

STATEMENT OF THE CASE

On July 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a statement of seasons (SOR) alleging facts and security concerns under Guideline F (Financial Considerations). The SOR informed Applicant that based on available information DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant her access to classified information and submitted the case to an administrative judge for a security determination.¹ On August 8, 2007, Applicant answered the SOR and requested a hearing.

The case was assigned to me on October 2, 2007. On October 4, 2007, DOHA issued a notice of hearing scheduling the hearing on October 24, 2007. The hearing was convened as scheduled. The government presented 13 exhibits, marked GE 1-13, to support the SOR. Applicant testified on her own behalf and presented no other evidence. DOHA received the transcript (Tr.) on November 2, 2007.

PROCEDURAL ISSUES

On September 27, 2007, the Government moved to amend the SOR by adding two allegations under Guideline F.² Applicant objected to the amendment, and I denied the motion (Tr. 14-18, 111).

FINDINGS OF FACT

Applicant admitted SOR ¶¶ 1.b, g, h, l, t, u, v, w, x, y, aa, bb, cc, and dd with explanations. She denied SOR ¶¶ 1.a, c, d, e, f, i, j, k, m, n, o, p, q, r, s, and z. Applicant's admissions are incorporated herein as findings of fact. After a thorough review of the evidence, including Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 41-year-old administrative data analyst working for a defense contractor. She has a high school education (Tr. 5). She married her spouse in June 1998 and they were divorced in August 2006. She has two sons, ages 16, and 24 (Tr. 47). She does not receive support for her 16-year-old son, because his father passed away (Tr. 113).

Applicant has been continuously employed from 1997 to the day of the hearing, except during a one-month period around March-April 2006 when she was unemployed (Tr. 116).³ In

¹ See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended, modified, and revised. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines (AG) to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, in which the SOR was issued on or after September 1, 2006.

² The Government's motion to amend the SOR was marked as Appellate Exhibit 1 and made part of the record.

February 2003, Applicant was hired by another Government agency and submitted a security clearance application (GE 2).⁴ In August 2003 and in 2004, she was confronted about her financial problems and asked to resolve them. She failed to do so. In February 2006, she was fired due to her unresolved credit issues (Tr. 106-107).

Applicant's background investigation addressed her financial situation and included the review of five credit bureau reports (CBR) dating from April 2003 to September 2007.⁵ Applicant stated her financial problems started around the late 1990s because she was unemployed and/or underemployed.

At her hearing, Applicant explained she has been using her credit cards to pay for her day-to-day living expenses, and for buying presents for her kids. She used her credit and opened accounts knowing she would not be able to repay the charges. Applicant claimed she has not been able to pay most of her delinquent debts because she has never earned enough to pay for her day-to-day living expenses and her old debts. She stated her willingness to pay her delinquent debts as soon as she earns enough money to do so. She also intends to file for bankruptcy protection to resolve her bad debts. Two weeks before her hearing, Applicant made inquiries about how to file for bankruptcy. However, as of the hearing day, she had not filed for bankruptcy protection (Tr. 50).

The SOR alleges 29 delinquent/charged off accounts. Applicant averred, and the Government conceded, that the following SOR allegations were duplicated (originated from the same debt, but were in collection by subsequent creditors and/or debt collectors): ¶1.a and 1.s; 1.b and 1.o and 1.p; 1.g and 1.cc; and 1.h and 1.k.

The debts alleged in ¶¶ 1.u, 1.v, and 1.w, totalling approximately \$10,000, were for student loans that Applicant took during the mid-1980s. She consolidated the three student loan debts pursuant to a payment plan around 2004. However, Applicant has defaulted twice on her payment arrangements due to lack of funds. On the last occasion, two of her checks were returned for lack of funds and the creditor placed the account on default. Sometime before her hearing, she started making payments again. The account will be removed from its default status when she pays \$1,000.

As of the hearing date, Applicant had 20 delinquent/charged off debts, totaling approximately \$33,626, that are supported by the Government's evidence. Applicant confirmed most of the debts are her debts, and that they are still outstanding because of her lack of income. She denied some of her debts (¶¶ 1.a, f, and q) because they were removed from her latest CBR. Applicant admitted, however, she did not pay the debts. Applicant paid the debts alleged in SOR

³ GE 3 (Applicant's Electronic Questionnaires for Investigations Processing, certified on Sep. 7, 2006 and Dec. 15, 2006).

⁴ GE 2 (Applicant's Questionnaire for Public Trust Positions (SF 85P)).

⁵ GE 5 through GE 10.

¶ 1.i, 1.d (the same debt was alleged under 1.e), and 1.m.⁶ She claimed she paid SOR ¶ 1.c; however, she presented no evidence to corroborate her claim.

Applicant claimed that around October-December 2006, she wrote letters to all of her creditors asking them to allow her to enter into payment arrangements. She claimed none of the creditors responded to her letters. When asked for copies of her letters, she responded she had them in her computer at work. She also claimed that twice previously she attempted to consolidate her debts with two different financial counseling/consolidation services. She presented no evidence to corroborate her claims. Applicant was allowed additional time to submit information post-hearing to support her claims. She failed to do so. Applicant presented little evidence of efforts taken to pay or otherwise resolve her debts since the day she acquired them.

Applicant claimed mitigating circumstances that prevented her from paying her debts, i.e., periods of unemployment, underemployment, and lack of child support. She presented no evidence, other than her testimony, to corroborate her claims. Applicant presented no evidence of any measures she has taken to avoid future financial difficulties. She claimed she did not seek financial counseling because she does not have the resources to do so. At her hearing, Applicant admitted that her financial problems were the result of her financial mismanagement (Tr. 119).

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the Disqualifying and Mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,⁷ and the whole person concept.⁸ Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations) is the applicable relevant adjudicative guideline.

⁶ GEs 7-10.

⁷ Directive, Section 6.3. "Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy . . ."

⁸ Directive ¶ 2(a). "The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . ."

BURDEN OF PROOF

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁹ The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.¹⁰ The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries the ultimate burden of persuasion.¹¹

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.¹²

CONCLUSIONS

Under Guideline F (Financial Considerations), the government's concern is that an Applicant's 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. AG ¶ 18.

Applicant has a history of failing to meet her financial obligations dating back to the late 1990s. Since then, she has accumulated at least 20 delinquent/charged off debts and/or judgments totaling approximately \$33,626. The majority of Applicant's delinquent accounts could be considered small debts (for less than \$1,000); however, they have been delinquent for many years. In 2003 and 2004, Applicant was confronted about her financial problems by her then employer. Applicant failed to resolve her financial problems and was fired from her employment. As of the day of her hearing, Applicant still had substantially the same debts that caused her to be fired. She presented little evidence to show she has been diligent taking action to resolve her debts. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability*

⁹ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁰ ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999) (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006) (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record); Directive ¶ E3.1.32.1.

¹¹ *Egan*, *supra* n.9, at 528, 531.

¹² See *id.*; AG ¶ 2(b).

or unwillingness to satisfy debts; and FC DC ¶ 19(c): a history of not meeting financial obligations; apply in this case.

Considering the record evidence as a whole,¹³ I conclude that none of the mitigating conditions apply. Applicant presented little evidence of efforts taken to contact creditors, or to resolve any of the debts since she acquired them. Nor is there any evidence that she has participated in any financial counseling. I specifically considered Financial Considerations Mitigating Condition (FC MC) Guidelines ¶ 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*, and conclude it applies, but only to a limited extent.

Applicant's uncorroborated testimony fails to establish mitigating factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts. She was unemployed for one month, underemployed, and she may have received sporadic child support. These claims demonstrate circumstances beyond her control; however, Applicant's evidence is not sufficient to show she has dealt responsibly with her financial obligations. She presented little evidence to show she dealt responsibly with her financial obligations even after confronted by her prior employer about her financial problems. She presented little evidence of paid debts, settlements, documented negotiations, payment plans, budgets, and of financial assistance/counseling received. Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility, or that she has taken control of his financial situation. Based on the available evidence, her financial problems are likely to continue. Moreover, her financial problems are recent, not isolated, and ongoing.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I applied the whole person concept. I specifically considered Applicant's age, education, maturity, her years working for a defense contractor, and her demeanor and testimony. Considering the totality of Applicant's circumstances, she demonstrated a lack of judgment and trustworthiness in the handling of her financial affairs. She has failed to mitigate the security concerns raised by her overall behavior.

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, b, c, f, g, j, h, j, n, q, r, z, l, t, u, v, w, x, y, aa, bb, and dd	Against Applicant
Subparagraphs 1.d, e, i, k, m, o, p, s, cc	For Applicant

¹³ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

DECISION

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 eligibility for a security clearance for Applicant. Clearance is denied.

Juan J. Rivera
Administrative Judge