not address their debts. The debts in SOR ¶¶ 1.e, 1.a.e, 1.a.f, 1.a.g, 1.a.h, 1.a.j, totaling approximately \$6,121 are Applicant's sole debts. All of the remaining debts are joint debts with her husband. Her ex-husband refuses to help pay the joint debts, and they remain unpaid.³

¹ Tr. 20, 23-27.

² Tr. 20-23, 28-38.

³ Tr. 27, 44-47, 55-57, 77-78.

In early 2010, Applicant fell and broke her ankle while at work. She received worker's compensation for one month, but the payment was delayed. Applicant was able to pay her monthly expenses during this time, but was unable to make progress on paying her overdue debts.⁴

Applicant paid the judgment in SOR ¶ 1.a (\$3,263) through garnishment. It was a medical debt incurred when she was unemployed and did not have medical insurance. The debt in SOR ¶ 1.b (\$1,926) is a judgment from a bank where Applicant and her husband had a checking account. The judgment is unpaid. The debt in SOR ¶ 1.c (\$293) was a water bill that Applicant was unaware was owed when she moved. It is paid.⁵

The debt in SOR ¶ 1.u is a car loan debt (\$29,132). Applicant and her husband purchased the car new in February 2006 and obtained a loan for about \$20,000. He retained the car when they separated. She contacted her ex-husband's mother to ask him to return the car to her so she could negotiate an agreement with the creditor's lawyer. The car was returned to her three to four months ago and she is negotiating the return of the car and will then be advised as to how much she will owe on the car once it is sold. The debt is unresolved.⁶

The debt in SOR ¶ 1.v (\$11,308) is also a car loan for a voluntary repossession. Applicant has not yet contacted this creditor to resolve the debt. The debt in SOR ¶ 1.x (\$5,820) is a loan that was taken out by Applicant and her husband that was used to make repairs on a different car.⁷

The debt in SOR ¶ 1.a.i (\$69) was to a restaurant. Applicant provided proof that she attempted to pay this debt and sent a check to the creditor, but it has not been cashed, so the debt remains on her credit report.⁸

Applicant sent letters to the creditors in SOR ¶¶ 1.m, 1.n, 1.o, 1.a.k (\$50, \$54, \$55, \$60, respectively) offering to settle the debts. She did not receive a response to her letters. Applicant paid some small debts and one larger one (\$500) that were not listed on her credit report.⁹

In early 2010, Applicant contacted a money management company to help her resolve her financial problems. She participated in their online financial counseling training. She learned how to prepare a budget, which she now has and adheres to. She

⁴ Tr. 38-40.

⁵ Tr. 41-44; Answer to SOR at pages 9-10; GE 2.

⁶ Tr. 47-53; GE 2, 3.

⁷ Tr. 54-55; GE 2, 3.

⁸ Tr. 57-58; GE 3, AE C.

⁹ Tr. 58-65; Answer to SOR at pages 12-13.; AE B.

learned how to challenge debts on her credit report, which she did and had some removed, and she learned how to negotiate settlement amounts for her debts, which she is attempting to do. She decided that the fees for participating in the money management program were too expensive and it was better to use that money to pay her delinquent debts.¹⁰

Applicant's current employer no longer provides medical insurance. Applicant stated that this benefit is still being negotiated by the employees and company, but it has been delayed for months.¹¹

Applicant's salary has increased in the past year and she has more expendable income. Her sister is living with her and is providing some money to help with expenses. Her sister earns a modest income, but her contribution is helpful.¹²

Applicant intends to pay all of her delinquent debts. Her plan is to pay the small debts first, and once the deficiency balance is determined on the car she is returning, she will start to pay that debt. She is hoping to increase her payments toward resolving these debts. She recently had to spend \$1,000 for veterinarian bills for her pets. She contributes to her employer's retirement plan. She plans on moving soon to a less expensive residence that will include utilities and then increase her debt payments. She pays all of her regular monthly expense on time.¹³

Applicant provided character letters stating she is trustworthy and loyal. Her work is beyond reproach and she is a valued employee. She is dedicated to the mission of her employer. She is compassionate and professional. She is dedicated, hard working, reliable, sincere, and enthusiastic. Applicant meets deadlines and conscientiously adheres to company standards and guidelines. She is considered mature and person of integrity.¹⁴

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 useful in evaluating an applicant's eligibility for access to classified information.

¹⁰ Tr. 65-69; Answer to SOR at page 14.

¹¹ Tr. 70-71.

¹² Tr. 28-29.

¹³ Tr. 22, 72-76, 79-80.

¹⁴ AE A.

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 as to obtaining 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 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 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.

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 especially considered:

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

Applicant has 33 delinquent debts, one of which is a judgment, totaling approximately \$66,000. Most of the debts are unpaid and unresolved. 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; and
- (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's debts are numerous and unresolved, so AG ¶ 20(a) does not apply. Applicant has both delinquent joint debts and individual debts. Many of the debt were incurred when she was married and her ex-husband refuses to help her pay them. Applicant also was injured and only received partial pay for a period of time through

worker's compensation. These conditions were beyond Applicant's control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. I find she did not because she voluntarily resigned from her job in November 2007, when she could not afford to do so because of her delinquent debts. She was unable to find work until May 2009. AG ¶ 20(b) only partially applies.

Applicant participated in online financial counseling which taught her how to make a budget and what she should do to begin to address her delinquent debts. Applicant has been employed since May 2009 and received worker's compensation for one month. She has only recently started to contact a few of her creditors and most of the alleged delinquent debts are unresolved. At this juncture, there has not been a good-faith effort to address the delinquent debts and there is insufficient evidence to conclude her financial problems are under control. I find AG ¶ 20(c) partially applies. I have considered all of the facts and conclude AG ¶¶ 20(d) and 20(e) do 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. Applicant has 33 delinquent debts totaling approximately \$66,000 listed on her SOR. Many of the debts are joint debts she incurred with her husband. Some of the debts were incurred by her. Applicant voluntarily left her employment in November 2007 and was unemployed until May 2009. She resolved two judgments, one through garnishment. She has a budget and has sent a letter to some creditors attempting to negotiate settlements. At this juncture, it is too soon to conclude that Applicant is fully committed to resolving her delinquent debts. Until she has an established track record of paying her delinquent debts and remaining fiscally responsible, her finances remain a security concern. 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 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:	AGAISNT APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.a.k:	Against Applicant
Subparagraphs 1.a.l-1.a.n:	For 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