



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



In the matter of:)	
)	
)	
SSN:)	ISCR Case No. 07-01646
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

March 11, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant had a judgment and 15 past due accounts totaling approximately \$41,000. Applicant has been making payments in accordance with repayment plans on the three largest debts. Half of the debts were for medical treatment provided following a slip and fall. One of the debts belongs to her ex-husband and she disputes two of the other debts. She intends to pay all she owes. Applicant has successfully mitigated financial considerations and personal conduct concerns. Clearance is granted.

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on May 31, 2007, detailing the security concerns under

¹ 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.

Guideline F for financial considerations based on a history of financial problems as evinced by delinquent debts and Guideline E for personal conduct for falsified material on a Security Clearance Applicant, Standard Form (SF) 86.

On July 9, 2007, Applicant answered the SOR, and requested a hearing before an administrative judge. On December 11, 2007, DOHA issued a notice of hearing scheduling the hearing held on January 15, 2008. On December 14, 2007, I was assigned the case. At the hearing, the government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through D, which were admitted into evidence. The record was kept open to allow Applicant to submit additional matters. On January 25, 2008, additional documents were received. Department Counsel did not object to the material, which was then admitted into evidence as Ex. E. On February 1, 2008, the transcript (Tr.) was received.

Motion to Amend SOR

On November 1, 2007, Department Counsel moved to amend the SOR by adding three unpaid debts as ¶¶ 1.m, 1.n, and 1.o and add falsification for failing to list a past due unpaid judgment on her SF-86 (¶ 2.c). Applicant had no objection to the amending of the SOR and the motion to amend was granted. (Tr. 10-11) At the hearing, ¶ 2.b was amended to delete all reference to a Diners Club debt of \$4,861. Applicant has never had a Diners Club account. Neither Applicant nor DC could explain the reference to the Diners Club debt. Applicant had no objection to the deleting of the reference and the motion to amend was granted. (Tr. 21-22) Applicant neither admitted nor denied the amended allegations.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d, 1.e, 1.g, 1.i, 1.k, and, 1.l of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.g, 2.a, and 2.b of the SOR. She does not know the creditor listed in 1.c, 1.f, 1.h, and 1.j. The admissions are incorporated herein as findings of fact. After a thorough review of the record, case file, pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 59-year-old truckdriver who has worked for a defense contractor since November 2000, and is seeking to maintain a security clearance. Applicant and her husband are long haul truckers. They have recently purchased a new truck, a 2008 Peterbilt, and hope to sell the old one, a 1998 Peterbilt, worth approximately \$30,000. (Tr. 125, 143) They have already found a buyer for their old truck. (Tr. 143) They pay \$3,000 monthly for the truck tractor payment and \$700 for the trailer. (Tr. 118)

For 2004, they had \$180,000 in income and \$213,000 in expenses. Their adjusted gross income was a loss of \$42,440. (Ex. E) During 2005, their income was \$208,000 and their expenses were \$191,000. Their adjusted gross income was \$8,146.

During 2006, their income was \$202,000 and their expenses were \$196,000. Their adjusted gross income for the year was a loss of \$2,024 after adjusting for alimony paid. (Ex. E) In April 2007, Applicant completed a personal financial statement listing monthly income of \$5,700, \$3,100 in monthly expenses, and \$1,000 in debt payment leaving a remainder of \$1,600 per month. (Ex.2) Applicant believes her monthly discretionary income is between \$100 and \$200. (Tr. 150 – 154). Applicant income fluctuates depending on how many trips are made and how many miles are traveled each month

From 1994 to 2000, Applicant was unemployed and on Social Security disability due to migraine headaches and Crohn's disease. (Tr. 27, 28) Applicant's new truck, with bathroom facilities, allows her to resume truck driving.

In November 2000, she returned to the work force. She informed the Social Security Administration (SSA) she had returned to work, called them 6 or 7 times to ask why she was still receiving payment, and stressed to them she did not want to be overpaid, because she would not have the ability to repay an overpayment. (Tr. 74, Ex. B) SSA informed her she was entitled to the money and had 11 months to show she was still in the workforce. (Tr. 74) However, she was overpaid and the SSA is attempting to recover \$1,650. (SOR ¶ 1.i) When she called the SSA about the overpayment, SSA's records indicated Applicant had previously called about possible overpayment. In three years, when Applicant turns 62 and become eligible for Social Security, the amount owed will be deducted from her benefits. (Tr. 75) The SSA informed her that approximately 90% of recipients are overpaid. (Tr. 77)

In 1998, Applicant separated from her previous husband. In 1999, she divorced and remarried. Her current husband was also recently divorced.

Shortly after returning to work, she stopped working to take care of her brother who later died in April 2001. Following his death, she returned to work. In March 2003, she experienced a slip and fall in a store breaking her knee cap in four places. (Tr.40) Medicare was paying only 80% of the medical bills. She has had numerous surgeries: in March 2003 to wire the knee together (Tr. 40), January 2004 to remove the wires, August 2004 to remove a piece of bone (Tr. 41), and August 2007 when her knee cap was surgically removed. (Tr. 41) She missed work due to the surgeries. Some of the medical bills are held by a single creditor. Applicant has arranged a repayment plan with this creditor.

Applicant had 77 therapy treatments assuming Medicare would pay 80% of the cost. Medicare failed to pay. The creditor has a lien against any settlement Applicant may obtain from the store where she fell. Applicant's court date for the suit is in August 2008. Mediation in the matter started on January 28, 2008. (Ex. E) Since being on disability, Applicant has received Medicare coverage for her medical expenses. She pays her premium every three months. (Tr. 88)

Applicant has paid two medical bills (\$1,811.60 and \$160) in full and has arranged payment on two other medical bills (\$1,513.79 and \$142.75) through the

collection agency. (Ex. A) The creditor indicates Applicant's payment record has been excellent. She has been paying \$50 on this account since she was injured in 2003. (Tr. 139-140) Applicant was paying \$250 monthly to a creditor for multiple accounts, but has recently raised the monthly payment to \$400. (Tr. 61, 138) She has been making payments for more than 18 months. (Tr. 139) The balance owed is \$16,115. (Tr. 46, Ex D) The bill started out at \$20,000. (Tr. 47) A number of medical bills have been paid in full.

Seven of the debts listed in the SOR are medically related. SOR ¶ 1.c is a \$134 medical bill, which Applicant did not recognize until the time of the hearing. (Tr. 64) She intends to pay this debt. (Tr. 39) SOR ¶ 1.d is a \$643 hospital bill. SOR ¶ 1.e is two debts of \$48 and \$267 owed a city hospital. (Tr. 64) SOR ¶ 1.f is a \$424 debt owed a medical center. (Tr. 65) SOR ¶ 1.k are three medical bills totaling \$196. (Tr. 86) SOR ¶ 1.l represents 26 medical accounts totaling \$7,571. SOR ¶ 1.n is a \$76 debt owed for radiology. Applicant hopes to use the recovery from her slip and fall case to pay these debts. (Tr. 39)

Applicant and her husband owed the IRS approximately \$19,000 (SOR ¶ 1.b) for tax years 2001, 2002, and 2003. (Tr. 33, Ex. 6) She is paying the IRS \$500 per month on this debt. (Ex. C) Until recently the amount was deducted through her employer, but since it was a voluntary levy the amount is now paid directly by Applicant. (Tr. 34) She has been making payments to the IRS for two and a half years. (Tr. 35)

The divorce decree required her ex-husband to pay the amount owed (\$1,022) on a credit card debt (SOR ¶ 1.g.). (Tr. 69) Applicant is unfamiliar with two debts listed in her credit reports; one for \$428 (SOR ¶ 1.h) and the other for \$3,794 (SOR ¶ 1.j). (Tr. 71, 83) The \$428 was the amount of high credit on the account. The balance is zero and the credit report indicates the account was transferred or sold. (Exs. 3, 4) The debt appears in the February 2007 credit report (Ex. 4), but not in the May 2007 credit report (Ex. 5). Applicant has no knowledge about the \$484 debt (SOR ¶ 1.m), and intends to contact the creditor about this debt. (Tr. 90) The credit history (Ex. 4) indicates payments have been made on this account and \$73 is past due. The credit report (Ex. 3) lists a \$68 unpaid debt (SOR ¶ 1.o).

The creditor holding the \$5,182 debt listed in (SOR ¶ 1.a) reduced the debt to a judgment in the fall of 2003. Applicant's checking account was garnished for \$149, which may or may not have been related to the judgment. (Tr. 31) The garnishment was stopped and the judgment remains unpaid. Applicant wishes to set up a repayment arrangement on this debt, but has been unable to locate the creditor. (Tr. 32, Ex. 6, Ex. B) Applicant does not remember the reason for the judgment. Her attorney looked it up and brought it to Applicant's attention. It was a default judgment. (Tr. 30)

When completing her SF 86, Applicant did not remember all of her creditors. Question 36 asked if any liens had been placed against her property for failing to pay taxes. She answered "no" because she had not received a tax lien but was making

voluntary payments to the IRS. (Tr. 98) Additionally, Applicant believed the lien had to be placed against her property and she had no real estate property. (Tr. 98)

Applicant denied deliberately failing to list her debts that had ever been more than 180 days delinquent, or were currently more than 90 days delinquent. (Tr. 99-100) The government was concerned why six prior debts were not listed. Applicant stated three of the debts were not known to her and it had been years since she had been contacted by creditors. SOR ¶ 2.b references a debt which Applicant never had and DC acknowledged should not have been included in her debts.

Applicant's response to the SF-86 was handwritten and Ex. 1 is a computer generated form. Applicant and her husband are long-haul over the road truck drivers. As such, there are periods of time when they are gone from their home for extended periods. At one point during the security clearance application, Applicant was sent paperwork and she was not home for almost three months to receive the paperwork. (Tr. 29)

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. 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

Under Guideline F (financial considerations) a security concern typically exists due to significant unpaid debts. 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.²

An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owed more than \$41,000 to 14 creditors. One of the debts was

² Revised adjudicative guidelines (AG) ¶ 18.

reduced to judgment. Disqualifying Conditions (DC) ¶ 19(a), “inability or unwillingness to satisfy debts” and 19(c), “a history of not meeting financial obligations,” apply.

Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial problems were contributed to by numerous surgeries and medical treatment related to her slip and fall that destroyed her knee cap. Seven of the debts, totaling more than \$9,000, are for medical bills. Applicant pays premiums for Medicare coverage and assumed Medicare would pay for her 77 treatments. The mediation process has recently started on this slip and fall case.

Additionally, Applicant lost time from work caring for her brother prior to his death and because of her migraine headaches and Crohn’s disease. The restrictions imposed on her job as a truck driver by her Crohn’s disease have been lessened by the bathroom facilities on the new truck. The medical bills resulting from the slip and fall, the time lost from work caring for her brother, and the restrictions on her work imposed by Crohn’s disease are not likely to recur because of the facilities in the new truck. AG ¶ 20(a) applies.

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,” applies. Applicant experienced an unexpected medical emergency and caring for her brother along with the financial burden associated with each. She has paid what she was able to on her debts. AG ¶ 20(b) applies.

AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has paid a number of the medical bills. She has been making \$250 monthly payments, recently raised to \$400, to one creditor for more than 18 months. She has been making \$50 monthly payments on other medical bills since March 2004, approximately 4 years. She has been voluntarily paying the IRS \$500 per month for more than two and a half years. Additionally, the debt (\$1,022) listed in SOR ¶ 1.g. is her ex-husband’s debt. AG ¶ 20(b) applies to these four obligations.

The SSA overpaid Applicant \$1,650 in disability payments. Applicant acted reasonably in attempting to avoid overpayment. She called the SSA and told them she had returned to work and they assured her she was entitled to the payments. She intends to allow SSA to take the amount owed from her benefits when she starts receiving payment in three years. This may not be the best way to handle the overpayment, but one can only do so much with the funds available.

Applicant wants to arrange payment on the \$5,000 judgment. She also owes four additional debts: \$ 68 (SOR ¶ 1.o), \$428 (SOR ¶ 1.h), \$484 (SOR ¶ 1.m), and \$3,794 (SOR ¶ 1.j). Should their old truck sell or should she receive settlement on the slip and fall case, these amounts could easily be paid. If there is no sale or settlement, Applicant has arranged payments with other creditors in the past and her long history of payments indicates her creditors will be paid. These five additional debts do not raise concerns about her current reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The allegations under Guideline E, (Personal Conduct) are refuted. The Government has shown Applicant's answers to questions 37, 38 and 39 were incorrect, but this does not prove the Applicant deliberately failed to disclose information about her finances. The Applicant has denied intentional falsification. In July 2004, when completing her SF 86, Applicant did not list any debts as having ever been more than 180 days delinquent or being currently more than 90 days delinquent. At the time she completed her SF 86, she was making payments on three of the obligations. Applicant does not recognize three other creditors and was not being called or contacted by any creditors. A default judgment was obtained against Applicant, but Applicant was unaware of the judgment until her attorney looked it up. Applicant was not receiving any calls or correspondence from the creditors and had simply forgot about the debts when she completed her SF-86

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning delinquent debt is not deliberate if the person did not know of their existence or failed to remember them. The Applicant was unaware of the default judgment and did not know her accounts were delinquent when completing her SF 86. Additionally, Applicant's job took her away from home for months at a time, thereby limiting her access to her mail.

I found Applicant's explanation of her negative answers on her SF 86 plausible. After hearing her testimony, observing her demeanor, and evaluating all the evidence of record, I found her testimony credible on the falsification issue. I am satisfied she did not intentionally falsify her SF 86.

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 commonsense 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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries. The majority were for medical treatment and taxes.

Applicant is making monthly payments on three of the largest of her debts. These debts cannot be a source of improper pressure or duress. Applicant is addressing those debts she can. There are debts she is currently unable to address. The issue is not simply whether all her debts are being paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a) (1)) Applicant is paying those bills that she can and has been doing so for a number of years. The length of time she has been making payments gives me confidence she will continue to make payment until these debts are paid. Once the debts are paid she will work to pay off the remaining obligations.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations.

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-1.o: For Applicant

Paragraph 2, Guideline F: FOR APPLICANT

 Subparagraph 2.a- 2.c: 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. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge