



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



In the matter of:)	
)	
-----)	ISCR CASE No. 07-04638
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Appellant: *Pro Se*

February 6, 2008

Decision

BRAEMAN, Kathryn M., Administrative Judge:

History of the Case

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on June 27, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1 based on the revised Adjudicative Guidelines² issued on December 29, 2005, and implemented by the Department of Defense, to be effective September 1, 2006. Applicant responded to these SOR allegations in a notarized Answer of July 31, 2007 where she admitted all of the allegations, and requested a hearing. While Applicant paid some of her debts, she was unable to document efforts to establish a plan to resolve the remaining debts that resulted in large part from serious health issues when she was not covered by insurance. Consequently, clearance is denied.

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended and revised.

² A copy of the revised Adjudicative Guidelines was sent with her Statement of Reasons (SOR).

Department Counsel on August 21, 2007, submitted a Ready to Proceed notice. Subsequently the case was assigned to me on August 22, 2007. A Notice of Hearing issued on August 28, 2007, set the matter for September 26, 2007.

At the hearing Department Counsel offered eight documents (Exhibits 1-8) that were admitted into evidence without objection. Applicant offered and I admitted four documents (Exhibits A-D). She also testified. At her request, and as the Department Counsel did not object, I left the record open until October 10, 2007, in order for her to submit supplemental information. (TR 33; 52; 61-62) However, no additional evidence was submitted. The transcript (TR) was received on October 4, 2007.

Findings of Fact

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant is 53 years old and has worked as a warehouse specialist for a defense contractor for 16 years, from 1991 to the present. Applicant completed a Security Clearance Application (SF 86) to obtain a security clearance in June 2006. (Exhibit 1; TR 29)

She married her first husband in 1971 and divorced in 1997; they had three children, now 37, 35, and 28. She married her second husband in 1999; they have been separated since March 2006. (Exhibit 1, TR 29-30)

Finances

When Applicant's first husband left the military in 1995, he was unable to find employment until 1997. In January 1997 they filed for Chapter 7 bankruptcy; and their debts of \$21,000 were discharged in April 1997. Their financial problems were made worse by their separation and divorce and by her health problems. She had a lot of medical bills from her diabetes and had three children to support. (Exhibits 2, 3; TR 34-36; 44)

Applicant disclosed on her SF 86 that she had two judgments in 2000 and 2001. She reported that she had bills over 180 days delinquent – a gas bill for \$724, a 2005 hospital bill for \$1032, a 2005 hospital bill for \$44,000, a 2005 credit card for \$205, a credit card bill for \$72, a 2005 hospital bill for \$370, a car loan for \$5714, a 2004 hospital bill for \$47, an electric bill for \$238, a telephone bill for \$237, a 2001 hospital bill for \$208, a 2001 loan for \$5,656, and a 2000 credit card bill for \$1,310. (Exhibit 1)

Applicant admitted she accumulated 43 debts totaling about \$34,000. (Answer; Exhibits 4, 5, 6) She stated that she had subsequently paid a judgment from a dentist (SOR 1.e.), her cable bill (SOR 1.w.), a medical bill (SOR 1.aa.) and her telephone bill (SOR 1. ee. and 1. ff) in order to have telephone service restored. I accept her testimony as her records were destroyed in a September 2006 house fire while she was in the hospital in 2006; she had a fire where her rental house burnt down in September 2006

and was a total loss. She had renter's fire insurance which allowed her to get another rental house. She then had to buy all the essentials she lost. For several debts Applicant testified she does not know which creditor has the account as in some instances the debts have been sold to collectors. She has plans to resolve the smaller bills with minimal payments. (Exhibit A; TR 37-40; 51)

Applicant has had serious medical problems in the last two years, including two heart attacks. The first in September 2005 kept her off work until March 2006; the second one in September 2006 kept her off work for a month. She also has been diagnosed with congestive heart failure. These health issues have added to her financial difficulties as during that time her job did not provide health insurance, so she had to pay for the medicine she needed. Her company's policies allow the health insurance to lapse when an employee is off work for a certain period of time. (Exhibit C; TR 43-46) She received only \$485 in disability insurance reimbursements. (TR 47) In August 2007 she had additional health issues that kept her off work as she was again hospitalized. (TR 48) She had financial responsibility for all of her medical bills and medications as she did not have insurance to cover them (Exhibits B, D; TR 53)

Recently in August 2007, Applicant consulted someone from her church to serve as a financial counselor; this person was consulting with Applicant to decide what plan would work for Applicant to resolve her debts. The plan was not finalized as this woman had a death in her family and was unable to continue to meet with Applicant. (TR 31-33; 48-49) Applicant submitted no post-hearing documents describing her plan to resolve her delinquent debts.

Applicant is paying her current bills on time. (TR 50) She currently works forty hours per week. (TR 51-52)

Policies

Enclosure 2 of the Directive sets forth adjudicative guidelines (AG) to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the mere presence or absence of any particular adjudication policy or condition is not decisive.

Based on a consideration of the evidence as a whole in evaluating this case, I weighed the relevant Revised Adjudication Guidelines, and determined the following security concern and AG was relevant to my determination:

Guideline F: Financial Considerations

The security concern caused by financial problems is:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, clack 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 18.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue applicant's access to classified information. Then the applicant may present evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

Analysis

Financial Considerations

The government provided substantial evidence of Applicant's financial problems reflecting debts of about \$34,000 to 43 creditors for medical and other debts. Consequently, Financial Considerations Disqualifying Condition, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply. Her financial problems are sufficiently significant to raise security concerns.

With the government's case initially established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.

³Executive Order No. 10865 § 7.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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.

AG ¶ 20(a) partially applies^[1] because her financial problems "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." She fell behind on the majority of her bills because of serious health issues where she had no health insurance provided by her long-term employer. Also, she had periods of time where she could not work. She is now paying her bills on time. She does not receive full credit under AG ¶ 20(a) because she will continue to be under financial stress until she is able to meet with her financial advisor, and to develop and implement her plan to resolve these debts.

AG ¶ 20(b) provides that security concerns may be mitigated when, "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." As discussed above, Applicant's financial issues result from a series of serious medical issues and a household fire that destroyed all of her possessions. She explained how she "acted responsibly under the circumstances" by paying some of her debts. However, she failed to demonstrate financial responsibility, as she did not provide

^[1]See generally ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under the good faith mitigating condition for debts being resolved through garnishment).

evidence that she has developed or implemented a plan to resolve her remaining delinquent debts. She receives partial credit under AG ¶ 20(b).

AG ¶ 20(c) applies in part. Although Applicant did receive some financial counseling, she did not finalize a plan to provide evidence that her financial problems will be resolved in the future or are under control. She testified and I accepted her testimony as truthful that five SOR debts are paid. To her credit, she was current on her monthly expenses, but again, she provided no budget or plan to demonstrate her responsibility and to demonstrate these financial problems are under control.

AG ¶ 20(d) applies in part because she “initiated a good-faith effort” to repay some of her overdue creditors; however, the majority of her debts remain unresolved. AG ¶ 20(e) does not apply as Applicant did not “dispute the legitimacy of the past-due debt which is the cause of the problem.”

In sum, Applicant credibly promised to resolve her remaining delinquent debts, but she provided no details about her payment plan as to how she might do so.

Whole Person Analysis

Applicant is a full time worker, and has been one for sixteen years. She had several serious health issues that created high medical bills and prevented her from working full time as she recovered. Having considered both the record and Applicant in light of the “whole person” concept, I conclude she is a sincere person who made efforts to reform her financial practices. However, she is not yet on the road to financial recovery. While there is little potential for pressure, coercion, exploitation, or duress as she has stable employment, she has substantial debts and very limited resources.

In conclusion, financial issues remain a security concern. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude she failed to mitigate the security concerns pertaining to financial considerations. I rule favorably for Applicant in subparagraphs 1.e., 1.w., 1.aa., 1.ee, and 1.ff as she credibly testified that she paid these five debts (although receipts were not available due to a fire that destroyed all of her possessions).

Appellant’s laudable, recent efforts, however, are not sufficient to remedy her failure to provide proof of payments or payment plans for the majority of her delinquent debts. So I rule against Applicant for subparagraphs 1.a. through 1.d., subparagraphs 1.f. through 1.v., subparagraphs 1.x. through 1.z., subparagraphs 1.bb. through 1.dd., and subparagraphs 1.gg. through 1.rr. Her recent, positive steps are not sufficient to persuade me that she should hold a security clearance. She could have done more to address her delinquent debts.

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.d.:	Against Applicant
Subparagraphs 1.e.	For Applicant
Subparagraphs 1.f. through 1.v.	Against Applicant
Subparagraph 1.w.	For Applicant
Subparagraphs 1.x. through 1.z.	Against Applicant
Subparagraph 1.aa.	For Applicant
Subparagraphs 1.bb. through 1.dd.	Against Applicant
Subparagraph 1.ee.	For Applicant
Subparagraph 1.ff.	For Applicant
Subparagraphs 1.gg. through 1.rr.	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 a security clearance for the Applicant. Clearance is denied.

KATHRYN MOEN BRAEMAN
Administrative Judge