



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



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| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 11-00970 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

December 7, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On April 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action 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 by the DOD on September 1, 2006.

In a June 20, 2011, response, Applicant admitted 19 of 26 allegations raised under Guideline F and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on July 25, 2011. The parties proposed a hearing date of September 7, 2011. A notice setting that date for the hearing was issued on August 22, 2011. Applicant did not receive the notice within the required 15 days, and Applicant declined to proceed as scheduled. The hearing was rescheduled on September 1, 2011, for a September 19, 2011, hearing date. I convened the hearing as scheduled.

Applicant gave testimony and offered 14 documents, which were accepted without objection as exhibits (Exs.) A-N. She was given until September 23, 2011, to submit any additional documents. The Government introduced four documents, which

were accepted into the record without objection as Exs. 1-4.¹ On September 26, 2011, the Government forwarded four additional documents from Applicant, which were accepted without objection as Exs. O-R. The transcript (Tr.) of the proceeding was received on September 28, 2011. On September 29, 2011, the Government forwarded one additional document from Applicant which had been inadvertently left out of her earlier transmission to the Government. It was accepted into the record without objection as Ex. S. The record was then closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden of mitigating security concerns related to financial considerations. Clearance is denied.

Findings of Fact

Applicant is a 37-year-old office manager who has worked for the same defense contractor since July 2009. She completed a high school education and attended some college courses. She is single and has two children.

When Applicant first applied for a security clearance in about 2003, she notified her security officer that she was planning to file for bankruptcy protection. This decision was necessitated by her estrangement from the father of her children and her acquisition of debt on consumer accounts. She filed for bankruptcy in July 2003 and her debts, amounting to about \$18,000, were consequently discharged in about November 2003. For approximately six months, she refrained from using credit cards, then she opened one or more credit card accounts in an undefined plan to rebuild her credit. She then acquired more credit cards when she found a higher-paying job in April 2005. Due to a reduction in force, however, she lost her job at some point in November 2008. She remained unemployed until March 2009, amounting to about three or four months of unemployment. Applicant then found a full-time, three-month temporary position that lasted until May 2009. Another short-term assignment lasted for about half of June 2009. She then started her present position in July 2009. Applicant attributes her present financial distress to these periods of unemployment or underemployment, amounting to about four of five months without a regular income, and to her lack of knowledge regarding personal finance.²

At issue in the SOR are 24 debts, as reflected in allegations ¶¶ 1.b-1.y.³ Those debts represent approximately \$45,000 of accumulated delinquent debt with balances ranging from \$31 to \$22,000. At the hearing, Applicant provided the following information:⁴

¹ An initial objection to one document was functionally withdrawn when the documents were explained to the Applicant. Tr. 11-17.

² Tr. 25.

³ Allegation ¶ 1.a concerns Applicant's 2003 bankruptcy filing and discharge.

⁴ In response to the SOR, Applicant provided copies of letters initiating contact with the creditors noted at allegations ¶¶ 1.d, 1.e, 1.h, 1.i, 1.n, 1.o, 1.p, 1.q, 1.r, 1.s, 1.w., and 1.y. She provided no documentary evidence of responses to those letters.

1.b – \$2,080 college-related charge off – Unpaid. This debt is for two courses Applicant took in 2008. She failed one class and one was dropped. She contacted the school, then its collection agent, earlier this year. She admitted, however, that the debt remains unpaid.⁵ She also showed that this debt is duplicated in the entry noted at 1.y, below.

1.c – \$22,000 car repossession – Unpaid. This debt was incurred when a new car purchased in 2005 was repossessed in May 2010, after three missed payments. Her monthly car payment was about \$480 a month. Applicant stated the vehicle was later resold, leaving a deficiency owed of about \$13,833. She testified that she made two \$200 payments toward that balance this past summer. She provided evidence of one such payment, from June 2011.⁶ No subsequent payments were shown as made.⁷ After the hearing, she wrote that she had directed a biweekly payment of \$100 to be sent to the creditor, but no evidence was provided showing that a direct payment had recently been made.⁸

1.d – \$561 charge off – Unpaid. This debt is related to one of the credit cards Applicant initially obtained to help rebuild her credit after her bankruptcy. She does not recall when she became delinquent on the account, but it appears to have become delinquent in mid-2007, before she lost her job in a reduction in force.⁹ No payments were subsequently made. However, it is included in a consumer credit counseling (CCC) debt payment agreement, described below, which she stated was poised to be implemented in mid-October 2011. No other efforts were shown as made before the record closed.

1.e – \$1,019 charge off – Unpaid. This debt is related to a credit card. Applicant stated that she previously made payments on the account in 2010, but had no evidence to offer as proofs of payment. It is included in the CCC agreement.

1.f – \$1,615 charged off – Unpaid. This debt is related to a credit card. Applicant testified that she paid about \$100 on this debt previously, but no supporting evidence was offered to substantiate this claim. It is included in the CCC agreement.

1.g – \$1,472 collection – Unpaid. Applicant admitted she has not made any payments on this account. It is included in the CCC agreement.¹⁰

1.h – \$2,302 telecommunications collection – Unpaid. Applicant stated that she contacted this provider on three occasions previously. She requested validation of the

⁵ Tr. 33.

⁶ Tr. 38.

⁷ Tr. 39.

⁸ Ex. S (Note, email, and receipt).

⁹ Tr. 41.

¹⁰ Tr. 45.

balance, but testified that her request was denied. She believes the balance is really about \$500.¹¹ No payments have been made on this debt. It is included in the CCC agreement.

1.i – \$374 telecommunications collection – Unpaid; status unclear. Although she contacted this creditor to make arrangements to satisfy the debt in June 2011, she was later told by a collection agency that it had no record of the debt.

1.j – \$80 collection – Paid.¹²

1.k – 1.m – \$180/\$31/\$327 medical collections – Unpaid. Applicant noted that these three debts might have been acquired while she was unemployed. She believes she had submitted claims for these accounts to Medicare or Medicaid, but provided no evidence showing that either entity is responsible for the debts. No payments have been made on these accounts.

1.n – \$218 cable collection — Unpaid. It is included in Applicant’s personal repayment plan for repaying debts directly.¹³ No evidence of previous payments was submitted. There is no indication as to when this debt might be paid.

1.o – \$2,577 collection – Unpaid. Applicant hopes to pay this debt on her own. No payments have thus far been paid.

1.p – \$223 cable collection – Unpaid. Applicant has made inquiries about this debt, but no progress on its resolution has been made.¹⁴

1.q – \$80 cable collection – Unpaid. Applicant has made inquiries about this debt, but no progress on its resolution has been made.¹⁵

1.r – \$360 cable collection – Unpaid. Applicant has made inquiries about this debt, but no progress on its resolution has been made.¹⁶

1.s – \$3,940 college-related collection – Unpaid. Applicant believes the debt balance is a lower sum, but provided no evidence showing that it is. She called the institution to request that it review the balance alleged and wrote it a letter concerning the same

¹¹ Tr. 46.

¹² Tr. 51-52.

¹³ Tr. 54-62.

¹⁴ Tr. 63-64.

¹⁵ Tr. 63-64.

¹⁶ Tr. 63-64.

issue in June 2011. There is no evidence of a response or more recent effort to resolve this debt. No payments have been made on this debt.

1.t – \$88 collection – Status unknown. Applicant testified that she previously paid this debt. She provided no evidence showing that it has been satisfied, however, and cannot recall when she might have made that payment. She contacted the creditor and requested a verification of any balance owed, but provided no evidence of any response and presented no evidence of subsequent efforts to resolve this debt.¹⁷

1.u – \$361 collection – Unpaid. Applicant contacted this creditor, but the balance remains unchanged and unpaid.

1.v – \$246 insurance-related collection – Unpaid.¹⁸

1.w – \$1,944 collection – Unpaid. It is included in the CCC agreement.

1.x – \$670 telecommunications collection – Disputed. Applicant disputed the balance alleged with the creditor and is awaiting verification or resolution.¹⁹ The account currently shows a balance of about \$375.²⁰ There is no evidence of dispute with any of the three leading credit reporting bureaus.

1.y – \$2,080 college-related charge off – Duplicate entry. This is the same unpaid debt noted at 1.b, above.

In response to March 20, 2011, interrogatories, Applicant stated that most of the creditors later noted in the SOR would either be paid in full or in a repayment plan that was to begin in April 2011. Her June 2011 SOR response reflects commitments to pay some of the debts noted, and references a repayment plan to be implemented. The CCC agreement, which incorporates credit card debts, was dated the morning of the rescheduled hearing, which commenced at 1:55 p.m. on September 19, 2011.²¹ It includes six of the debts noted in the SOR. The first payment on the CCC plan, for

¹⁷ Tr. 65-66.

¹⁸ Tr. 67.

¹⁹ Tr. 50-51.

²⁰ Ex. P (Telecommunications bill, dated Nov. 6, 2010).

²¹ Tr. 68. Applicant initially explained this situation by noting that “today’s date actually reflects when I went into the system to give them banking information.” She testified that the agreement was otherwise made in July 2011, then noted she initially contacted the entity that month. Ex. R (Budget-related materials) shows that on July 15, 2011, CCC contacted Applicant and stated it would like to discuss with her options for debt management. Applicant’s documents show that she had devised a plan or negotiated an agreement by late August 2011. Applicant agreed that the banking information and the payment plan were not set up until September 19, 2011. Tr. 69-71.

\$320, was due on October 16, 2011. She did not initiate an earlier date for starting repayment because of committed expenses related to her children returning to school.²²

In addition to the credit counseling entity through which Applicant is poised to implement a repayment plan on some of her debts, she also had a credit and budget review by another agency and received employee assistance counseling through her workplace. Applicant conceded that no payments have been made on the accounts at issue except for those noted at 1.c and 1.f.²³ She explained her delay in previously implementing a formal repayment plan by noting, “[u]nfortunately, sometimes day to day things that go on in your life can cause you - - can cause things to shift, or . . . you have to make changes.”²⁴ She further noted that, “these past six months [have] been a balancing act. . . .I’ve been very busy with my job. . . and sometimes having unexpected expenses that cause me to having to change or delay payment.”²⁵

Aside from the delinquent credit card accounts at issue, Applicant has one credit card that remains in good standing. Its current status was unexplored. She has multiple student loans that are in deferment until November 2011, after which she will be obligated on a \$130 a month repayment plan. Applicant maintains two savings accounts, both with balances of less than \$100. On the day of the hearing, she had about \$46 in her checking account. She has a retirement account with a former employer with a balance of about \$13,256.²⁶ After budgeted expenses and expenditures, Applicant has a weekly net remainder of about \$45-\$120, from which she plans to honor those debts noted above she reserved for direct personal repayment.²⁷ She recently applied for part-time employment with three different potential employers in an effort to generate more income.²⁸

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the

²² Tr. 72. Applicant noted that she stopped receiving weekly allotments for child support of \$89 in July 2011.

²³ Tr. 74.

²⁴ Tr. 76.

²⁵ Tr. 76-77.

²⁶ Ex. P (Retirement account information).

²⁷ Tr. 81-82. According to the budget and recommended budget submitted after the hearing and accepted as Ex. R (Debt management program and budget), Applicant currently has a net monthly remainder of \$90 and, if the recommended budget is adopted, a net monthly remainder of \$108. An updated budget shows a potential net monthly remainder of \$204.

²⁸ Tr. 82-83.

complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The 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." The administrative judge must consider all 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.

The 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. . . ." ²⁹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ³⁰

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 those to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation 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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."³¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³²

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that

²⁹ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³¹ *Id.*

³² *Id.*

could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F - Financial Considerations

Under Guideline F, “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.”³³ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”³⁴ The Government’s evidence showed that Applicant owed about \$45,000. She admitted a majority of the debts at issue were hers. To date, she has paid one nominal debt (\$80) and made a couple of hundred dollars in payments on some of the other debts. She entered into a debt repayment plan with regard to six of the debts, but has yet to show she has initiated consistent payments toward that plan or established a pattern of regular debt repayment through that plan or her own initiative. Her present income barely exceeds her monthly expenses and obligations. Such facts are sufficient to raise 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*). With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The debts at issue are multiple in number and represent a significant amount of delinquent debt. Only one debt has been paid. Although her largest debt, for the automobile repossession, may have been reduced in terms of the debt owed, little progress has been made on satisfying that debt. Other than a retirement account with a balance in excess of \$13,000, which remains unapplied to her present delinquent debt, Applicant has no significant cash reserves. Both her current budget and a proposed budget leave her with a net monthly remainder ranging from about \$173 and \$204, leaving little buffer for incidentals or common variances in economic need. Moreover, she waited until the last minute to finalize her debt repayment program with CCC, which only addresses six of the 24 debts at issue. Furthermore, Applicant presented scant evidence of attempts to economize, although she did show that she recently began seeking a part-time job to generate additional income. Finally, she recently has had difficulty “balancing” her obligations or committing to payment plans due to unexpected expenses. After consideration of these factors and the record as a whole, there is insufficient evidence to raise Financial Considerations Mitigating Condition (FC MC) 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*).

³³ AG ¶ 18.

³⁴ *Id.*

At issue is 45,000 in delinquent debt. This amount could be lowered after the reduction of the car repossession liability from \$22,000 to about \$14,000 after its post-repossession resale. Regardless, the debt exceeds at least \$37,000, far more than the amount at issue in her 2003 bankruptcy proceeding. Although Applicant experienced periods of unemployment, they were only for periods of about three or four months from late 2008 until early 2009 and a couple of weeks in the summer of 2009. She has been continuously employed since that time. Other than three medical bills that appear to be attributable to a period during which she lacked health care coverage, there is little direct documentary evidence showing that these periods are responsible for most of the debts at issue (e.g., the car repossession occurred in May 2010 and the 2007 charged-off credit card balance). Moreover, it is unclear, given the facts she presented, whether her very recent loss of child support (mid-2011) was unavoidable or unwarranted. Therefore, 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*) only applies to a limited extent.

Applicant received financial counseling, employee assistance regarding her situation, and a budgetary review. She solicited the aid of CCC to help her manage six of 24 debts. Even assuming that the record contained evidence of October and November 2011 payments toward the six debts potentially addressed in the CCC plan, that plan only deals with six accounts; it does not encompass a majority of the debts at issue. Moreover, insufficient time has passed to use that plan as a demonstration of a consistent and regular effort to address her debt. As the record stands, there is only evidence of a plan poised to be implemented, payment of one nominal debt, a couple of disputed balances, and some scattered payments toward her overall obligations. Therefore, neither FC MC AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) nor FC MC AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

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 a 37-year-old office manager. She is a single mother. She has attended some college. She has initiated some form contact with most, if not all, of her creditors. However, she only recently pursued secondary employment and instituted a debt repayment plan the morning of the hearing.

Applicant experienced brief periods of employment between mid-2008 and mid-2009, but there is insufficient evidence to show that the combined three-and-a-half to four-and-a-half months they represent is responsible for all the debt at issue. Applicant sought guidance from a financial counselor and through her employer's assistance program. Her delay until the morning of the hearing to institute a debt repayment plan vexed her ability to show that consistent and regular payments have been made toward the six debts involve. Although she acknowledges that her current budget is extremely fragile, she plans to address the rest of the debts at issue on a budget that leaves her with a net monthly remainder of only about \$200.

This process does not demand that an applicant satisfy all one's delinquent debts. However, it does require a showing that a reasonable and workable debt repayment plan has been devised, and demonstrable evidence that such a plan has been successfully implemented. Although Applicant introduced evidence that she was poised to begin a debt repayment plan in October 2011, it only addressed six of the 24 debts at issue. While she seemed genuine in her intent to implement that plan, it cannot be dismissed that she postponed or interrupted previous plans to do the same due to various financial set backs. While Applicant has demonstrated efforts to address her debts, she failed to demonstrate that a holistic plan has been successfully implemented to address the delinquent debt at issue. Based on Applicant's evidence and argument, financial considerations security concerns remain unmitigated. As noted, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.i: | Against Applicant |
| Subparagraph 1.j: | For Applicant |
| Subparagraphs 1.k-1.x: | Against Applicant |
| Subparagraph 1.y: | For 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 denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge