



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



In the matter of:)	
)	
)	ISCR Case No. 07-05063
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer L. Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

January 23, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

On August 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on August 29, 2007. She answered the SOR in writing on September 10, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 6, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on November 22, 2007. As of January 8, 2008, she had

not responded. I received the case assignment on January 15, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, dated September 8, 2007, Applicant admitted all the factual allegations in the SOR, except ¶¶ 1.a, 1e, and 1.i, which she denied. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is a 32-year-old employee of a defense contractor, working as a security officer/supervisor. She is a community college graduate. She is single with no children.¹ Applicant has an extensive amount of delinquent debt. She admitted to the debts listed in SOR ¶¶ 1.b-1.d, 1f-1h, and 1.j-1.n. The debts are also listed on the credit bureau reports (CBR) in the FORM. The total amount alleged for those debts is \$16,423.² There is no evidence that any of those debts have been paid.

SOR ¶ 1.a alleges a debt of \$766 to a financial institution, as collected by a collection company. Applicant provided documentation in her response to Interrogatories that she settled this debt for \$388 on July 13, 2007.³

Applicant denied the debts in SOR ¶¶ 1.e and 1.i, for \$7,688 and \$4,696 respectively. She wrote for both allegations that she was “waiting on credit report to dispute the claim.” Applicant did not submit any documentation about these disputed debts. Both debts are listed on the three CBRs in the FORM. The CBRs include for the \$7,688 debt in SOR ¶ 1.e, that “Consumer disputes this account information.”⁴

There is no information in the FORM as to how or why Applicant got into financial trouble. She stated in her response to Interrogatories and in her response to the SOR that she was contacting all her creditors to try and settle her debts one at a time.⁵ The only debt that was paid was the debt alleged in SOR ¶ 1.a.

Policies

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list

¹ Item 4.

² Items 3, 6-8.

³ Item 5.

⁴ Items 3, 6-8.

⁵ Items 3, 5.

potentially disqualifying conditions and mitigating conditions, which are useful 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 the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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 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.

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).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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 guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. The evidence of Applicant's delinquent debts is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all the potential mitigating conditions, and especially considered 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," AG ¶ 20(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," AG ¶ 20(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," AG ¶ 20(d) "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," and AG ¶ 20(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 settled the debt in SOR ¶ 1.a. There is no evidence that Applicant paid any of the other debts as alleged in the SOR. That is insufficient evidence to conclude Applicant made a good-faith effort to repay overdue creditors or otherwise resolve debts. She disputed two of the debts, but did not submit documentation to substantiate her dispute. There is no evidence as to what caused Applicant's financial problems. Nor is there evidence of financial counseling. I do not find any of the mitigating conditions applicable.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) 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 common sense 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 the facts and circumstances surrounding this case. Applicant has a history of financial delinquencies. She settled one debt and indicated she had a plan to pay her other debts. She provided very little additional information about herself.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on her financial issues.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b-1.n:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge