



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-00965
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

November 21, 2011

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 13, 2008. On May 26, 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); 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.

Applicant received the SOR on July 1, 2011; answered it on July 20, 2011; and requested a hearing before an administrative judge. DOHA received the request on July 21, 2011. Department Counsel was ready to proceed on August 30, 2011, and the case

was assigned to me on September 9, 2011. DOHA issued a notice of hearing on September 14, 2011, scheduling the hearing for October 11, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through M, which were admitted without objection. I kept the record open until October 26, 2011, to enable Applicant to submit additional evidence. She timely submitted AX N, which was admitted without objection. Department Counsel's comments regarding AX N are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on October 19, 2011.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.d and denied the allegations in SOR ¶ 1.e. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 42-year-old service order coordinator employed by a defense contractor. (Tr. 47.) She graduated from high school in 1987. (Tr. 47.) She was a federal employee from July 1987 to June 1989. She married in February 1993, and two children, now ages 18 and 21, were born during the marriage. From June 1989 until May 1998, she was a stay-at-home mother.

Applicant and her husband filed a joint petition for Chapter 7 bankruptcy in June 1998 and received a discharge in October 1998. (GX 4.) She and her husband filed the bankruptcy petition after he accumulated numerous delinquent credit card accounts and student loans. (Tr. 39.) The record does not reflect the specific debts that were discharged.

Applicant's husband left her at about the same time as they filed for bankruptcy, forcing her to seek full-time employment. (Tr. 50.) Between mid-1998 and May 2002, she worked at private-sector jobs. She was unemployed from May to July 2002. She left a job with a ceramic tile company in November 2002, after she refused to sign a form regarding her understanding of company procedures because it did not reflect the procedures they followed. She left her next job in November 2003 following allegations of unsatisfactory performance. (GX 1 at 31-32.) She divorced her husband in December 2003. She has worked for her current employer for about eight years. (Tr. 48.)

Applicant initially received child support from her ex-husband totaling about \$1,003 per month. (Tr. 54.) The child support was reduced to \$465 per month when their teenaged son began having behavioral problems and moved in with his father. When their son was 16 years old, he impregnated his girlfriend. He and his pregnant girlfriend moved in with Applicant, and his father stopped paying child support for him. Applicant did not seek a court order to compel payment of child support. (Tr. 57-58.) Applicant obtained a court order making her the custodial parent of her son's girlfriend until September 2007. (GX 1 at 28.) Applicant's son beat his girlfriend and frightened Applicant and her daughter. After a violent incident during the summer of 2007,

Applicant's daughter moved in with her father, and her father stopped paying child support for her.

In November or December 2007, Applicant was hired by the contractor for whom she had been a subcontractor, but she did not realize that she could no longer work overtime as an employee of the contractor. Consequently, her income dropped by about \$1,000 per month. (Tr. 38-42.)

Applicant's son and his wife had a son in February 2008. (Tr. 52.) Her son then joined the U.S. Marine Corps, and his wife and child moved out of the house. By this time, Applicant was deeply in debt. She rented rooms in her home, but her renters did not pay the rent. (Tr. 64.) She sold her home in a short sale in 2008. Her credit report of July 30, 2010, reflects that the amount due on her mortgage was "legally paid in full for less than the full balance." (GX 6 at 4.) She filed a second Chapter 7 bankruptcy petition in June 2011, solely in her name. She completed the course on financial management required by the bankruptcy court in July 2011. (AX K.) She received a discharge in September 2011. (GX 3; AX H.)

The delinquent debts alleged in SOR ¶¶ 1.a-1.d became delinquent after Applicant's income was reduced in late 2007, her son and his pregnant girlfriend began living with her, and her ex-husband stopped paying child support. These debts were included in Applicant's most recent bankruptcy. (AX N.)

The \$10,000 debt alleged in SOR ¶ 1.a was a \$7,600 line of credit opened in May 2008. (GX 2 at 6.) The record does not reflect what Applicant purchased or paid with these funds. Her August 2008 credit report reflected that the account was being paid as agreed. (GX 5 at 8-9.) Her July 2010 credit report reflected that her payments were 60 days past due. (GX 6 at 9.) Her February 2011 credit report reflected that the debt was charged off in the amount of \$10,000. (GX 7 at 1.)

The \$1,306 debt alleged in SOR ¶ 1.b was for clothing. (GX 2 at 6.) Applicant's August 2008 credit report reflected that this account was opened in April 2004, had a balance of \$343, and was current. (GX 5 at 7.) Her July 2010 credit report reflected a balance of \$1,306 referred for collection. (GX 6 at 7.) Her February 2011 credit report reflected that the debt was charged off in the amount of \$1,306. (GX 7 at 2.)

The \$1,479 debt alleged in SOR ¶ 1.c also was for clothing. (GX 2 at 6.) Applicant's August 2008 credit report reflected that this account was opened in July 2006, had a balance of \$1,836, and was current. (GX 5 at 10.) Her July 2010 credit report reflected that this debt was referred for collection in the amount of \$1,479. (GX 6 at 4.) Her February 2010 credit report reflected that the debt was charged off. (GX 7 at 2.)

The debt alleged in SOR ¶ 1.d was a charge account with a jewelry and camera store. Applicant's August 2008 credit report dated reflected that she opened this account in August 2006, was making monthly payments of \$66 as agreed, and had a

balance of \$757. (GX 5 at 11.) Her July 2010 credit report reflected that the account was closed by the credit grantor after it became 120 days delinquent. (GX 6 at 8.)

Applicant denied the delinquent \$822 telephone bill alleged in SOR ¶ 1.e. This account was opened in October 2000. It was not listed on her August 2008 credit report. It was charged off in April 2010 and paid in full in February 2011. (GX 2 at 16; GX 6 at 8; Tr. 77, 84-85.) The creditor is Applicant's current employer.

After Applicant's son and his wife separated in early 2010, Applicant became concerned about the welfare of her two-year-old granddaughter. In June 2011, she obtained legal custody of her granddaughter. Her son pays \$400 per month in child support. (Tr. 43-46.)

Applicant completed an online debt education course, and she has formulated a monthly budget. She is currently living with her fiancé and her granddaughter. She and her fiancé share household expenses. (Tr. 43-44, 46-47.)

When Applicant was interviewed by a security investigator in August 2010, she reported net monthly income of \$2,720, expenses of \$2,325, debt payments of \$554, and a monthly shortfall of \$159. (GX 2 at 7.) In response to DOHA interrogatories in April 2011, she submitted a personal financial statement reflecting net monthly income of \$2,738, expenses of \$2280, debt payments of \$458, and a remainder of less than a dollar. (GX 2 at 13.)

Applicant owes federal income taxes from tax year 2009. Her 2010 refund was seized for the tax debt, but she still owes about \$1,600. She has not made any payment arrangements for this debt. She last contacted the Internal Revenue Service (IRS) about ten months before the hearing. (Tr. 89-90.) She testified she has made no recent attempts to contact the IRS because of her frustrating experience of working through a telephone menu only to be connected to "somebody that can't help you." She testified, "I don't have time during my workday to be on the phone all day with the IRS." (Tr. 91.) This debt is not alleged in the SOR.

Applicant's pay vouchers reflect a tax levy of \$223 in September 2011. (AX I at 3-4.) She testified the levy was imposed because she did not pay the personal property tax on her car. (Tr. 88.) This debt is satisfied and is not alleged in the SOR.

Applicant's pay vouchers also reflect a loan from her retirement account that she is repaying by deductions from her pay at the rate of \$45.72 per pay period for 36 months. (AX I at 1-5.) She used this loan to pay the legal fees for her recent bankruptcy. (Tr. 87.) The loan is current and is not alleged in the SOR.

In preparation for the hearing, Applicant downloaded a budget program. Her budget for October 2011 reflects total monthly income of \$5,748, expenses of \$3,537, and a net remainder of \$2,211. For November 2011, her income is the same but her expenses are \$2,559. Her budgeted net income reflects the repayment of the loan from

her retirement account. The increased net monthly income reflected in her recent budget resulted from combining her income with her fiancé's. She has about \$713 in her checking account and \$6,737 in her retirement account. (AX I, L, and M.) Her budget does not provide for payment of her delinquent federal taxes. As of the date of the hearing, she had no open credit card accounts. (Tr. 73.)

Applicant's fiancé testified that he has known Applicant since childhood and they have lived together for about six months. Applicant was vague about their marriage plans, testifying that they had not set a marriage date because they "have enough obstacles to get over now." (Tr. 47.) However, her fiancé testified that they plan to marry in September 2012. (Tr. 104.) They share household expenses. Applicant's fiancé described her as loyal, ethical, and devoted to her family. He has no doubts about her honesty, integrity, and trustworthiness. (Tr. 98-105.)

A friend for the last 13 years met Applicant while operating a daycare center where Applicant left her children. She watched Applicant raise her children, deal with the son's behavioral problems, and struggle with her finances. She described Applicant as "incredible." The friend became a coworker for about three and a half years and was impressed by her dedication, honesty, and intelligence. Tr. 109-117.)

Applicant submitted seven letters from friends, coworkers, supervisors, and government employees who supervise the program on which she works. A friend and coworker describes her as dedicated, morally strong, talented, and absolutely trustworthy. (AX A.) A friend and neighbor for the past 15 years regards her as very loyal, honest, and trustworthy. (AX B.) Her branch chief, who has known her for about a year, describes her as dedicated, creative, skilled, and trustworthy. (AX C.) A seasoned government employee, with 36 years of service, considers her a "huge asset" who is being groomed to be hired as a government employee at the first available opportunity. (AX D.) A facilities coordinator describes her as a "true asset" who is dedicated, talented, prompt, and responsive. (AX E.) The program manager for whom she worked as a subcontractor until she was hired by the contractor strongly supports her application for a clearance. (AX F.) A friend, who has known Applicant for ten years and worked with her on youth programs, states that she is honest and ethical, and her integrity and sincerity are without question. (AX G.)

Policies

"[N]o 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 applicants 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 AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 made "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. Thus, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). "[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

Guideline F, Financial Considerations

The SOR alleges five delinquent debts totaling about \$14,758. Applicant admitted the four debts alleged in SOR ¶¶ 1.a-1.d. She denied the debt alleged in SOR ¶ 1.e and produced evidence that it was paid in full.

The concern under this guideline 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 following disqualifying conditions under this guideline are relevant:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(b): indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Although Applicant paid the debt alleged SOR ¶ 1.e in February 2011, it raises security concerns because it was charged off as a bad debt in April 2010. Applicant's admissions and her credit reports establish AG ¶ 19(a), (c), and (e).

Applicant's indebtedness to a jewelry and camera store while on a limited income qualifies as "frivolous or irresponsible spending," within the meaning of AG ¶ 19(b). She initially demonstrated willingness and intent to pay the debt by making the regular payments reflected on her August 2008 credit report, but she stopped making payments when her income was reduced and made no further efforts to resolve this debt until it was discharged in her Chapter 7 bankruptcy. Thus, I conclude that AG ¶ 19(b) also is established.

Applicant's federal income tax debt and her failure to timely pay the personal property tax on her car were not alleged in the SOR. Conduct not alleged in the SOR

may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the evidence of her delinquent tax debts for these limited purposes.

Security concerns based on financial problems can be mitigated by showing that "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." AG ¶ 20(a). Applicant's debts are recent and numerous. However, they did occur under circumstances that are unlikely to recur. Her husband left her with two children, bad credit, no financial resources, limited education, and minimal work experience. Nevertheless, her August 2008 credit report reflected that she was able to pay her debts until she suffered an unexpected income reduction and the financial burden of supporting her irresponsible son, his pregnant wife, and her granddaughter was thrust upon her. She now has custody of her granddaughter but is no longer supporting her son and her daughter-in-law. Her recent Chapter 7 bankruptcy discharge resolved her delinquent debts, and she has sufficient income to handle her current living expenses. However, her dilatory approach toward resolving her federal tax liability militates against a finding that recurrence of delinquent debts is unlikely. I conclude that AG ¶ 20(a) is not established.

Security concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(b). Both prongs, *i.e.*, conditions beyond the person's control and responsible conduct, must be established. The circumstances set out in the above discussion of AG ¶ 20(a) were largely beyond Applicant's control. However, her losses of employment in November 2002 and November 2003 appear to have been largely her fault and not due to circumstances beyond her control. Applicant initially made reasonable efforts to satisfy her financial obligations. However, after she and her fiancé began living together and sharing expenses, she had a net monthly remainder of more than \$2,200, but she made no reasonable efforts to resolve her delinquent debts, including her unpaid federal taxes. I conclude that AG ¶ 20(b) is not established.

Security concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(c). Applicant received counseling mandated by the bankruptcy court. In addition, she has conducted on-line research into family budgeting, and she has begun to apply what she has learned. She has sufficient income to manage her current expenses, including the delinquent federal taxes. However, she has taken no steps to resolve her federal income tax debt, and insufficient time has passed since her bankruptcy discharge for

her to establish a track record of financial responsibility. I conclude that AG ¶ 20(c) is not fully established.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999).

An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

While bankruptcy is a legally permissible option and removes the pressure to obtain funds that underlies Guideline F security concerns, it does not necessarily show a good-faith effort within the meaning of this guideline. An applicant must do more than show that he or she relied on a legally available option such as bankruptcy in order to claim the benefit of this mitigating condition. See ISCR Case No. 06-14521 at 2 (App. Bd. Oct. 15, 2007).

In this case, Applicant’s actions initially showed good faith. She immediately sought and obtained employment after her husband left her. She tried renting rooms in her home, without success. She sold her home in a short sale, but the proceeds were insufficient to resolve all her debts. She resolved the debt alleged in SOR ¶ 1.e before she received the DOHA financial interrogatories or the SOR. On the other hand, she continued with her plan to file a Chapter 7 bankruptcy petition even after her net monthly income increased substantially. As of the date of the hearing, she had made no attempts to resolve her federal income tax debt for at least ten months. I conclude that AG ¶ 20(d) is not fully established.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 20(e). This mitigating condition applies to the debt alleged in SOR ¶ 1.e, but not the debts alleged in SOR ¶¶ 1.a-1.d, which Applicant has not disputed.

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 the applicant’s conduct and all relevant circumstances. An 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

A security clearance adjudication is aimed at evaluating an applicant's judgment, reliability, and trustworthiness. It is not a debt collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) Thus, I have focused on the circumstances surrounding the debts rather than the question whether they have been resolved.

Applicant is a mature adult who has struggled to support herself and her family since her marital breakup. She has a reputation among friends, coworkers, and supervisors for determination, trustworthiness, and reliability. Her current budget is a realistic step toward financial stability. On the other hand, the viability of her budget depends on Applicant and her fiancé continuing to live together and share living expenses, even though she and her fiancé gave inconsistent testimony at the hearing about their marriage plans. Her budget does not provide for paying her federal income taxes. Insufficient time has passed since her most recent bankruptcy discharge for her to establish a track record of financial responsibility.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a-1.d: **Against Applicant**

Subparagraph 1.e: **For Applicant**

Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge