



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-15967

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel

For Applicant: *Pro Se*

September 30, 2008

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed and signed a Standard Form 86 (SF-86) security clearance application dated March 16, 2007. On March 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) stating 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 for SORs issued after September 1, 2006.

In a response notarized on June 17, 2008, Applicant denied all eleven allegations raised concerning allegedly delinquent debts. She also requested a hearing. DOHA received Applicant's request on June 10, 2008, and it was assigned to another administrative judge. The case was reassigned to me for caseload considerations on

July 10, 2008. Department Counsel and Applicant agreed to an August 14, 2008, hearing date, and a Notice of Hearing was issued on July 17, 2008, to that effect.

The hearing took place as scheduled. Department Counsel submitted four exhibits (Ex.), accepted into the record as Exs. 1-4 without objection. Applicant submitted three exhibits, accepted as Exs. A-C without objection. Applicant was assisted by her daughter. Both Applicant and her daughter gave testimony. No other witnesses were called and no exhibits were offered into evidence. Applicant was given through August 29, 2008, to submit any additional materials. The transcript (Tr.) was received on September 4, 2008. The record was closed on September 8, 2008, with no additional documents received. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

Findings of Fact

Applicant is a 63-year-old security guard who has worked for the same government contractor since 1994. She is a widow who raised five children. She has a high school diploma. She returned to school as an adult for some college course work.

After her marriage, Applicant worked as a wife and mother. Her husband, then in his 30's, died in 1981. Applicant was left as a single parent living off Social Security and meager benefits from his estate. She eventually found work as a cleaner. She worked hard to make sure her children were well taken care of and educated.

One of Applicant's daughters took a student loan for \$5,000 in 1989 while in college. Because she was underage at the time, Applicant co-signed for the loan. Before the daughter graduated in June 1991, the lender accidentally started asking for repayment prematurely, although the loan was not set for repayment until six months after her graduation. The student aid office referred her to some forms to fill out to correct the situation and make sure she was not liable for the interest. The school told her not to pay the loan at that time. Neither the daughter nor Applicant heard about that particular student loan until Applicant applied for a home mortgage in the spring of 2008. In the interim, the daughter paid off all of her other student loans.¹

Between 2001 and 2003, Applicant oversaw her elderly mother's medical care. Although the mother had some financial resources, Applicant was needed to co-sign a lease so her mother could rent an apartment. After about six months, Applicant had to leave her job because caring for her mother was so time consuming. Applicant eventually sublet the lease to a niece in 2002 when Applicant's mother had to be placed in a nursing facility. Applicant continued with regular visits to visit her mother until, after a brief time in the hospital, her mother died on New Years Eve of 2003.

When Applicant applied for a home loan in the past year, she learned her niece had broken the lease by vacating the apartment prematurely. As a consequence,

¹ Tr. 17.

Applicant was deemed liable for the lease balance. The apartment owner ultimately accepted a proposal that Applicant would repay the balance owed on the lease through monthly \$25 payments.² Applicant has been making payments in accordance with that agreement.

Over the years, Applicant and one of her daughters have been confused with other because they have the same name, lived at many of the same addresses, had the same phone numbers, and other similarities.³ This confusion is apparent on Applicant's credit report in several entries regarding personal information. For example, it notes Applicant's profession as that of her daughter. Applicant's daughter similarly notes that the telecommunications/telephone accounts noted on Applicant's credit report are, in fact, hers.⁴

At issue in the SOR are 11 allegedly delinquent accounts:

Medical Account Balance (\$537 and \$30) – Addressed/In Processing – These medical bills were submitted to Applicant's medical provider, which apparently declined to cover them. She is awaiting verification that she is liable for them. (SOR ¶ 1.a and ¶ 1.b).

Cell Phone Bill (\$492) – Unaddressed – Applicant's daughter lost this phone in an amusement park. She states that she immediately reported the lost phone, but that it was not disabled. She claims subsequent calls on the phone were wrongfully billed to her mother, the Applicant.⁵ (SOR ¶ 1.c and ¶ 1.e).

Credit Balance (\$57) – Unaddressed – Applicant stated this account was paid, but failed to provide evidence of payment. (SOR ¶ 1.d).

Collection Account (\$643) – Unaddressed – Applicant does not recognize this account entry. She believes it is an error on her credit report, but there is no documentation that this has been disputed with either the company or any of the credit reporting bureaus. (SOR ¶ 1.f).

Telecommunications (\$118) – Unaddressed – Applicant's daughter claims this is one of her telephone accounts. Applicant denies that it is her account. Applicant stated the account was disputed, but provided no evidence of dispute. (SOR ¶ 1.g).

Student Loan (\$16,025) – In repayment – Applicant requested and received a repayment plan to pay off her daughter's educational loan.⁶ The terms call for payments

² Tr. 19.

³ Tr. 18; 22.

⁴ Tr. 30-32.

⁵ Tr. 22.

⁶ Ex. A (Monthly payment stub); Ex. B (Income contingent repayment letter); Tr. 27.

of approximately \$215 per month. Applicant demonstrated that the credit report marked as Government Exhibit 3, at 13, reflects the account as being currently in repayment.⁷ (SOR ¶ 1.h).

Creditor (\$4,905) – Paid – Applicant settled for a pay off of this account for \$2,800. That amount was tendered and the account is now satisfied.⁸ (SOR ¶ 1.i).

Phone Bill (\$160) – Unaddressed – Applicant believes this is a repeat of the cell phone bill noted in ¶ 1.c and ¶ 1.e), above. It does not, however, have the same account number or date for the opening of the account as any of the above telecommunications or phone services.⁹ Again, Applicant's daughter believes the cell phone bills are hers and on her mother's credit report in error. (SOR ¶ 1.j).

Apartment Lease Balance (\$1,391) – In repayment – This is the apartment which was sublet to Applicant's niece. Applicant demonstrated she has a promissory note to repay the balance that shows payments have been made.¹⁰ She was to submit evidence of a history of payment after the hearing, but none arrived prior to the closing of the record.¹¹ (SOR ¶ 1.k).

Applicant recently became a homeowner with the help of her daughter, who lives nearby. She has received financial counseling to the extent she has been thoroughly counseled by her daughter, a finance professional with a major financial institution. The daughter has 15 years of experience in a capacity not far akin from a personal bookkeeper and financial analyst. She is considered to have excellent skills in her profession.¹²

Applicant's daughter has impressed upon Applicant the importance of being responsible with credit and the importance of keeping her use of credit low. Starting earlier this year, she helped her mother devise a strategy for dealing with the debts noted by the home lender and, subsequently, the SOR. Thus far they have worked out two repayment plans that are in progress and satisfied a major debt with a credit card. The record shows execution of their strategy thus far has developed a meaningful track record which, when the daughter's phone bills are set aside, leaves less than \$1,500 yet unaddressed.

⁷ Tr. 25-29.

⁸ Ex. C (Creditor letter, dated July 22, 2008).

⁹ See Ex. 3 (Credit report, dated April 5, 2007).

¹⁰ Ex. D (Letter, dated June 10, 2008).

¹¹ Tr. 30.

¹² Tr. 43.

With her mother living nearby, the daughter now discusses both her mother's physical well-being and recent expenditures daily. She now regularly reviews her mother's accounts, expenses, and expenditures. Applicant's bills now go directly to her daughter's home so that she can go over them with her mother.¹³ With her daughter's help, Applicant's credit cards have a zero balance at the end of each month.¹⁴ Her daughter is committed to helping her mother both keep her home and her security clearance.

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 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. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹⁵ The burden of proof is something less than a preponderance of evidence.¹⁶ The ultimate burden of persuasion is on the applicant.¹⁷

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

¹³ Tr. 38.

¹⁴ *Id.*

¹⁵ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁸ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁰ 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 clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F, “failure or an 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.”²¹ The Regulation sets out several potentially disqualifying conditions under this guideline.

In the spring of 2008, Applicant discovered she had several delinquent accounts on her credit report. She was unaware of many of them, either because she assumed they had been paid or because her role as co-signer had been exploited. Regardless, several of the accounts remain unpaid to date. Consequently, Financial Considerations

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Executive Order 10865 § 7.

²¹ Revised Adjudicative Guideline (AG) ¶ 18.

Disqualifying Condition (FC DC) AG ¶ 19(c) (“a history of not meeting financial obligations”) and FC DC AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) apply. With such conditions raised, the burden shifts to Appellant to overcome the case against her and mitigate security concerns.

Applicant was co-signer on an apartment lease for her aging mother. When Applicant’s mother’s health dramatically declined and she had to be moved into a nursing facility, her niece took over the lease. When, unbeknownst to Applicant, the niece abandoned the apartment and broke the lease, Applicant became responsible for the outstanding balance. Similarly, Applicant was assigned responsibility for cell phone accounts properly belonging to her daughter. This apparently occurred because of identity confusion on the part of the credit bureaus, which have repeatedly confused the two in other areas in the past. Financial Considerations Mitigating Condition (FC MC) 2, AG ¶ 20(b) (“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”) applies.

Applicant and her daughter discovered most of the debts at issue when Applicant was considering the purchase of a home in the spring of 2008. With the help of her daughter, a finance professional, Applicant was advised about how to improve her credit, to address her debts, and to manage her finances in the future. Together, they sought to address the debts in order of their significance. Applicant sought out a repayment plan for the student loan, her largest debt, and the apartment lease. She paid off the second largest debt. Aside from those debts, Applicant needs to clean up her credit report by reporting inaccurate information and accounts. She also needs to address several small accounts representing less than \$1,275 in debt. However, given Applicant’s income and the four months since receiving the SOR, significant strides have been made and a meaningful track record developed.²² FC MC 4, AG ¶ 20(d), (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) applies. To the extent her daughter’s counseling and oversight can be considered counseling, and in light of the efforts thus far made to address Applicant’s debts, FC MC 3, 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”) applies.

Inasmuch as Applicant has presented mitigating conditions with regard to how her debts have arisen and has shown how she is systematically approaching the satisfaction of those debts with the help of her daughter, a finance professional, she has mitigated financial considerations security concerns.

²² See ISCR Case No. 07-06482 (App. Bd. May 21, 2008); ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007).

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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, as well as the "whole person" factors. Applicant is a mature woman who, when widowed early, did what she could to see that her children were raised well and educated. She has balanced her work as a cleaning person, and then a security guard, with her obligations as a mother and a daughter. Before her daughter interceded, Applicant had little guidance as to how to systematically approach her bills or how to organize and maintain records. Consequently, an SOR was issued regarding 11 allegedly delinquent debts.

Applicant has demonstrated a meaningful track record of debt resolution. She sought out a repayment plan for the student loan she co-signed for her daughter. She is in repayment on that loan. She has also entered into a settlement agreement and then paid off her second largest debt in July 2008. Although Applicant failed to demonstrate a monthly history of timely payment on the apartment complex obligation, she did demonstrate that a promissory note has been executed and that payments were being made. Not counting various telecommunications accounts which are apparently part of a credit report mix-up with her daughter's identity, Applicant leaves a manageable sum of well under \$1,275 in accounts yet unaddressed.

Applicant's daughter is a finance professional with 15 years of experience. Within the past six months, she has interceded in her mother's life as an informal bookkeeper and financial mentor. She lives near her mother and the two have daily contact. They meet whenever questions or issues regarding money arise. The daughter reinforces organization and reasoned expenditures, finances, and the importance of timely repayment as the keys to maintaining her home and her job. All bills go through

the daughter, and the two discuss their monthly payments and budget. With her help, Applicant's daughter hopes to help complete Applicant's fulfillment of her financial obligations and clear up errors on her credit report. Given her recent help to make her mother a homeowner, Applicant's prospects look good with regard to honoring her two remaining repayment plans and methodically addressing those accounts yet to be satisfied. Between the Applicant's efforts thus far and her daughter's on-going guidance, Applicant has mitigated security concerns. I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge