



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



In the matter of:)	
)	
)	ISCR Case No. 12-02451
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

02/25/2014

Decision

WHITE, David M., Administrative Judge:

Applicant incurred about \$50,000 in still-delinquent debts over the past four years, despite steady employment and apparently sufficient income to meet her financial obligations. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on November 16, 2011. On June 26, 2013, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on July 16, 2013, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 13, 2013. The case was assigned to me on August 19, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on August 30, 2013, setting the hearing date for October 9, 2013. On October 8, 2013, DOHA issued a cancellation notice for the hearing due to the Government shutdown. On October 15, 2013, DOHA issued another Notice of Video Teleconference Hearing, and I convened the hearing, as rescheduled, on October 22, 2013. Applicant, and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through I, which were admitted without objection, and testified on her own behalf. I granted Applicant's request to leave the record open until November 5, 2013, for submission of additional evidence. I later extended that deadline to November 27, 2013, at Applicant's request. DOHA received the transcript of the hearing (Tr.) on October 30, 2013. Applicant timely submitted AE J and K. Department Counsel forwarded those exhibits to me on December 2, 2013, with no objection to their admission. AE J and K were admitted, and the record closed.

Findings of Fact

Applicant is a 70-year-old employee of a defense contractor. She worked as a Government employee at a U.S. Navy facility from 1968 to 1993, and has been continuously employed in administrative assistant positions for a series of support contractors at the same facility since 1997. She married her 75-year-old husband in 1986, after divorcing her first husband in 1974. She has two children and four stepchildren, all of whom were born in the 1960s and live independently. She earned a high school diploma in 1961, and has taken some computer classes at a community college. She has held security clearances since 1968, except during her temporary retirement from 1993 to 1997. (GE 1; GE 5; Tr. 8-10, 37.)

Applicant admitted all of the factual allegations concerning her delinquent debts as set forth in SOR ¶¶ 1.a through 1.f, with some explanations. (AR.) Applicant's admissions, including her statements in response to DoD CAF interrogatories (GE 5), are incorporated in the following findings.

Applicant has lived in the home she owns since 1972. In June 1998, she and her husband entered into a \$47,256 first mortgage loan on the property, with monthly payments of \$394. By January 2001 the balance was reduced to \$45,012 and she had no delinquent debt. (GE 2 at 7.)

In April 2002, January 2003, May 2004, April 2006, December 2006, and March 2008, Applicant borrowed equity out of the property through a second mortgage, a home equity line of credit, and refinancing the first mortgage loan four times. The current balance on her first mortgage is about \$232,000 with a monthly payment of

\$1,514. The balance on her \$50,000 home equity line of credit is \$50,590 toward which she had been making interest-only monthly payments of \$164. That payment is due to rise to \$450 or \$500 per month in June 2014. (GE 3; GE 4; GE 5; AE J; Tr. 44-46.)

Applicant admitted owing six delinquent debts, which totaled \$49,695 as alleged in the SOR. (AR.) She attributed her financial difficulties to about \$3,000 in unplanned septic system repairs that became necessary in 2010, and “mismanagement.” (GE 5; AR; Tr. 30, 42-47.) The six debts became delinquent between August 2009 and November 2012. (GE 3; GE 4; Tr. 49.) Since being questioned about her financial difficulties during her November 30, 2011 security interview with an investigator from the Office of Personnel Management (OPM), she has made small payments toward the debts, as described below.

The \$5,607 credit card debt alleged in SOR ¶ 1.a became delinquent in August 2010. In November 2011, the outstanding balance was \$6,707 and she started paying the collection agency \$150 per month toward this debt. Her May 15, 2013 statement from the collection agency showed that her last payment had been made on September 26, 2012, and her check for \$100 would be deposited on May 23, 2013, toward the balance of \$5,607. Her October 15, 2013 statement showed an outstanding balance of \$5,208 after her \$150 payment on September 23, 2013. (AR; GE 3; GE 5; AE C; Tr. 47-48.)

SOR ¶ 1.b alleges a past-due approximate amount of \$327 on another credit card account that became delinquent in November 2012. The actual past-due amount as of April 2013 was \$302, with a total account balance of \$2,090. (GE 4 at 3.) Applicant authorized the creditor to begin taking \$60 monthly debit payments toward this debt from her bank account on May 24, 2013. In July 2013, she said the balance due was \$1,961. Her October 2013 account statement showed a \$75 payment on September 30, 2013, past-due and membership fees of \$40, and interest charges of \$44 for the month. Her balance due on this most recent statement was up to \$2,157. (AR; GE 5; AE D; Tr. 48-49.)

The \$2,458 delinquent debt alleged in SOR ¶ 1.c arose when Applicant purchased a \$1,200 sewing machine in July 2008 on a contract calling for no interest and no payments for 12 months. She failed to pay for the machine as agreed, and the account was placed for collection. On February 11, 2013, she entered into an agreement to settle the debt by making 12 monthly electronic debit payments of \$124.64 to the collection agency. Her October 2013 account statement reflected that she had made eight such payments and four, totaling \$499, remained to be paid through January 2014. (AR; GE 5; AE E; Tr. 49-51.)

Applicant had two delinquent credit card accounts with a major bank, as alleged in SOR ¶¶ 1.d and 1.f, in the amounts of \$16,325 and \$19,711. These accounts became delinquent in March 2011 and December 2010, respectively. In May 2013, she made arrangements to pay the collection agency holding the first debt \$200 per month for 18 months, but the confirmation letter stated that this plan would not resolve the entire

\$16,325 balance due. Her October 2013 account statement showed a balance of \$15,926 and a scheduled \$180 payment due that month. Applicant submitted letters from the major bank dated June 3, 2013, and October 10, 2013, acknowledging payments of unspecified amounts toward the second debt. The second letter showed an outstanding balance of \$19,513. (AR; GE 5; AE F; AE H; Tr. 51-52, 82-84, 86-89.)

The \$5,240 department store revolving charge account alleged in SOR ¶ 1.e became delinquent in March 2011. In March 2013, Applicant agreed to pay the collection agency holding the account a monthly electronic payment of \$150 for 12 months, with no agreement that this would resolve the remaining balance. As of September 16, 2013, she was still scheduled to make six of these monthly payments, through February 2014, and the account balance had been reduced to \$4,640. (AR; GE 5; AE G; Tr. 52.)

Accordingly, as of the close of the record, Applicant had made some payments toward each of the SOR-listed debts, but none had yet been resolved according to the documentation she provided. The total remaining on these six delinquent accounts was \$47,943, which is \$1,752 less than the total alleged in the SOR. Continued payments at the rates noted above would take more than five years to pay off the current balances, without consideration of additional interest and fees over that period.

Applicant submitted two financial statements showing her monthly income and expenses, and reflecting annual net family income of about \$96,000. The first statement, submitted in June 2013, showed a monthly net remainder of \$3,237 but no savings and \$4,200 in stocks/bonds. It also reflected \$283,000 in mortgage debt on her home that she valued at \$200,000. (GE 5.) She was unable to explain where the extra \$3,237 per month had gone when asked during her hearing, but said she had, "very little in savings." (Tr. 43-44, 62-65.) After the hearing, she submitted a second statement showing higher living expense estimates that reduced her monthly net remainder to \$1,283. (AE J.) That still leaves more than \$15,000 per year unaccounted for.

Applicant has consistently stated, since submitting her SF 86 in November 2011, that she intended to sell two small vacant lots that she subdivided from the back of her property in order to pay her delinquent debts. (GE 1; GE 5; AR.) She provided a property tax statement for one of the two identical lots, showing its 2013 assessed value to be \$52,770. She testified that she had made no progress toward selling the lots as of her hearing date, but thought a neighbor might be interested in buying them despite their reduced marketability due to a neighbor's recent clear-cutting of the adjacent property. (Tr. 38-42, 53-61.) After the hearing, she submitted a copy of a sale and listing agreement with a realtor, dated October 30, 2013, placing the two lots on the market for a total asking price of \$80,000. (AE K.) She provided no information to show whether these lots are encumbered under her first mortgage or home equity line of credit.

Applicant provided no evidence of financial counseling to address her admitted “mismanagement” of her available income. She testified that she had made preliminary contact with a financial services company, but had not decided to enter an agreement for them to assist her. (Tr. 47, 69-71.) Her most recent performance evaluation contained complimentary remarks concerning all aspects of her work, and gave her an overall rating of “Exceeds Expectations.” (AE A.) She submitted several letters from longtime friends, acquaintances, coworkers, and military supervisors praising her character and dedication. (AE B.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it

grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Over the past four years, Applicant incurred six delinquent debts, totaling about \$50,000, that she is unable to repay at present despite being steadily employed with significant monthly surplus income according to the financial statements she submitted. This evidence raised significant security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns. The SOR allegations and evidence do not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 multiple SOR-listed debts became delinquent over the past four years and remain unresolved. She offered no evidence of changed circumstances or improved financial management that would support a finding that such issues are unlikely to recur or do not reflect on her reliability and judgment. Applicant failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). She claimed that her problems were caused by a \$3,000 expenditure in 2010 to repair her septic system, but did not establish how that caused her to default on about \$50,000 in other debts or squander her variously estimated \$15,000 to \$39,000 in annual surplus income. Between April 2002 and March 2008, she borrowed about \$237,000 against appreciation equity in her home and spent those funds, in addition to her income, leaving her without any savings at present. This was not responsible conduct under the circumstances.

Applicant did not undergo financial counseling, or otherwise demonstrate a basis on which to predict improved financial management. Nor has she asserted any basis to dispute her ongoing obligation to repay her delinquent debts, none of which were shown to be resolved despite recent and sometimes sporadic small payments toward each. If the two lots she recently listed for sale are encumbered under her mortgage or line of credit, the creditors are unlikely to permit their sale without applying the proceeds toward loan principal. If they are not encumbered she is at least \$80,000 underwater on those loans. These facts preclude significant mitigation under MC 20(c), (d), or (e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a sincere individual, with a long record of service at the Navy installation where she is employed. She is mature and accountable for her choices and actions, but has recently struggled to remain current on her debt obligations. While she has recently made relatively small payments toward each SOR-listed debt, she has not yet demonstrated positive permanent behavioral changes or rehabilitation. Her conduct with respect to these voluntarily assumed financial obligations was neither responsible nor indicative of trustworthiness.

The potential for exploitation or duress, due to the number and magnitude of Applicant's outstanding debts, has not been significantly alleviated. The likelihood of continuation of these issues has not been shown to be reduced. Applicant has earned the trust and confidence of friends and coworkers. Overall, however, the record evidence creates ongoing doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge