



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



In the matter of:)
)
) ISCR Case No. 07-07761
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

May 30, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the security concerns arising from her financial considerations, criminal conduct, and lack of credibility. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her Questionnaire for Sensitive Positions (SF 86) (GE 1) on October 10, 2006. On October 19, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct).¹

¹ 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 answered the SOR on December 20, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on February 14, 2008. DOHA issued a Notice of Hearing the next day. I convened the hearing as scheduled on March 4, 2008. The government offered exhibits (GE) 1 through 6, which were received without objection. Applicant testified on her own behalf and submitted exhibits (AE) 1 through 7, which were received without objection.² DOHA received the transcript of the hearing (Tr.) on March 12, 2008.

Findings of Fact

In her Answer to the SOR, Applicant admitted all SOR allegations with explanations. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence, including Applicant's demeanor, I make the following additional findings of fact.

Applicant is a 30-year-old program analyst employed by a government contractor (Tr. 40). She received an Associate's Degree in Business Management in December 2007 (Tr. 5), and expects to complete her Bachelor's degree in 2009 (Tr. 96). She married her first spouse in November 1998. They separated in 2001, and divorced in 2003 (Tr. 38). She has two children from this marriage, ages 8 and 9 (Tr. 39). Applicant and her ex-husband share custody of their children and she receives no alimony or support. Applicant married her current spouse in May 2008 (Tr. 39).

Applicant's work history (GE 1) reflects she has been, for the most part, consistently employed since 1996 to the present as a program analyst and an executive administrator. In September 2006, she was hired by her current employer, a government contractor, and would like access to sensitive information to work on government contracts. Since 1996, she has been unemployed only during a one month period in 2003 (Tr. 98, GE 1).

Applicant's background investigation addressed her financial problems and past criminal behavior. It included a review of her August 2007 response to DOHA interrogatories (GE 2), and the review of credit bureau reports (CBRs) from October 2006 (GE 4), and July 2007 (GE 3). The SOR alleges 12 delinquent/charged off accounts totaling approximately \$16,600.³ The debts are well supported by the record evidence. At her hearing, consistent with her answers to the SOR, Applicant confirmed these are her debts and they are still outstanding.

² AE 7 was submitted post-hearing. I kept the record open until April 4, 2008, to allow Applicant time to submit additional documentation. Department Counsel's memorandum, stating no objections to me considering Applicant's post-hearing submission is included in AE 7.

³ Applicant explained, and the Government conceded, SOR ¶¶ 1. f and 1. j are the same account (Tr. 25-26).

In December 2006, a government investigator confronted Applicant about her delinquencies. During that interview, Applicant promised to begin resolving her delinquent debts by contacting creditors, paying some of her debts, and establishing payment plans for others. Applicant presented little evidence of any efforts taken to pay or otherwise resolve her debts since the day she acquired them until after she received her SOR in October 2007.

Applicant explained she went through a rough financial period from 2001 to September 2006. During that period she separated from her first husband and later they were divorced. She was providing care and support for herself and her children. Her earnings were inadequate, around \$32,000 a year and she relied on her credit to pay for day-to-day living expenses and other debts. As a result of these factors, and the higher cost of living, she acquired many debts which became delinquent because she did not have the means to pay for them. Most of those delinquent debts remain delinquent to the present, and are alleged in the SOR.

In September 2006, Applicant was hired by her current employer and received a salary increase of around \$18,000. Since 2006, she has been earning approximately \$54,000 a year. Applicant claimed for the last three years she has been working hard repairing her credit, paying delinquent debts and making settlement agreements. Applicant presented no documentary evidence of payments made to any creditors, settlement agreements, or of any efforts to resolve her debts prior to receipt of her SOR.

Applicant's delinquent debts include credit card accounts, personal loans, unpaid utility services, and a medical bill. Six of the delinquent debts listed could be considered small debts because the total owed per debt is less than \$1,000. Since October 2007, Applicant has made payments on some of her delinquent debts and established settlement agreement for a few others. Applicant admitted she never contacted any of the creditors prior to October 2007, because she did not have the money to pay the debts (Tr. 46-47, 106).

Concerning SOR ¶ 1.a (\$4,418), Applicant explained she paid her car insurance in a monthly basis. While on work related travel, she allowed a friend to use her car which was uninsured. He was involved in an accident and damaged a utility pole. She could not afford to pay for the utility pole, and the debt was referred for collection. At her hearing she claimed she entered into a payment agreement around October 2007, and that she has been making monthly payments of \$100 for a total of \$500 (Tr. 43-44). Her documentary evidence shows she paid \$100 in March 2005; four payments of \$75 in January 2007; one \$50 payment in October 2007; and one payment in March 2008 (AEs 5, 6).

SOR ¶ 1.b (\$1,154) is an outstanding delinquent debt. It was acquired as a result of a broken apartment lease. While leasing the apartment, Applicant paid the rent late, but claimed she did not issue worthless checks to the landlord (Tr. 48). The owner filed a judgment against Applicant in May 2004. She never attempted to settle the debt because she did not have the money and they refused to settle for less than full

payment. She claimed she contacted the debt collector after October 2007, but they have not sent her any documents (Tr. 46).

SOR ¶¶ 1.c (\$757) and 1.d (\$1,642) are collections for Applicant's delinquent credit card accounts. SOR ¶ 1.c has been in collection since 1999 (Tr. 109-110). She claimed she made settlement agreements with both debt collectors and that she paid \$100 on each account. She presented no evidence to support her claims (Tr. 50, 57, 111).

Applicant alleged she established a payment agreement in October 2007 with the debt collector for SOR ¶ 1.e (\$2,239), and that she has been making payments. The evidence shows she has made one \$50 payment (AE 5, p. 5). She presented no evidence of a settlement/payment agreement or additional payments.

SOR ¶¶ 1.f (\$297) and 1.j (\$340) alleged the same delinquent account. She claimed she has made some payments after receipt of the SOR (Tr. 27). She presented no evidence to corroborate her claims. Concerning SOR ¶ 1.g (\$645), Applicant claimed she recently contacted the creditor to establish a payment plan. She presented no evidence to support her claim (Tr. 113).

Applicant paid off SOR ¶ 1.h (\$570) with payments in January and February 2008 (AE 6). Concerning SOR ¶ 1.i (\$1,115), Applicant initially testified she did not recognize the creditor. However, during cross-examination she remembered this was one of her delinquent credit card accounts (Tr. 56, 58, 114).

SOR ¶ 1.k (\$2,109) was Applicant's cell phone account which became delinquent. Because she did not have the money to pay it, she just ignored it until she received the SOR (Tr. 59-60). At her hearing, she claimed she paid \$200 and that she promised to pay it in full before May 1, 2008. Applicant's documentary evidence shows she paid \$100 on March 3, 2008 (AE 5). She also provided the debt collector with a postdated check to be deposited on March 27, 2008 (AE 6).

Applicant claimed she did not recognize SOR ¶ 1.l (\$95). GEs 3 and 4 show that in 2003 Applicant issued a \$70 worthless check to a medical provider and has failed to make it good (Tr. 61-62). SOR 1.m (\$1,645) is a delinquent debt for medical services Applicant received. She claimed she was provided the bill for her co-payment two years after she received the services and stated is disputing the claim. She has not disputed the claim through proper channels, and has done nothing to resolve the debt (Tr. 63-64).

In addition to the above debts, Applicant has a \$17,000 student loan that will require payments beginning in 2009 (Tr. 96). In June 2007, Applicant agreed to a \$78,000 judgment by default (Tr. 73-81). Apparently, while working as a bookkeeper, she was accused of stealing \$30,000. Applicant vehemently denied any criminal malfeasance. She admitted, however, to causing the loss of money through her negligence. The judgment included \$35,812 in punitive damages, attorney fees, and

pre-judgment interest on promissory notes signed by her (GEs 5, 6). She also owes \$20,000 to her current husband for an equity loan she took to pay for one of her cars and other debts (Tr. 85).

Applicant expressed numerous times her willingness and intent to pay her delinquent debts; however, at the present she cannot afford to do so. Her monthly expenses far exceed her net monthly income of approximately \$2,800 (Tr. 88). In April 2007, she started working in real estate. She claimed in 2007 she made \$8,000 in commissions for two property sales, and that she applied that money towards payment of her \$78,000 judgment and other debts. She presented no evidence to support this claim. Her plan is to use part of her future real estate commissions' income to pay her delinquent debts.

She considered consolidating her debts once, but she would rather pay the debts herself and not have to pay additional interest and fees. Applicant presented no evidence of any measures she has taken to avoid future financial difficulties. There is no evidence she has ever sought or received financial counseling.

Between 1999 and 2004, Applicant issued five bad checks (SOR ¶¶ 2a, b, d, e, and f). She claimed many of the bad checks were caused by her financial problems, and because of her and her ex-husband's failure to coordinate funds and issuing checks from a joint check account. Although she has been charged with criminal offenses for uttering the bad checks, Applicant was never prosecuted because she paid the bad checks before trial (Tr. 35).

SOR ¶ 2.a concerns two \$7,500 checks she post-dated and issued to a friend to pay him for a \$14,000 loan she received to pay another debt (Tr. 65-66). She claimed her friend needed the money and cashed the check before the check's post-date.

Regarding SOR ¶ 2.c, Applicant explained she paid her car insurance on a monthly basis. While on work related travel, she allowed a friend to use her car which was uninsured, and he was involved in an accident. Applicant re-insured her car and then filed an insurance claim for the accident (Tr. 36, 69-71, GE 2). The insurance company discovered her car was not insured at the time of the accident and asked to be reimbursed the claim money. Applicant had paid for the car repairs, and did not have the money. She was arrested and charged with theft. She plea bargained to a charge of "False/Misleading Information," paid \$9,700 in restitution, and served two days jail.

Applicant received solid recommendations from her current facility security officer, business operations manager, co-worker, and supervisor (AEs 1-4). She is considered to be a hard-working and dedicated employee. In general, they believe she is trustworthy, and a dependable and reliable employee. They recommended her for a security clearance.

Having observed Applicant's demeanor, and considering her testimony in light of the record evidence, I find Applicant's testimony was less than candid. She minimized

her questionable behavior and failed to take full responsibility for her actions. She was not credible in her testimony concerning the efforts she took to resolve her delinquent debts.

Policies

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.⁴

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 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 controlling 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."⁵ 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

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ *Egan, supra*, at 528, 531.

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

Under Guideline F, the security 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.

As of her hearing date, Applicant has 12 delinquent debts, including three judgments, which have been charged off or in collection for many years, totaling approximately \$16,600. AG ¶ 19(a) (“inability or unwillingness to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(c) (“consistent spending beyond one’s means . . .”), apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns. After considering all the mitigating conditions (MC), and the record evidence as a whole,⁶ 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 up until receipt of the SOR. Nor is there any evidence that she has participated in any financial counseling.

I specifically considered 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

⁶ 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.

individual acted responsibly under the circumstances)” and AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”), and conclude that they apply, but only to a limited extent.

Applicant’s testimony raised mitigating factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts, i.e., she was a divorced mother of two, received no child support, and acquired many of her debts as a result of her divorce. Notwithstanding, Applicant’s evidence is not sufficient to show she has dealt responsibly with her financial obligations. She presented little evidence to show paid debts, settlement agreements, documented negotiations, payment plans, budgets, financial assistance/counseling before receipt of the SOR.

Regarding AG ¶ 20(d), I considered Applicant recently started making payment agreements and paying some of her debts. Notwithstanding, Applicant’s financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility. She failed to establish that she received financial counseling, and that the problem is being resolved or is under control (AG ¶ 20(c)). She also failed to provide documentation that she properly disputed the legitimacy of any of the debts (AG ¶ 20(e)). Based on the available evidence, her financial problems are recent, not isolated, ongoing, and are likely to be a concern in the future. Moreover, Applicant is financially overextended and has engaged in illegal acts to overcome her financial problems.

Guideline J, Criminal Conduct

Under Guideline J, the security concern is that criminal activity “creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.” AG ¶ 30.

From 1999 and 2004, Applicant issued five bad checks (SOR ¶¶ 2a, b, d, e, and f), and was arrested and charged with uttering worthless checks. Additionally, she was found guilty of “False/Misleading Information” for falsifying an insurance claim, and was accused of theft while working as a bookkeeper. Taken together, these incidents create doubts about Applicant’s judgment, and her ability or willingness to comply with laws, rules, and regulations. Criminal Conduct disqualifying conditions AG ¶ 31(a) “a single serious crime or multiple lesser offenses,” and AG ¶ 31(c) “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” apply.

AG ¶ 32 lists four conditions that could mitigate the criminal conduct security concerns raised under AG ¶ 31(a). After considering all the mitigating conditions, I find that none apply. Her criminal behavior is recent, the circumstances that caused her questionable behavior (financial problems) are still present in Applicant’s life, and her questionable behavior is likely to recur. Moreover, having observed Applicant’s demeanor, and considering her testimony in light of the record evidence, I find

Applicant's testimony was not fully candid and forthright, and that she tried to minimize her questionable behavior. In sum, she lacks credibility and is not trustworthy. Applicant's overall behavior cast serious doubts about her judgment, reliability, and willingness to comply with laws, rules and regulations. Furthermore, her lack of credibility and honesty show Applicant has not learned from her mistakes, that her questionable behavior is likely to recur, and such behavior cast doubts on her rehabilitation.

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) 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."

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature, educated and hard-working employee. She has been successful working for a defense contractor for approximately two years. Her character references recommended she receive a security clearance. During the last two years working for her employer, she has earned a reputation as a trustworthy, reliable, and dependable employee. Notwithstanding, as previously discussed under Guidelines F and J, Applicant's financial problems, criminal behavior, and lack of credibility and trustworthiness outweigh her favorable information.

Overall, the record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial considerations and criminal conduct.

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 – 1.m:	Against Applicant

Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a – 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 Applicant's security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge