



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 07-03059 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

February 14, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA), on April 30, 2005. On June 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant provided her answer to the SOR on August 23, 2007. DOHA issued a notice of hearing on October 24, 2007 for a hearing that was originally scheduled for November 13, 2007. At the beginning of the hearing, I granted Applicant's motion for continuance for medical reasons. On December 4, 2007, the case was rescheduled for hearing on December 20, 2007. At the hearing, five exhibits (AE 1 through 5) were placed in the record to support the government's case. Forty-four exhibits (AE A through

AE QQ)¹ were received in the record in support of Applicant's case. Applicant called one witness and then testified on her own behalf. DOHA received the transcript of the hearing on January 7, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

There are seven allegations under the financial considerations guideline. Applicant admitted all the alleged delinquent debts, but noted the overdue debts identified in subparagraph 1.c. and 1.f. were the same. As of the date of the SOR (June 27, 2007) Applicant owes six creditors \$49,066.00.

Applicant is 48 years old. She is divorced and has one son. She became an independent contractor after she was laid off in August 2000. As an independent contractor, she contracts her software training services to private entities or state and federal agencies. Her employment requires living in a customer's location during the life of a contract. When the contract ends, she moves to the next project that could be in a different location. Sometimes however, Applicant may have a few months of unemployment before beginning her next period of employment.

Due to a stagnant national economy in August 2000, and before Applicant became an independent contractor, her employer, a dot. com company, suddenly laid her off after promising her an extension of her contract. She moved to another location in the state, believing her chances for employment would improve. Upon arriving at the new location, Applicant was incapacitated for a few months after being diagnosed with asthma, so she did not look for work. When she started investigating opportunities, she found no work because (1) there was little work to be found in her field, and (2) she had no experience in negotiating the terms of her services as an independent contractor. Between August 2000 and May 2001, she paid all her credit cards with her savings. When she stopped paying her credit cards in May 2001, the listed debts fell delinquent as late fees and interest quickly climbed to levels she could not pay.

Applicant's security clearance questionnaire (SCA) (GE 1),² dated April 30, 2005, reflects that after she resumed employment in November 2001, she worked on contracts for four employers, and then was unemployed from June to December 2003. She knows she should have paid off the debt after she resumed work, "but [I] was very busy trying to make up for the time I had been unemployed by just working as much as I could." (Tr. 69)

¹ AE PP (budgetary information) and AE QQ (correspondence relating to debt in 1.c. of the SOR were received in the time period allowed for post-hearing submissions.

² In Applicant's SCA, she listed almost all debts under question 38 (debts over 180 days delinquent in the last 7 years).

Applicant is sure she will not fall into the same situation as she did in 2000. She testified, "Because I have established savings (Tr. 71; AE MM), I've established a retirement account. I am working consistently and I am paying my - - my credit card bills in full every month so there is no debt." (Tr. 70)

On May 26, 2007, Applicant provided answers to interrogatories. Attached to her answers is a report of interview (ROI) (October 13, 2006) conducted by an investigator from the Office of Personnel Management (OPM) and Applicant.³ Applicant quoted her earnings at about \$94,000.00 a year, with a monthly remainder of more than \$4,600.00 a month for savings.

Applicant's answers to interrogatories also contain an attached statement from her regarding the interview, Applicant's budget, and a list of her creditors.

In the attached statement (GE 2), Applicant acknowledged the October 13, 2006, interview was substantially accurate, though she pointed out some changes. She explained in the attached statement she had not been able to resolve any of the debts because of her temporary work assignment since November 2006 that was not supposed to end until July 2007. Applicant requested more time to launch her plan to address the creditors. She stated, "It is still my intent to make arrangements to settle with my [creditors] but it may take time to find the current owners of the debts, negotiate a settlement, and make payment arrangements." (GE 2, statement supplementing/correcting the October 2006 interview) Behind her attached statement is a budget showing yearly income, monthly taxes, and assets. She supplemented her budget in GE 2 with a budget for November and December 2007. (AE PP)

As Applicant indicated in her May 2007 answers to interrogatories, and her August 2007 answer to the SOR, she intends to repay her debts. Combined with the employment issues, the delay in repaying her debts was partially due to an inability to find the owners of the accounts.

In May or June 2007, Applicant's cousin, a paralegal for about 20 years, agreed to assist Applicant locate the account owners and resolve the delinquent accounts. Though she had no experience, Applicant's cousin was positive she could locate the owners of the overdue accounts and negotiate settlements. Applicant also hired a public accountant to assist in the negotiations with the creditors while advising her in the business aspects of her extant consulting venture.

Locating the actual owners was difficult as most of the accounts had been sold several times. The cousin located and communicated with four of the six listed creditors. During her investigation, she discovered that the accounts described in subparagraphs 1.c. and 1.f. were the same account. All listed debts became delinquent at various times in 2001, when Applicant was unemployed.

³ Applicant adopted the ROI with minor changes.

■ The account (\$3,351.00) with creditor 1.a. was paid in full on September 26, 2007. (AE H, AE I) Though the debt was charged off by the original creditor, it had not been sold to a collection agency. The creditor accepted the written off amount in full satisfaction of the debt. (Tr. 99)

■ The account (\$8,843.00) belonging to creditor 1.c. was settled on September 21, 2007 for \$3,700.00. (GE KK) In a letter by the collection agency to Applicant on September 7, 2007 (GE QQ) laying out terms of the settlement, the collection agency identifies creditor 1.f. as the original creditor of the account.

■ The account (\$3,631.50) belonging to creditor 1.e. was settled for \$1,800.00 on September 21, 2007. (AE G, AE LL)

■ The oil company credit union account (1.g.) totaling \$11,307.49, was settled for \$2,929.00 on October 23, 2007. (AE M, Q, R)

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■ Applicant tried several times through letters to establish contact with the creditor in 1.b. and the collection agency in 1.d. (AE T, V, W, and NN) In her letters, she indicated that she obtained the creditor's name from her credit bureau report. She requested that she be contacted in writing by the creditor about resolving the delinquent debt. As of the date of hearing, she had received no response from either the creditor in 1.b. or the collection agency in 1.d.

Applicant's cousin knows that Applicant's current financial problems eventuated from unemployment in 2000 and 2001. To avoid having those same problems, Applicant has been regularly saving large amounts of money, and paying her bills in advance. The cousin has seen Applicant's monthly budget.

Applicant is sticking to her budget. She has reestablished her credit as evidenced by her credit cards that she pays every month in full to avoid carrying balances. (Tr. 86) Applicant's ongoing plan is to satisfy the remaining creditors even though the debts may no longer be legally enforceable. (Tr. 88)

On November 12, 2007, Applicant attended a live one-hour, financial counseling course, and received a certificate of completion. (AE AA) The instructor did not believe additional counseling was necessary. (Tr. 126)

Applicant is viewed at work and in non-work situations as honest and trustworthy. Her social friend of two years thinks she is a caring individual. Applicant's education loan that she opened in June 1997 shows a regular payment history from December 2003 to the present.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Financial Considerations (FC)

Inability to pay bills on time places the individual debtor at risk of committing illegal acts to generate funds.

Analysis

Applicant's financial indebtedness falls within the scope of FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*), and FC DC 19.c. (*a history of not meeting financial obligations*). As of the date of the SOR, Applicant owed \$49,066.00 to six creditors. For approximately six years, she did nothing to address the debts.

Because the listed debts converted to a delinquent status within a relatively small period of time six years ago, FC mitigating condition (MC) 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*) receives some consideration. All credit reports (GE 3, 4, and 5) show the debts became past due in 2001, without more recent evidence of delinquent indebtedness.

Having been informed of a contract extension in 2000, Applicant did not foresee a sudden layoff followed by a 14-month period of unemployment from August 2000 to November 2001. Fortunately, she exercised good judgment by continuing to pay the credit cards until May 2001, when she exhausted her savings account.

Applicant's medical problems, a lack of experience in negotiating her independent contractor services in 2000 and 2001, and a poor economy, fetches less mitigation with the passage of time, her fairly steady employment, except for a six-month period in 2003, and Applicant's aggressive saving practices. With the amount of money Applicant was saving in October 2006, she could have easily paid off or settled two of the smaller debts listed in the SOR. The fact that it was difficult to locate the owners of the accounts is not mitigating. As her monthly remainder indicates, Applicant could have hired professional support much earlier to assist her locate and resolve her financial delinquencies.

Applicant's completion of the financial counseling course is entitled to limited consideration FC MC 20.c. (*the person has received or is receiving counseling for the problem and/or there are clear indications the problem is being resolved or is under control*), even though the course was completed shortly before the hearing, and lasted only an hour. The more probative evidence is Applicant's budget that has been in existence since May 2007. (GE 2) Even though there are still two large debts outstanding that must be addressed, the presence of a budget provides a concrete indicator that Applicant is committed to regaining firm control over her finances.

Applicant repayment of \$11,700.00 to fully pay one creditor and settle three of six creditors are entitled to substantial weight under FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) With the help of her cousin and her accountant, Applicant executed her plan to address her debts. Even though receipt of the SOR played a significant part in Applicant's success in settling with four of six creditors, Applicant is to be commended for paying the debts from her own

funds rather than creating new debt by taking out a loan. I find for Applicant under the financial considerations guideline.

Whole Person Concept (WPC)

As set forth on page 18 of Enclosure 2 of Directive 5220.6, the decision to grant or deny a security clearance depends on a commonsense assessment of the FC guideline, and then evaluating that guideline in the context of the general factors of the whole person. Accumulating more than \$49,000.00 in debt to six creditors since 2001 demonstrates serious financial problems. However, a 14-month period of unemployment was a circumstance that a reasonable 41-year-old person in Applicant's position could not have anticipated, especially after she had been told she could expect a contract extension. Though she should have tackled the debts much sooner than she did, the 14-month period of unemployment made her increasingly apprehensive about another long period of unemployment.

Applicant has made several behavior changes in her financial practices that persuade me to find for her under the FC guideline. First, she has never attempted to hide or shy away from the past due debt, although she has learned that the remaining debts may no longer be legally enforceable. Second, in May or June 2007, Applicant devised and executed a plan that harvested the pay off or settlement of four out of six creditors in September 2007. Third, in May 2007, she changed her financial practices by installing a budget to aid in the management of her financial affairs. The budget is facilitating payment of her current creditors in advance of when the actual debts are due. Fourth, she hired an accountant to oversee her business matters. Finally, I am confident Applicant will resolve the remaining two debts as she had with the other four. Having considered the record as a whole, the FC guideline is resolved in Applicant's favor.

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 (Financial Considerations, Guideline F): FOR APPLICANT

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|-------------------|---------------|
| 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 |

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.

Paul J. Mason
Administrative Judge