



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



In the matter of:)
)
) ISCR Case No. 10-07570
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

August 31, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 18, 2010. On May 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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.

On June 15, 2011, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on July 20, 2011. On July 27, 2011, DOHA issued a Notice of Hearing, scheduling Applicant's hearing for August 10, 2011. On that date, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced seven exhibits, which were marked Ex. 1 through 7 and admitted to the record without objection. Applicant called one witness, testified, and introduced ten exhibits, which were marked as Ex. A through Ex. J and entered in the record without objection. At the conclusion of the hearing, I agreed to leave the record open for one calendar week, until close of business August 17, 2011, so that Applicant could, if she wished, provide additional information for the record. Applicant timely offered eight additional exhibits, which were marked as Ex. K through R and entered in the record without objection. DOHA received the transcript (Tr.) of the hearing on August 15, 2011.

Findings of Fact

The SOR contains eight allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.h.) In her Answer to the SOR, Applicant admitted three allegations (SOR ¶¶ 1.c., 1.d., and 1.g.), and she denied the allegations at ¶¶ 1.a., 1.b., 1.e., 1.f., and 1.h. Applicant's admissions are included as findings of fact. (SOR; Answer to SOR.)

Applicant is 46 years old, never married, and the mother of an adult child. She has a high school diploma. She has held a security clearance for approximately 11 years. From April 2000 until June 2008, Applicant was employed by a federal contractor as a security guard. When she failed to pass a test required as a condition of her employment, Applicant resigned because she feared she might be terminated. She then worked from June 2008 until March 2009 as a stock clerk in a large retail store. She also had a seasonal part-time job. In March 2009, she accepted a position as a security guard with her current employer. She now seeks renewal of her security clearance. (Ex. 1; Tr. 53-54, 59-60.)

In 2006, Applicant sold a home she had owned for five years and purchased another home for approximately \$180,000. In January 2008, Applicant refinanced her home and assumed a new mortgage for \$222,000. Her monthly payment on her refinanced mortgage was \$1,762. (Ex. 2 at 4; Tr. 53-58.)

After resigning from her job as a security guard in June 2008, Applicant began to experience financial difficulties. She did not earn enough from her job as a stock clerk to pay her monthly mortgage. She made partial payments for a time, but the mortgage loan went into default in 2009. Eventually, the property went into foreclosure. In December 2010, the bank holding Applicant's mortgage accepted a short-sale price of

approximately \$133,000 for the property. The bank lost between \$90,000 and \$100,000 on its mortgage loan to Applicant. (Ex. 6; Tr.54-59.)

Applicant opened a credit card account in January 2006. She used the credit card to pay her mortgage and to make car payments. The SOR alleges at ¶ 1.c. that the account was charged off and that Applicant owed a delinquent debt of \$5,207 to the credit card company. Applicant admitted the debt. She stated that in July 2011, she made an oral agreement with the credit card company to pay \$100 a month on the debt. She provided documentation that on July 17, 2011, the credit card company had deposited the \$100 check she submitted on July 15, 2011, in partial payment of her debt. (Ex. 2; Ex. 3; Ex. J; Tr. 64-67.)

In November 2008, while working as a stock clerk at the retail store, Applicant took out a loan for approximately \$46,000 and purchased a new automobile. Her monthly payments for the loan on the vehicle were approximately \$800. Applicant made payments on the vehicle until about January 2010; thereafter, she relinquished the vehicle in a voluntary repossession. The SOR alleges at ¶ 1.d. that Applicant owes a loan balance of approximately \$25,115 on the debt. Applicant admitted the debt but requested an accounting from the creditor. The creditor investigated Applicant's request and informed her that the amount of the debt was accurate. At her hearing, Applicant asserted that she had an oral agreement with the creditor to pay \$100 a month on the debt. She provided documentation establishing that on July 15, 2011, she had tendered a check for \$100 to the creditor, and the creditor had presented the check for payment on July 20, 2011. (Ex. 2; Ex. 3; Ex. I; Ex. Q; Tr. 67-71, 94.)

Also in November 2008, Applicant took out a loan for approximately \$30,000 to purchase an automobile for a person with whom she had a romantic relationship. Applicant took financial responsibility for the loan because her significant other had poor credit and could not obtain a loan. Applicant and her significant other ended their romantic relationship but agreed that he would make the monthly payments of \$500 on the automobile loan, and he did so until March 2010. In April 2010, he was laid off from his job.¹ He relinquished the automobile in a voluntary repossession. The SOR alleges at ¶ 1.g. that Applicant owes a balance on the loan of \$16,957. While Applicant admits the debt and asserts that she has requested an accounting from the creditor, her letter requesting an accounting does not reference the account identified with the debt specified in SOR ¶ 1.g. The debt remains unsatisfied. (Ex. 2; Ex. 3; Ex. R; Tr. 74-79, 100-109.)

The SOR alleges at ¶ 1.a. that Applicant owed a state tax lien of \$1,500 entered against her in September 2010. Applicant claimed that the lien had been satisfied from proceeds she received from the short sale of her home and from her federal and state income tax refunds captured by the state. She provided documentation to corroborate her claim that the tax lien had been satisfied. (Ex. B; Ex. C; Tr. 56-57, 62.)

¹This individual appeared as a witness and stated that he remains unemployed. (Tr. 108.)

The SOR alleges at ¶ 1.b. that Applicant owed \$353 on an account placed for collection, and the debt had not been satisfied. Applicant claimed that the debt had been settled for \$176.45, and she provided documentation to corroborate her claim. (Ex. D; Ex. O; Tr. 62-64, 84-85.)

The SOR alleged at ¶ 1.e. that Applicant owed a \$1,773 delinquent debt, in collection status, to a creditor. Applicant claimed she had settled the debt for \$625.59 in June 2011, and she provided documentation to corroborate her claim. (Ex. E; Tr. 79-81.)

The SOR alleged at ¶ 1.f. that Applicant owed a \$226 delinquent debt, in charged-off status, to a creditor. Applicant claimed that she had settled the debt for \$181.59 in June 2011, and she provided documentation to corroborate her claim. (Ex. F; Ex. P; Tr. 81-84.)

In her answer to the SOR, Applicant denied the \$500 debt alleged at ¶ 1.h. and stated that she had disputed the debt. At her hearing, she admitted the debt, stated that she no longer disputed it, and acknowledged that it remained unsatisfied. (Tr. 71-74.)

Applicant's yearly gross salary is about \$36,000. Her monthly net salary is approximately \$2,500.² She estimated her monthly expenses as follows: rent: \$1,098³; food and groceries: \$100; car payment: \$551; cable: \$65; cell phone: \$50; gasoline: \$70; automobile insurance: \$192; renter's insurance: \$30; and credit disputing service: \$99. Applicant's fixed monthly expenses total approximately \$2,255, leaving her with a net monthly remainder of \$246. (Tr. 43-47, 51, 99.)

Applicant has no active credit cards. She estimated that she has between \$100 and \$200 each month to use to pay her delinquent debts. The record does not reflect that Applicant has had financial counseling. (Tr. 47-48.)

In July 2011, Applicant purchased a new 2011 automobile. In order to purchase the vehicle, she took out a loan for \$28,000. Her monthly payment on her automobile loan is \$551 and is included in her list of fixed monthly expenses. (Tr. 88-89.)

Applicant's current site supervisor provided a letter of character reference. The supervisor stated that Applicant reported for work in advance of her scheduled tour of duty and performed her assignments adequately. Her former site supervisor also provided a letter of character reference. He stated that Applicant did an exceptional job, was an excellent communicator, and was very dependable. (Ex. G; Ex. H.)

² Applicant stated that her take-home pay "is around about \$1,200 or \$1,300 every two weeks." (Tr. 43.)

³ Applicant stated that her monthly gas, electricity and water charges were included in her rent. (Tr. 45.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President 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. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s 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.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 relating to the guideline 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns.

After resigning from her position in 2008, Applicant took out consumer loans to purchase vehicles for herself and her significant other. She accumulated substantial delinquent debt. She was unwilling or unable to satisfy her creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. If the financially delinquent 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,” then AG ¶ 20(a) might apply. If “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,” then AG ¶ 20(b) might apply. If “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,” then AG ¶ 20(c) might apply. If “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” then AG ¶ 20(d) might apply. Finally, if “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,” then AG ¶ 20(e) might apply.

The record shows that Applicant’s financial delinquencies resulted in part when she voluntarily resigned from her position as a security guard in 2008, took a job as a stock clerk in a retail store, and found she lacked sufficient financial resources to pay her debts. Applicant has been steadily employed at her current job since March 2009, and yet her financial delinquencies continue. Applicant’s current financial delinquencies involve substantial sums of money, occurred under circumstances that are likely to recur, and cast doubt on her current reliability, trustworthiness, and good judgment.

The SOR alleges that Applicant is responsible for eight delinquent debts. To her credit, Applicant provided documentation to show that she had settled or otherwise satisfied four of the debts alleged on the SOR. Those four debts, alleged at SOR ¶¶ 1.a., 1.b., 1.e., and 1.f., total approximately \$3,852. However, four additional debts, alleged at SOR ¶¶ 1.c., 1.d., 1.g., and 1.h., total approximately \$47,779 and remain unresolved. Applicant claimed she had oral agreements with the creditors at SOR ¶¶ 1.c. and 1.d. to make \$100 payments on each debt every month, and she provided documentation showing she had sent each creditor an initial payment of \$100 in July 2011, approximately one month before her hearing. The financial summary she provided at her hearing indicated that she had a monthly remainder of approximately \$246. She stated that she had between \$100 and \$200 each month to pay her delinquent debts.

However, in July 2011, Applicant assumed an additional financial obligation when she took out a \$28,000 loan to purchase a new 2011 vehicle. Her financial summary shows that expenses associated with the new vehicle total over \$800 each month. While Applicant’s intention to satisfy her creditors is laudable, she has failed to demonstrate a track record of financial responsibility. She has not yet demonstrated priorities that emphasize paying her existing debts and avoiding additional financial delinquencies in the future. I conclude that AG ¶¶ 20(a), 20(b), and 20(c) do not apply to the facts of Applicant’s case. Further, I conclude that AG ¶ 20(d) applies in part to the facts of Applicant’s case.⁴

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):

⁴ ¶ 20(e) is not raised by the facts of this case.

(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 relevant facts and circumstances surrounding this case.

Applicant's financial problems began when she was a mature adult. She provided documentation establishing that she had paid or settled four of her delinquent debts. However, she has not taken any action to address the debts at SOR ¶¶ 1.g. and 1.h. In July 2011, over two months after receiving the SOR, she sent payments of \$100 to the creditors identified at SOR ¶¶ 1.c. and 1.d., raising a concern about her motivation, her intent to make good-faith efforts to resolve those overdue debts, and her ability to avoid recurrence of financial delinquency in the future. DOHA's Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.'

(Internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

While Applicant provided documentation to show that four of the eight debts alleged on the SOR have been settled or otherwise satisfied, she has failed to demonstrate that she has developed a long-term plan to satisfy her creditors and understands how to avoid excessive debt in the future. Moreover, she failed to establish that she had pursued resolution of her four unresolved debts, totaling \$47,779, with "reasonableness, prudence, honesty, and adherence to duty or obligation."

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's judgment, reliability, and suitability for a security clearance.

Accordingly, I conclude, after a careful review of the facts of her case, the financial considerations adjudicative guideline, and the whole-person analysis, that Applicant failed to mitigate the security concerns arising from her financial delinquencies.

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 1.b.:	For Applicant
Subparagraphs 1.c. and 1.d.:	Against Applicant
Subparagraphs 1.e. and 1.f.:	For Applicant
Subparagraphs 1.g. and 1.h.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge