



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



In the matter of:)
)
-----) ISCR Case No. 11-00220
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

January 20, 2012

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) lists 19 debts, totaling \$41,490. The only evidence she provided of payments to her SOR creditors was two checks, dated July 15, 2011, totaling \$45. She did not provide correspondence to or from creditors or credit reporting companies, disputing any debts, or correspondence to or from creditors, concerning negotiation of any settlements. She failed to make sufficient progress in resolving her SOR debts, and financial considerations concerns are not mitigated at this time. Eligibility for access to classified information is denied.

Statement of the Case

On August 10, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (Item 5). On October 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to 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* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) 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 a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On November 1, 2011, Applicant responded to the SOR allegations and requested a decision without a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated November 16, 2011, was provided to her on November 30, 2011. She was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.¹ On January 4, 2012, DOHA received Applicant's response to the FORM. The case was assigned to me on January 12, 2011.

Findings of Fact²

In Applicant's response to the SOR, she admitted the debts in SOR ¶¶ 1.a, 1.c, 1.f to 1.i, 1.l, and 1.m to 1.r.³ She denied responsibility for the debt in SOR ¶ 1.b, indicating her husband opened the account and it was attached to her name. She also denied responsibility for the debts in SOR ¶¶ 1.d, 1.e, 1.j, and 1.k because they were not her accounts. She denied the debt in SOR ¶ 1.s without elaboration. Her admissions are accepted as factual findings.

Applicant is a 48-year-old shipper and receiver as well as a supply supervisor, who has been employed by a government contractor since December 2002.⁴ She did not provide any education information. She has never served in the military. Her first marriage was in 1983, and she was divorced in 2001. She married her current spouse in October 2002, and she was separated from her husband in May 2009. Her two children were born in 1988 and 1994. One of her children passed away in September 2010. (Item 7 at 3)

¹The DOHA transmittal letter is dated November 21, 2011, and Applicant's receipt is dated November 30, 2011. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³Unless stated otherwise, the information in this paragraph is from Applicant's SOR response. (Item 4)

⁴Unless stated otherwise, the information in this paragraph is from Applicant's SF 86. (Item 5) On January 4, 2012, she indicated she was no longer working in the supply field. (FORM response)

Financial Considerations

On June 28, 2005, Applicant provided a six-page statement and a personal financial statement to an Office of Personnel Management investigator. (Item 11) She discussed several delinquent debts which appeared on her credit report in 2005 and her security clearance application. (Item 11)

When Applicant completed her SF 86 on August 10, 2010, she disclosed that her home loan was delinquent; however, there was a buyer for her house. (Item 5 at 38) Her home was eventually sold, and there is no evidence that she has a delinquent mortgage debt. Additionally, she disclosed on her SF 86 that the debt in SOR ¶ 1.b for \$16,054 was delinquent. (Item 5 at 39) She said the loan was taken out by her husband and became delinquent when his hours were cut at work. (Item 5 at 39)

Applicant's SOR lists 19 debts, totaling \$41,490. Her August 4, 2011 responses to DOHA interrogatories indicated as follows:

1.a bank debt placed for collection (\$2,822)—date of most recent payment was July 2008. Applicant "scheduled a payment plan beginning September 1, 2011." (Item 6 at 2)

1.b bank debt placed for collection (\$18,141)—date of most recent payment was July 2009. Applicant assumed her husband was making payments. She was trying to make arrangements on this debt. (Item 6 at 2)

1.c bank debt placed for collection (\$1,047)—date of most recent payment was March 2007. Applicant was attempting to contact the creditor. (Item 6 at 2)

1.d and 1.e bank debts placed for collection (\$2,932 and \$2,221)—date of most recent payments were April 2008. Applicant denied responsibility for these two debts; however, she was an authorized user on the accounts. The accounts were her mother's or her father's accounts, and she contacted the credit bureau to have them removed from her credit report. (Item 6 at 3)

1.f charged off debt (\$222)—date of most recent payment was May 2007. Applicant scheduled a payment plan beginning September 1, 2011. (Item 6 at 3)

1.g bank debt placed for collection (\$645)—date of payment was unknown. Applicant said the account was transferred, and she was attempting to find the holder of the debt. (Item 6 at 3)

1.h and 1.i debts placed for collection (\$539 and \$403)—date of payment was unknown. Applicant said the accounts were transferred, and she was attempting to find the holder of the debts. (Item 6 at 4)

1.j bank debt placed for collection (\$5,710)—date of most recent payment was July 2008. Applicant denied responsibility for this debt; however, she was an authorized

user on the account. The account was her father's account, and she was contacting the credit bureau to have it removed from her credit report. (Item 6 at 4)

1.k debt placed for collection (\$199)—no payments were made. Applicant said the debt originated from a gasoline-type credit card and she did not have this type of credit card. She is attempting to have this debt removed from her credit report. (Item 6 at 5)

1.l bank debt placed for collection (\$2,050)—date of most recent payment was unknown. Applicant was attempting to arrange a payment schedule. (Item 6 at 5)

1.m and 1.n medical debts placed for collection (\$1,121 and \$447)—date of most recent payment was unknown. Applicant scheduled a payment plan with payments beginning September 1, 2011. (Item 6 at 5)

1.o and 1.p medical debts placed for collection (\$82 and \$51)—dates of most recent payments were unknown. Applicant scheduled two payments to be made on each debt, beginning in September 2011. (Item 6 at 6)

1.q and 1.r delinquent medical debt (\$900 and \$107)—date of most recent payment was unknown. Applicant scheduled a payment plan with payments beginning September 1, 2011. (Item 6 at 6)

1.s debt placed for collection (\$1,851)—date of most recent payment was unknown. Applicant was unable to find any information regarding this debt. (Item 7 at 5)

On October 12, 2010, Applicant advised an Office of Personnel Management (OPM) investigator in her personal subject interview (PSI) of the following monthly financial information: gross income (\$4,094); net income (\$2,460); expenses (\$1,955); debt payments (\$20); and discretionary funds available to address debts (\$485). (Item 7 at 4-5)

Applicant had "minor financial struggles 4 years ago." (Item 5 at 8) She promised to pay off her debts and clear her credit report. (Item 5 at 8) She provided photocopies of the front side of two checks dated July 15, 2011. (Item 5 at 9) One check was for \$20 and the other check was for \$25. (Item 5 at 9) She did not provide any evidence of financial counseling. (Item 7 at 5)

In the FORM, Department Counsel states:

To date, Applicant has not provided sufficient evidence to mitigate the Government's concerns relating to her financial situation. . . . Although she claims to have established payment plans on a number of debts at issue, there is no evidence of any such plans or any evidence that she has made any payments towards any of the debts listed in the Statement of Reasons. . . . [T]here is no evidence of her disputes [of her responsibility

to pay any of the debts listed on her Statement of Reasons] or of the resolution of any such disputes.

Department Counsel in the FORM at 4-5. The November 21, 2011 letter from the DOHA Director also encouraged Applicant to submit material on her behalf. All she submitted in response to the FORM was a one-page letter without any supporting documentation. She explained in her FORM response as follows:

The debts I deny are those of my father's (who died 3 years ago). I was never an account holder just an authorized user because they lived [outside the United States] and I had to buy boat parts from the U.S. to send to them. I do not know why and think those debts should NOT be on my credit report. I am trying (not getting very far) but trying to have those removed, short of hiring an attorney to help me.

Applicant emphasized that she had good job performance and showed good self-control and judgment. Her performance over the previous 11 years showed she was willing to comply with rules and regulations. She offered to take necessary actions to retain her access to classified information.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines 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 overarching 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 unfavorable.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant 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. 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 therein 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 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guideline F (financial considerations).

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c)

a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in her credit reports, her OPM PSI, her responses to DOHA interrogatories, and her SOR response. Applicant’s SOR lists 19 debts, totaling \$41,490. Some of her debts became delinquent in 2007. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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.

Applicant’s conduct in resolving her debts warrants very limited application of AG ¶¶ 20(b), 20(c), and 20(d).⁵ There is no evidence of financial counseling. She showed

⁵The Appeal Board has previously 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 good faith when she admitted responsibility for her SOR debts in her responses to DOHA interrogatories and in her SOR response. Applicant's financial situation was damaged by insufficient income, her spouse's underemployment, as well as her separation from her spouse. However, Applicant's financial circumstances have been relatively stable since 2009, and she has not provided sufficient information about variations in her income over the most recent three years to fully establish any mitigating conditions. AG ¶ 20(e) does not apply because she failed to provide documented proof to substantiate the basis of the dispute or evidence of actions to resolve the issue. Applicant credibly stated that she contacted the collection agent for the debts in SOR ¶¶ 1.h (\$539) and 1.i (\$403), and as well as the bank holding the debt in SOR ¶ 1.g (\$645), and those debts have been transferred. She was not able to locate the current holders for those three debts. According, I find for Applicant on these three debts. Of course, if these three debts surface on her credit report, she will be responsible for them.

Applicant is not credited with mitigating the debts where she is merely an authorized user of the accounts because in many instances all authorized users are jointly liable for the debts incurred on such accounts. Additionally, she noted that she used her authorized user SOR accounts to purchase boat parts for her parents. She did not provide copies of the authorizing documents or contracts, and based on the evidence provided, it is not possible to establish that she is not liable for payment of such debts.

Applicant did not establish that she acted responsibly under the circumstances. The file lacks proof that she maintained contact with all of her creditors.⁶ There are no receipts or account statements from creditors, establishing any payments to her SOR creditors. She provided photocopies of the front of two checks dated July 15, 2011, totaling \$45, as part of her response to DOHA interrogatories. There is insufficient evidence that her financial problem is being resolved and is under control. The file lacks evidence that she has acted responsibly on any of her SOR debts.

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.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

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

⁶"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n. 9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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 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.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of her access to classified information. Applicant is a 48-year-old shipper and receiver as well as a supply supervisor, who has been employed by a government contractor since December 2002. She married her current spouse in October 2002, and she was separated from her husband in May 2009. Her two children were born in 1988 and 1994. One child passed away in September 2010. Applicant is credited with contacting the collection agent for the debts in SOR ¶¶ 1.h (\$539) and 1.i (\$403), as well as the bank holding the debt in SOR ¶ 1.g (\$645) and discovering those two debts have been transferred. She has contacted some of her SOR creditors made offers to settle some debts. She is sufficiently mature to understand and comply with her security responsibilities. She deserves some credit for volunteering to support the U.S. Government as an employee of a contractor. There is every indication that she is loyal to the United States and her employer. There is no evidence that she abuses alcohol or uses illegal drugs. Applicant's financial situation was damaged by insufficient income, underemployment of her spouse, and separation from her spouse in 2009. I give Applicant substantial credit for admitting responsibility for most of her SOR debts in her SOR response and for explaining the remaining SOR debts. She has been honest about her failure to fully address her delinquent SOR debts. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial at this time. Applicant's SOR lists 19 debts, totaling \$41,490. The only proof she provided of payments to her SOR creditors was two checks dated July 15, 2011, totaling \$45. She did not provide letters to any creditors that she disputed any

debts, or letters from or to creditors to show that she negotiated any settlements or established any payment plans. Applicant's employment has been stable since 2002 and there is no evidence of sufficient variations in her income to cause delinquent debt. She did not provide her pay statements or her income tax returns. She indicated in her budget that she had about \$300, which was potentially available each month to pay her SOR debts, and she did not provide enough information to assess her ability to address her delinquent debts. Applicant has failed to provide sufficient documentary evidence that she is making progress resolving her delinquent SOR debts, and she has not established her financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are not mitigated. Eligibility for access to classified information 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 to 1.f:	Against Applicant
Subparagraphs 1.g to 1.i:	For Applicant
Subparagraphs 1.j to 1.s:	Against 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 Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

MARK HARVEY
Administrative Judge