



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



In the matter of:)	
)	
)	ISCR Case No. 10-07509
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

December 29, 2011

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. She has accumulated over \$40,000 in delinquent debt and failed to establish that she manages her finances in a responsible manner. Clearance is denied.

Procedural History

On August 16, 2011, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.¹ The basis for this decision is set forth in a Statement of Reasons (SOR), which alleges the security concern under Guideline F (Financial Considerations). Applicant responded to the SOR on August 29, 2011 (Answer). She admitted 10 of the debts alleged in the SOR and and requested a decision on the administrative record.

¹ This action was taken pursuant to Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

On September 8, 2011, Department Counsel submitted its File of Relevant Material (FORM) and forwarded it to Applicant the following day. The FORM contains Government Exhibits (GE) 1 through 7, which are hereby admitted. Applicant acknowledged receipt of the FORM on September 21, 2011. She had 30 days within which to file a response to the FORM. She did not submit a response. I was assigned the case on November 18, 2011.

Procedural Issues

The Government, pursuant to Directive, Enclosure 3, ¶ E3.1.17, moved to amend the SOR to conform to the evidence. Specifically, the Government moves to amend the SOR by: (a) changing the creditor alleged in ¶ 1.e (replace “Security Credit”, with “a creditor identified as a medical account . . . on your credit report dated June 2, 2011”), and (b) withdrawing ¶¶ 1.g, 1.s, and 1.y. The amendment is granted. Applicant was provided notice of the requested changes and the amendment does not prejudice her.²

The SOR now alleges 22 debts totaling \$41,308. Applicant’s previous denial to the original debt alleged in ¶ 1.e remains in full effect. The Government bears the burden as to this debt and the other SOR allegations denied by Applicant.³

Findings of Fact

Applicant is 41 years old. She graduated high school in 1989 and that same year married her late husband, who was 44 years her elder. She has an adult child and has resided at the same address since 1989.⁴

Applicant was granted a security clearance in 1999. She has held a job from 1999 to the present, without any periods of unemployment or underemployment. She has primarily worked as a custodian. She has been with her current employer, a government contractor, since June 2010. She previously worked for this same employer from 1999 to 2002.⁵

² See ISCR Case No. 10-08560 at n. 3 (App. Bd. Dec. 5, 2011) (EO 10865 and the Directive provide “that an applicant is entitled to a written statement of reasons for denial of a clearance, opportunity to reply in writing, and an opportunity to appear personally before a Department Official” or have the matter decided on the administrative record. The Amendment in this case was fully consistent with the due process requirements of the EO and the Directive). See *also* ISCR Case No. 04-08547 (App. Bd. Aug. 30, 2007) (Amendments should be liberally granted as long as “fair notice to the affected party and the affected party has a reasonable opportunity to respond”).

³ See *generally* ISCR Case No. 11-00391 at 3 (App. Bd. Dec. 1, 2011) (“The Government is required to present substantial evidence of those allegations in the SOR that are controverted. That is, the Government’s burden extends only to those SOR allegations which the applicant has denied.”).

⁴ GE 4.

⁵ *Id.*

Applicant submitted her current security clearance application on June 21, 2010. She disclosed three delinquent debts: a loan from a check cashing place, a credit card, and a deficiency owed for her car that had been repossessed. She estimated the total amount past due on these three accounts was about \$4,634.⁶ A credit report that was generated a few days later, as part of Applicant's background investigation, revealed 20 accounts in Applicant's name that were in collection status for more than \$20,000.⁷ Applicant discussed her delinquent debts with a Government investigator in July 2010. She disclosed to the investigator that she was 60-days late on her mortgage, but had no knowledge regarding the majority of the delinquent debts on her credit report. She promised to look into the debts and satisfy those that were her debts.⁸

The amended SOR alleges 22 delinquent debts totaling about \$41,308.⁹ Applicant admits 10 of these debts or about \$23,662 of the total amount allegedly past due.¹⁰ She promises to resolve these 10 debts in her Answer. As for the 12 debts she denies, Applicant states that she either does not recall the debt or was unable to pay the debt due to economic hardship.¹¹ She promises to find out about these debts and take care of them. All 22 delinquent debts are listed on Applicant's credit reports,¹² and she discussed some of these debts with the investigator in July 2010.¹³

Applicant did not submit proof of payment on any of her delinquent debts. She also did not submit proof that she has contacted her overdue creditors in order to resolve her debts, or that she has disputed these debts with the creditor directly or through the credit reporting agencies. She also did not submit proof of having taken a financial counseling course, nor did she provide any information regarding any matters outside of her control that affected her ability to pay her debts.

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

⁶ *Id.* at 39-43.

⁷ GE 6.

⁸ GE 5.

⁹ Nine of these debts, totaling \$1,468, are for delinquent medical bills. (SOR ¶¶ 1.a, 1.b, 1.e, 1.f, 1.h, 1.j, 1.u -1.w).

¹⁰ SOR ¶¶ 1.c, 1.d, 1.h, 1.i, 1.k – 1.m, 1.q, 1.t, and 1.x.

¹¹ GE 3.

¹² GE 6 and 7. *See also* FORM at 8 (chart).

¹³ *Compare* GE 5 *with* SOR. *See also* FORM at 8.

disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated at 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.

One aspect of the concern is that an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant's accumulation of over \$40,000 in bad debt directly implicates this concern. It also establishes the following disqualifying conditions under AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

However, an applicant's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."¹⁴ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

(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 and provides documented proof to substantiate the basis of the dispute.

None of the mitigating conditions apply. Applicant currently has a significant amount of delinquent debt, which she has not satisfied and there was no evidence

¹⁴ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

presented that she has attempted to resolve her past-due accounts.¹⁵ Even if I were to assume that some of Applicant's debts are related to medical issues and the passing of her husband, she failed to provide any evidence to support a finding that she has acted responsibly under the circumstances.¹⁶ Applicant bears the burden of presenting evidence in mitigation and extenuation,¹⁷ but she failed to present any evidence – even as to the 10 debts totaling over \$23,000 that she admits owing.¹⁸ The mere promise to resolve her debts in the future, especially in light of her previous unfilled promise to the investigator to resolve some of the very same debts alleged in the SOR, is not enough to mitigate the concern at issue.¹⁹ Applicant failed to establish that her financial problem is under control and that she now manages her finances in a responsible manner. AG ¶¶ 20(a) through (e) do not apply. Applicant's financial problem remains a security concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).²⁰ I have considered all the favorable and extenuating factors in this case. Applicant has worked her entire adult life and previously held a security clearance without issue. However, she did not provide any documentation to place in context her financial problems and potentially mitigate the security concern raised by the significant amount of debt that she has amassed. The favorable whole-person factors present in this case do not outweigh the security concern at issue. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

¹⁵ ISCR Case 09-07792 at 2 (App. Bd. May 10, 2011) (“ . . . evidence that Applicant's debts remained delinquent at the close of the record supports . . . conclusion that these debts were ongoing.”)

¹⁶ See *generally* ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008) (“the second prong of MC 20(b) requires that an applicant act responsibly under the circumstances”).

¹⁷ ISCR Case No. 11-00391 at 3 (“Once an applicant's SOR admissions and/or the Government's evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.”).

¹⁸ ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008) (an applicant is expected to present documentation to substantiate his or her claim about the debts at issue).

¹⁹ ISCR Case No. 99-0012 (App. Bd. Dec. 1, 1999) (“Promises to take actions in the future, however sincere, are not a substitute for a documented track record of remedial actions.”)

²⁰ (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.

Formal Findings

I make the following formal findings regarding the allegations in the original SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.f:	Against Applicant
Subparagraph 1.g:	Withdrawn
Subparagraphs 1.h – 1.r:	Against Applicant
Subparagraph 1.s:	Withdrawn
Subparagraphs 1.t – 1.x:	Against Applicant
Subparagraph 1.y:	Withdrawn

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge