



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



In the matter of:)
)
) ISCR Case No. 10-07120
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro Se*

October 26, 2011

Decision

Duffy, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 7, 2010. On April 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On May 20, 2011, Applicant answered the SOR and requested a hearing. The case was assigned to me on August 9, 2011. DOHA issued the Notice of Hearing on August 24, 2011. The hearing was held as scheduled on September 13, 2011. Department Counsel offered exhibits (GE) 1 through 5 that were admitted into evidence without objection. Department Counsel's list of exhibits was marked as hearing exhibit (HE) 1. Applicant testified and offered exhibits (AE) A through O that were admitted into evidence without objection. The record was left open until October 3, 2011, for the Applicant to submit additional matters. Applicant submitted AE P through AB that were admitted into evidence without objection. Department Counsel's email indicating he had no objection to Applicant's post-hearing submission was marked as HE 2. The transcript (Tr.) of the hearing was received on September 19, 2011.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. She has worked for that contractor since March 2010. She was awarded a bachelor's degree in 1999. She is married and has two children, ages six and nine. This is the first time that she is seeking to obtain a security clearance.¹

The SOR listed eight delinquent debts totaling \$40,523. In her Answer to the SOR, Applicant admitted each of the delinquent debts with comments. Her admissions are incorporated as findings as fact.²

From October 2000 to June 2006, Applicant worked at an assisted living home. She left that job to raise her two children who were then six months and four years old. At that time, her husband, who was a realtor, became the sole source of income for the family. Her husband was a partner with another individual in a real estate business. In about 2005, his annual income was approximately \$108,000, and he had 10 to 12 real estate closings a month. In 2006, they had no financial problems and purchased a larger home. Based on growth projections for the local economy arising from the Base Realignment Commission's recommendations, they thought his business would continue to prosper. The local real estate market, however, fell into a slump starting in 2006, and his real estate closings fell eventually to about one or two a month. This economic downturn had a significant impact on their income. Applicant estimated that her husband's income decreased by 60 to 70 percent. During this economic downturn, she and her husband cut back on their expenses and she began working part-time as a bartender. She also worked part-time at another job in November 2009 and started her fulltime job with her current employer in March 2010. Her husband began working a second job in the spring of 2011. After 2006, Applicant and her family experienced

¹ Tr. 6-7, 31-32; GE 1.

² Applicant's Answer to the SOR; GE 4, 5.

some medical problems, and they did not have medical insurance to cover the expenses. In her Answer to the SOR, she indicated she and her husband had been living outside of their means. At the hearing, she also stated that one reason for her delinquent debts was her lack of organization and follow-through.³

Each of the delinquent debts in addressed separately below.

SOR ¶ 1.a – Internal Revenue Service (IRS) tax lien for \$34,494. Applicant's tax deficiency arose from her husband's business. This deficiency is for tax periods 2005 through 2008. The tax lien was filed in August 2009. In March 2011, Applicant and her husband entered into an installment agreement with the IRS in which they agreed to make monthly payments of \$850 starting on May 6, 2011, and continuing on the 6th of each month thereafter. The agreement indicated that the amount owed was \$42,849. At the hearing, she provided documentation showing she made a payment of \$850 on September 9, 2011. She indicated that she was unable to make earlier payments because she was making payments on other debts. In her post-hearing submission, she provided proof of another \$850 payment made on September 26, 2011. She indicated that she would continue making payments monthly thereafter.⁴

SOR ¶ 1.b – medical debt for \$1,010. This debt was listed for collection in May 2010. In her Answer, Applicant indicated that she entered into a settlement arrangement to pay \$350 in June 2010 and thereafter pay \$100 per month for the next seven months. Her bank records reveal that she paid the creditor \$353 on June 13, 2011; \$110 on July 11, 2011; \$100 on August 22, 2011; and \$100 on September 12, 2011. This debt is being resolved.⁵

SOR ¶ 1.c – medical debt for \$98. Applicant indicated that the amount of this debt was \$198. It was incurred in October 2009. It was paid off in March 2011. This debt is resolved.⁶

SOR ¶ 1.d – medical debt for \$1,487. The collection agency that handled the debt in SOR ¶ 1.c is also handling this debt, which was listed for collection in September 2009. In her Answer, Applicant indicated that she is currently paying \$50 per month on this debt. She stated that she has maintained close contact with the collection agency and has a good relationship with it. The collection agency's records reflect that she made a payment of \$100 on August 20, 2010, and \$50 payments on February 21, 2011; March 18, 2011; April 18, 2011; April 30, 2011; May 31, 2011; June 30, 2011; July 29, 2011; August 31, 2011; and October 1, 2011. As of September 12, 2011, she

³ Tr. 31-35, 48-52; Applicant's Answer to the SOR; GE 1-5; AE A.

⁴ Tr. 32-35, 54, 56-59; Applicant's Answer to the SOR; GE 2-5; AE A, E, O, Y.

⁵ Tr. 38-40; Applicant's Answer to the SOR; GE 2-5; AE O, AB.

⁶ Tr. 35-36, Applicant's Answer to the SOR; GE 2, 4, 5; AE W, AA.

owes \$1,235 on the debt in SOR ¶ 1.d and \$300 on another medical debt. The collection agency has indicated that these accounts are in good standing. This debt is being resolved.⁷

SOR ¶ 1.e – collection account for \$1,249. This collection account was opened in May 2010. In February 2011, Applicant entered into a settlement agreement with the collection agency. According to that agreement, she is required to pay a total of \$883 to settle this debt. She was obligated to pay \$50 in February 2011 and \$104 monthly thereafter until the debt was paid. Her bank records reveal that she made payments to this creditor of \$50 on February 28, 2011, and of \$104 on March 21, 2011; April 18, 2011; July 25, 2011; August 22, 2011; and September 19, 2011. She testified that the remaining balance would be paid in October 2011. This debt is being resolved.⁸

SOR ¶ 1.f – collection account for \$1,879. This account was charged-off by the original creditor in August 2009. In her Answer, Applicant stated that she has been making payments of \$100 to the collection agency for the last three months (March – May 2011). Her bank records reveal that she made payments of \$105 to this creditor on March 21, 2011; April 19, 2011; May 19, 2011; June 21, 2011; July 19, 2011; and August 19, 2011. She also made payments of \$234 on August 31, 2011 and September 19, 2011. In her post-hearing submission, she provided documentation showing the creditor considered this debt paid as of September 24, 2011. This debt is resolved.⁹

SOR ¶ 1.g – charged-off account for \$83. The date of first delinquency/date of last activity on this account was October 2005. In her Answer, Applicant admitted this debt, but stated it was an annual fee that was applied to her account after she voluntarily closed it. She stated that she felt this was an unfair charge. She testified that she called the creditor recently and was informed they could not find any information about this debt. In her post-hearing submission, she provided documentation showing that she paid this debt on October 3, 2011. This debt is resolved.¹⁰

SOR ¶ 1.h – medical account for \$205. This collection account was opened in August 2008. In her Answer, Applicant admitted that she owes this debt, but indicated that she could not find the creditor. She stated that she would take care of this debt as soon as she locates the creditor. At the hearing, she indicated she thought this debt was to a local hospital. When asked if she contacted the hospital, she stated that she had

⁷ Tr.35-36; Applicant's Answer to the SOR; GE 2-5; AE W, AB. On March 18, 2011, Applicant made a payment of \$50 to the collection agency; \$2 of the payment went towards the debt in SOR ¶ 1.c and remaining \$48 went towards the debt in SOR ¶ 1.d.

⁸ Tr. 40-42; Applicant's Answer to the SOR; GE 2-5; AE O, AB. In her Answer, Applicant indicated that she made a payment of \$104 on May 13, 2011; however, she provided no proof of that payment. In AE AB, she failed to note that she made a payment of \$104 on this debt on August 22, 2011. See AE O.

⁹ Tr. 42-43, 48-49; Applicant's Answer to the SOR; GE 2-5; AE V.

¹⁰ Tr. 43-44, 47-48; Applicant's Answer to the SOR; GE 2-5; AE Z, AB.

not contacted it. In her post-hearing submission, she indicated that she has made an arrangement to pay this debt on October 31, 2011. This debt is not resolved.¹¹

In the summer of 2009, Applicant received financial counseling from an accountant who provided her information on budgeting and suggested she go back to work. At the time of the hearing, her net monthly income was about \$2,600. She testified that her and her husband's combined net monthly income was about \$6,000, but she indicated their monthly income varies. She provided a monthly household budget that reported their expenses and debt payments were approximately \$4,265. Those monthly expenses and debt payments did not include the \$850 monthly payment to the IRS. Her and her husband's cars have been paid off. She has a student loan that will come out of forbearance in October 2011. She intends to make monthly payments of \$120 on the student loan, but indicated the required minimum payment was \$75.¹²

Applicant is meeting her current monthly financial obligations. Recently, she made significant strides in resolving debts that were not alleged in the SOR. She and her husband paid off his vehicle loan in August 2011. Their monthly payments on that vehicle were about \$300. In August 2011, they also made a final payment of \$2,000 on a credit card debt for which they were making monthly payments of \$300. In September 2011, they paid off a state tax deficiency of \$2,397. In September 2011, they also paid off the debt in SOR ¶ 1.f for which they were making monthly payments of \$105. The resolution of these debts will free up money for her to make the IRS payments. She has indicated that she is committed to getting her finances under control and has every intention of paying off her debts. At the hearing, she was open and honest about her financial situation. I found her testimony was candid and forthright.¹³

Nine coworkers, including supervisors, have written letters of reference on Applicant's behalf. They described her as honest, hard-working, and trustworthy.¹⁴ As an example of their statements, one coworker stated,

[Applicant] is an individual of unquestioned loyalty and impeccable integrity. She is diligent, conscientious, and adept at her duties. Additionally, I found that [Applicant] is a woman of high moral character who will always choose the hard right over the easy wrong. Patriotic, reliable, and displaying an unmatched initiative, [Applicant] is one of the most hard working and productive employees in the office. In short,

¹¹ Tr. 44-45; Applicant's Answer to the SOR; GE 2-5; AE X.

¹² Tr. 45-47, 52-54, 57-59; AE A, B.

¹³ Tr. 61-63; Applicant's Answer to the SOR; GE 2, 3; AE B, C, D, S, T, U, AB.

¹⁴ AE F-N.

[Applicant] is the kind of individual who embraces responsibility and always strives to do the right thing.¹⁵

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 unfavourable, 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.

¹⁵ AE N.

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

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts totaling over \$40,000 that she has been unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

(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.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness.¹⁶ An applicant is not required, as a matter of law, to establish that he or she has resolved every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take sufficient action to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debt alleged in the SOR be paid first.¹⁷

In 2006, Applicant and her husband were financially stable. He was earning over \$100,000 per year. At that time, she left her job to raise their children. Soon thereafter, the housing market collapsed. AG ¶ 20(b) applies in part because this economic downturn was a condition beyond their control that resulted in a 60 to 70 percent decrease in his income as a realtor. She does not receive full credit under AG ¶ 20(b) because she admitted that she was living outside of her means and indicated that her lack of organization and follow-through was one of the reasons for her delinquent debts. Nevertheless, Applicant and her husband have turned the corner on their financial problems. AG ¶¶ 20(c) and 20(d) are applicable. In 2009, they received financial counseling. She returned to work in November 2009. Her husband obtained a second job in the spring of 2011. They cut back on their expenses. In the past year, they have been working hard at paying their delinquent debts. She has resolved the debts in SOR ¶¶ 1.c, 1.f, and 1.g. There are clear indications that the debts in SOR 1.b, 1.d, and 1.e will be

¹⁶ See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

¹⁷ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

resolved soon. Although Applicant and her husband entered into a settlement agreement with the IRS for the debt in SOR ¶ 1.a in March 2011, they have only made two of the five payments that were due before the hearing under that plan. She indicated that she was unable to make those missed payments because she was making payments on other delinquent debts. Bank records support her claim. With the recent resolution of a number of her debts, she will have money available to make the IRS payments. I found credible and convincing her statement that she is committed to resolving each of these debts. Most significantly, she has established a plan for resolving her debts and has taken sufficient action to implement that plan. In short, I find that AG ¶¶ 20(c) and 20(d) apply and that AG ¶¶ 20(a) and 20(b) partially apply.

Applicant did not dispute any of the delinquent debts. 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 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 considered the potentially disqualifying and mitigating conditions in light of all relevant 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 some warrant additional comment. Applicant's service to her employer has been exceptional. Nine of her coworkers, including supervisors, had expressed great trust and confidence in her. She has encountered financial difficulties, but she has taken meaningful steps in addressing those problems. She is committed to resolving her financial problems and is on the right track to do so. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

Formal Findings

Formal findings 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:	FOR APPLICANT
Subparagraphs 1.a – 1.h:	For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge