



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



In the matter of:)
)
) ISCR Case No. 10-07203
)
)
Applicant for Security Clearance)

Appearances

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

March 18, 2011

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern that arises from her delinquent debts, including three that remain unsatisfied. Clearance is denied.

On December 21, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on January 10, 2011. She admitted SOR allegations 1.b, 1.c, 1.e, and 1.f, denied

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

SOR allegations 1.a, 1.d, and 1.g,² and she requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on January 28, 2011, which was mailed to Applicant on January 31, 2011. Applicant was informed she had 30 days from receipt of the FORM to submit her objections to any information contained in the FORM or to submit any additional information she wanted considered. Applicant acknowledged receipt of the FORM on February 8, 2011. On February 23, 2011, Applicant submitted a response to the FORM. On February 28, 2011, Department Counsel executed a memorandum indicating she did not object to the admissibility of Applicant's submission. The case was assigned to me on March 14, 2011.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 53-year-old woman who has been employed by a defense contractor since February 2007. She was hired as a senior subcontract administrator, and she was promoted to subcontract manager in April 2010. She worked as a procurement director for a different government contractor from January 2006 until February 2007. From May 2001 until January 2006, Applicant was employed by yet another government contractor, initially as a senior procurement/budget specialist/team lead, until she was promoted to procurement manager in July 2003. Applicant was awarded a bachelor degree in an unspecified discipline in November 2005.

Applicant was first married in January 1979. That marriage ended in divorce in May 1994. She remarried in July 1994. Applicant and her second husband separated in April 2005, and obtained a divorce in June 2009. Applicant has three children, ages 33, 24, and 20. Based on the last names Applicant listed for her children in the security clearance application she submitted, the oldest child is a product of her first marriage, and the two youngest are from her second marriage.

The \$8,333 debt alleged in SOR subparagraph 1.a is a judgment entered against Applicant based on the original debt alleged in SOR subparagraph 1.d.³ Applicant satisfied the judgment on November 12, 2010, by paying the creditor an agreed-upon settlement of \$4,700. Applicant satisfied the \$1,167 charged-off debt alleged in SOR subparagraph 1.b by paying the creditor an agreed settlement of \$583.73 on February

² Applicant wrote that she was admitting SOR allegation 1.g, but she then went on to allege the debt alleged in SOR subparagraph 1.g was a duplicate of the debt alleged in SOR subparagraph 1.f. Accordingly, I am interpreting her complete answer to be a denial of the debt alleged in SOR subparagraph 1.g.

³ The entries in documents Applicant submitted with her response to the FORM that she identified as Items 1c to 1f, including the amounts and partial account numbers contained therein, substantiate that SOR subparagraph 1.a and 1.d are the same debt.

14, 2011. The \$2,594 charged-off debt alleged in SOR subparagraph 1.c, the \$27,163 charged-off debt alleged in SOR subparagraph 1.e, and the \$2,372 collection account alleged in SOR subparagraph 1.f remain delinquent.⁴

Applicant attributes her financial problems to the separation and divorce from her second husband. She and her two daughters moved from the marital residence in 2005, and her husband thereafter failed to provide them with financial support. Her salary was insufficient to meet their living and educational expenses, and Applicant relied upon credit cards to provide for car repairs, fuel for her car, clothing, and spending money and transportation expenses for her eldest daughter who was attending college in another state. The \$27,163 charge off account alleged in SOR subparagraph 1.e arose from a loan used to consolidate some of Applicant's credit card debt.

Applicant acquired approximately \$30,000 in student loans for herself while she attended college. When her oldest daughter began college, Applicant acquired a parent loan to cover the first two years of her college expenses. Those loans were deferred until 2008, and then consolidated for payment. In fall 2008, Applicant's second daughter left home to attend college, and, although Applicant could not co-sign for student loans for her daughter, she did experience additional expenses in preparing her for college.

Applicant submitted a 30-page Experian credit report, dated February 13, 2007, with her response to the FORM that does not contain a single negative entry. A review of the two credit reports included with the FORM discloses that Applicant's financial problems began to materialize in late-2007 or early-2008. Applicant explained in her response to the FORM that by the end of 2008, when her student loan payment increased from \$300 to \$525 per month, she made a decision to stop paying some of her bills in order to maintain her household.

Applicant arranged to move in with a friend on March 13, 2011. She will reduce her monthly rent and utility expenses with this move. Assuming she completes the move and reduces her living expenses as she anticipates, Applicant will have about an additional \$1,000 per month in discretionary income that she can apply to satisfy her delinquent debt (see: list of expenses included with FORM Item 8).

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶

⁴ In her response to the SOR, Applicant alleged the debts listed in SOR subparagraphs 1.f and 1.g were the same debt. The high credit amount listed in both credit reports attached to the FORM is identical (\$2,172) for these accounts, thereby corroborating Applicant's claim they are duplicate accounts. SOR subparagraph 1.g will be found for Applicant without further discussion.

6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Guideline F (financial considerations), with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁵ The Government has the burden of proving controverted facts.⁶ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁷ although the Government is required to present substantial evidence to meet its burden of proof.⁸ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁹ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.¹⁰ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹¹

No one has a right to a security clearance¹² and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹³ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹⁴

Analysis

Guideline F, Financial Considerations

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

⁵ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁶ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁷ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁸ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁹ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

¹⁰ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

¹¹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

¹² *Egan*, 484 U.S. at 528, 531.

¹³ *Id.* at 531.

¹⁴ *Egan*, Executive Order 10865, and the Directive.

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. . . (Adjudicative Guideline [AG] 18)

Applicant has satisfied two debts that were delinquent in the combined amount of \$9,500. However, she still has three delinquent debts, owing in the combined amount of \$32,128, that have not been paid. The largest of those debts is based on a debt consolidation loan Applicant obtained. Applicant's debts have now remained delinquent for several years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant's credit reports disclose she lived a financially responsible lifestyle before she and her second husband separated. Her current financial problems did not begin until almost two years after they separated and are attributable to her efforts to provide for herself and her two daughters without financial support from their father. Her response to the FORM discloses she did not live an extravagant lifestyle following the separation, but instead merely attempted to maintain the lifestyle her daughters had experienced before the separation. Mitigating Condition (MC) 20(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* applies.

For the same reasons she is entitled to some consideration under MC 20(a): *the behavior . . . 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*. However, the amount of her continuing delinquent debt severely undermines this mitigating condition. Applicant has satisfied two of her delinquent creditors, entitling her to at least partial application of MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.

There is no evidence to indicate Applicant has received financial counseling, and she has over \$32,000 in delinquent debt remaining. Thus, her financial problems clearly are far from being resolved or under control. Accordingly, MC 20(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* does not apply. The remaining mitigating conditions have no applicability to the facts of this case.

The largest portion of Applicant's delinquent debt remains outstanding. In her response to the FORM, Applicant indicated she has made arrangements to reduce her monthly living expenses by moving in with a friend, which she hopes will provide additional funds to satisfy her remaining delinquent creditors. Only time will tell if that living arrangement will work and if she is able to and actually does apply the money she saves by it to her delinquent debt.

Applicant has a consistent work history since at least 2001. The promotions to management positions she earned with two government contract employers indicates that she possesses a strong work ethic. She maintained a financially responsible and stable lifestyle up to the time of her marital separation in 2005. However, considering the amount of delinquent debt she still has outstanding, it is simply too soon to be able to state with any confidence that she will regain a financially responsible and stable lifestyle in the foreseeable future.

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant failed to mitigate the financial considerations security concern. She has not overcome the case against her nor satisfied her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance. Guideline F is decided against Applicant.

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 and b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e and f:	Against Applicant
Subparagraph 1.g:	For 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 or continue a security clearance for Applicant. Clearance is denied.

Henry Lazzaro
Administrative Judge

