



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



In the matter of:)	
)	
)	ISCR Case No. 10-09127
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Marc Laverdiere, Esq., Department Counsel
For Applicant: *Pro se*

October 24, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On May 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on July 25, 2011. A notice of hearing was issued on August 5, 2011, 2011, and the case was heard on September 8, 2011. Department Counsel offered three exhibits (GE) 1-3, which were admitted without objection. Applicant testified and submitted three exhibits (AE) A-C at the hearing, which were admitted without objection. I held the record open until September 22, 2011 for Applicant to submit additional documents. Applicant timely submitted three documents, which were marked as AE D - AE F, and admitted into the record without objection. DOHA received the hearing transcript on September 16, 2011. Based on a review of the pleadings,

submissions, and exhibits, I find Applicant failed to meet her burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted 18 delinquent debts and denied the remaining five debts, with explanation, under Guideline F (Financial Considerations).

Applicant is 39 years old. She obtained her General Education Diploma (GED) in January 1991. Applicant is divorced with two children. She has been employed with her current employer since June 2007. (GE 1)

Applicant's financial difficulties began in 1999 when her marriage ended in divorce. Her household income was reduced from two salaries to one. Her initial separation from her husband in 1997 caused her reduced circumstances. She was not employed on a consistent basis and did not have health insurance. In addition, she has an autistic child with medical issues. Applicant remarried in 2001, but the marriage failed due to her abusive husband. This event complicated her financial situation. She was unemployed from November 2003 until April 2004. (GE 1)

In 2007, Applicant had old debts and began falling behind in current accounts. She lived with her family to keep expenses minimal. (Tr. 28) When she obtained her current position in June 2007, she decided to rent an apartment for herself and her children. However, she could not keep up with the rent. She was helping her older daughter to attend college. In addition, she had extra expenses for her special needs child (after school care). She was evicted in March 2010. (Tr. 34)

Applicant obtained the services of a law firm in April 2011 to assist her with a debt consolidation repayment plan for 20 delinquent debts. (AE A) The company is obtaining settlements on the account. She has a three-year automated debt repayment plan. She pays \$200 monthly for the company to settle her debts. The total debt is \$10,617.(AE B) She plans to address the remaining debts that are not in the plan.

Applicant's net monthly income is approximately \$4,012. The court ordered \$300 a month for child support, but her ex-husband is sporadic with his payments. After monthly expenses, she has a net remainder of \$600. (GE 2) She follows a budget. Her annual salary has risen from \$49,000 to \$65,000 since 2007.

The SOR lists 23 delinquent accounts, including four judgments, and numerous medical bills totaling in excess of \$18,000. Applicant admitted some debts, but disputes a judgment from an eviction. She stated she paid the rent, but the judgment was not removed from her credit report. She also stated that she has paid other debts that are not listed on the SOR. (Tr. 79)

Applicant denies/disputes the judgments listed in SOR ¶ 1a. ¶ 1.b. ¶ 1.c, and ¶ 1.d because they are paid. She has not presented any documentation that indicated

she formally disputed these debts or that she paid them. They are the result of rental evictions. (Tr. 32) At the hearing, Applicant stated that she paid the judgments with money orders. She does not have copies of them. (Tr. 35) She offered to contact the rental company, but did not submit any documentation from the company.

Applicant admits the debts in SOR ¶ 1.e through 1.m. These debts are included in her debt consolidation and settlement plan. (GE 3) SOR ¶ 1.v. and 1.u are duplicates.

Applicant obtained financial counseling and developed a debt consolidation plan in 2011. She has a monthly payment of \$200 for approximately 36 months. To date, one account has been settled. (AE F)) Applicant did not submit any documentation to support her assertion that she is paying the monthly \$200 payment.

At the hearing, Applicant was candid about her past, She has dealt with personal adversity and struggled to rebuild her life. She provides financial support for her two children. At one point, due to her personal difficulties with alcohol, her children could not live with her. In 2010, she completed a recovery program that allows her children to live with her. (Tr. 20) She believes she has a strong bond with her family. She also acknowledged that she has struggled with depression after her father's death. (Tr. 46) Applicant noted that during the period of depression and alcohol, she had difficulty making decisions and paying her bills. (Tr. 49)

At the hearing, Applicant emphasized that since 2007, she has been working with the government and has gained the confidence of her employer. She has been entrusted with classified personnel. (Tr. 19) She believes she has established her trustworthiness during the previous four years. She loves her job and needs to remain employed. She noted that she has been promoted . She believes she held a public trust clearance in 2004. (Tr. 91)

Applicant's team manager describes her as an invaluable member of the team, who supports a variety of defense contractors. She is a professional who displays integrity and competence. (AE F) Applicant is talented, organized, efficient and has excellent communication skills. She works independently and multi-tasks to complete projects in a timely manner. (AE F) Applicant is recommended for a security clearance.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The United States Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Analysis

Guideline F, Financial Considerations

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

Failure or an 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. It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."

Applicant has delinquent debts, including four judgments, that are unresolved in an amount of approximately \$18,000. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant's debts are recent and ongoing. She has a judgment that has not been resolved. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. As noted, Applicant's separation and divorce, her unemployment, the special needs of her son, and many medical bills resulted in unpaid debts. The unemployment may have exacerbated Applicant's ability to meet her obligations during this period. However, she did not address her accounts until receiving the SOR in 2011. There is no evidence that she acted reasonably under the circumstances. She allowed the delinquent debts to remain unpaid. There is no record of any attempts to resolve debt until after she received the SOR. She acknowledged that her personal difficulties did not allow her to focus on paying her debts. She receives partial credit under this mitigating condition.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has not provided evidence of any consistent payment plans. She asserts that she has a settlement arrangement for two accounts. She submitted documentation for one account. She has not submitted proof that she has made any payments. She claims she does not owe several accounts, but she did not present any documentation to confirm this assertion.

Applicant received financial counseling. FC MC AG ¶ 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) partially applies.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 39 years old. She is divorced with two children. She is a single parent who attempted to provide for her family. Her children had medical needs. She had some unemployment and personal difficulties which exacerbated her ability to pay her debts. Her separation and divorce compounded her financial problems. She has had financial difficulties for almost nine years.

Applicant was candid and forthright at the hearing. She has recently sought counseling and started a repayment plan with a law firm, who will help settle her debts. She was not clear about payments on her judgments. It was not until she completed her security clearance and received the SOR that she began to seriously address her delinquent accounts. In the last seven months, she has taken constructive steps to alleviate the difficulties. She has a plan of action for the majority of the debts. However, Applicant failed to submit sufficient information or evidence to mitigate the security concerns raised in her case. She did not produce evidence that she has made any of the \$200 monthly payments. She has not yet addressed the other accounts not listed in the plan which amount to approximately \$8,000. She is still unclear on the judgments. She is on the right track, but all doubts must be resolved in favor of the Government. At this time, Applicant has not mitigated the security concerns. Clearance is denied.

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- 1w:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge