



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



In the matter of:)
)
) ISCR Case No. 07-04307
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: Casey J. LeClair, Esq.

February 15, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns raised by her financial history. Eligibility for access to classified information is granted.

On September 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 19, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on December 3, 2007. DOHA issued a notice of hearing on January 14, 2008, as amended on January 15, 2008. I convened the hearing as scheduled on January 29, 2008. The government

offered Exhibits (GE) 1 through 5, which were received without objection. Applicant testified on her own behalf and submitted Exhibits (AE) A through H, without objection. I granted Applicant's request to keep the record open until February 11, 2007, to submit additional matters. Applicant's counsel submitted AE J through M, without objection.¹ The attorney's letter is marked Hearing Exhibit (HE) I. Department Counsel's memo is HE II. The record closed on February 11, 2007. DOHA received the transcript of the hearing (Tr.) on February 6, 2008.

Procedural and Evidentiary Rulings

Notice

I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice.

Findings of Fact

In her Answer to the SOR, dated October 19, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.e. and 1.h of the SOR, with explanations. She admitted in part and denied in part the allegations in ¶¶ 1.d, 1.f, and 1.g of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is a 31-year-old employee of a defense contractor. She attended college but did not obtain a degree. She is remarried after a divorce. Her husband is a senior enlisted member of the U.S. military. She is pregnant and has an 11-year-old child and two step-children, ages 18 and 17.²

Applicant has several delinquent debts. Applicant and her former husband started a business selling items over the internet in about 1998. In 2000, Applicant went to work for her current employer at a low wage. She also continued to assist her husband with the internet business. The inventory was purchased with credit cards in Applicant's name. Although the cards were in her name, Applicant's husband took care of the finances and paid all the bills. He let many of the bills go unpaid without Applicant's knowledge. Her husband was physically and mentally abusive. They separated in 2002 and divorced in 2003. Applicant and her husband were awarded joint custody of their child. The child stayed most of the time with Applicant but would visit the father during the summers and every other weekend. There was no child or spousal support ordered.³

¹ The exhibits were pre-marked by Applicant's counsel. I did not re-mark them. There was no AE I submitted.

² Tr. at 23-25, 93; GE 1.

³ Tr. at 20, 27- 33, 66-68; Applicant's Answer to SOR.

Applicant was employed after the separation, but she earned a relatively low salary. She had child care and basic living expenses that equaled or exceeded her salary. From 2002 through 2005, she was unable to pay all the debts that had accumulated prior to the divorce and she accrued some additional delinquent debts.⁴

In 2005, Applicant moved to the state where her current husband is stationed. She was able to obtain another job with the same company in the new state. Her child remained in the original state with her former husband. Applicant incurred about \$20,000 in legal fees attempting to obtain custody of her child. In 2007, her original state granted Applicant custody of her child and permitted the child to move to Applicant's current state of residence. The court also ordered her former husband to pay \$200 per month in child support.⁵

Applicant submitted a Questionnaire for Sensitive Positions, signed on May 25, 2006. She listed several financial issues on the questionnaire. In the summer of 2006, Applicant was interviewed by an investigator for her background investigation. Applicant discussed her delinquent debts with the investigating agent. Applicant told him that she wanted to pay her delinquent debts. The agent advised her that she should pay her largest debts first and then work downward to the smallest debts. Applicant had already started repaying her creditors in about 2005. She decided to follow the agent's advice and worked on paying the largest debts first. Applicant and her husband instituted a budget where she would use a large part of her salary to pay her delinquent debts.⁶

The SOR alleges eight delinquent debts totaling approximately \$38,306. She paid or settled four debts. Two payments were made on one debt which either cleared the debt or left a balance of about \$163. Applicant has payment plans on two of the debts and has paid approximately \$1,800 toward those debts. Applicant plans on paying the last debt in about August 2008, with a loan from her retirement account. Applicant has cleared approximately \$19,400 of the total amount owed of \$38,306, leaving approximately \$18,900 still owed. Individual debts are discussed below.

SOR ¶ 1.a alleges a judgment of \$6,369 awarded in 2005, for delinquent credit card debt. The debt was incurred in 1998 to 2002, as part of the expenses for Applicant and her ex-husband's internet company. Court documents submitted by Applicant show the \$6,369 judgment plus \$236 court costs and \$955 in attorney's fees. Applicant admitted to this debt and has instituted a payment plan. She has made payments of \$250 in July, August and October, 2007. She paid \$50 in January 2008. Two payments of \$125 each are pending.⁷

⁴ Tr. at 35-37.

⁵ Tr. at 33-38, 94.

⁶ Tr. at 24, 40-43, 53; GE 1.

⁷ Tr. at 47-51; Applicant's Answer to SOR; GE 2; AE A, L.

The debt of \$469 in SOR ¶ 1.b is for wireless telephone service. After the hearing, Applicant made a payment of \$153 on February 8, 2008, and scheduled a payment of \$153 for February 21, 2008. Applicant submitted payment records from her credit union to substantiate the payments. Handwritten on the credit union document are the words, "acct paid." Applicant either settled the debt with these two payments or still owes a small amount.⁸

Applicant admitted to the \$2,862 debt to a university, as alleged in SOR ¶ 1.c. Applicant chose to address her larger debts first. She plans on paying this debt in about August 2008, with a loan from her retirement fund.⁹

SOR ¶ 1.d alleges a delinquent debt of approximately \$16,231 for a credit card debt. The debt was incurred in 1998 to 2002, as part of the expenses for the failed internet company. The creditor agreed to settle the debt for half the amount owed if Applicant adhered to a payment plan of \$500 per month. Applicant made \$500 payments each month from about September 2005 through September 2007. The creditor lists this debt on the most recent credit bureau reports (CBR) as paid with a zero balance.¹⁰

Applicant admitted to the debt of \$11,352 to a financial institution, as alleged in SOR ¶ 1.e. This is a credit card debt that was incurred prior to 2002. Applicant has a payment plan with the creditor in which \$150 is automatically deducted from her credit union each month. Applicant submitted evidence of \$150 payments in August, September, October, November, and December 2007.¹¹

Applicant paid the debt of \$126 to a collection company, as alleged in SOR ¶ 1.f. The debt was paid before January 2007.¹² The CBR of June 14, 2006 lists a debt of \$776. The original amount of the debt is listed as \$1,455. This debt was for an apartment that Applicant lived in after she separated from her husband. Applicant settled this debt for \$990.¹³ In October and November 2006, Applicant made two payments of \$10 each and two payments of \$25 each to the cable company, as alleged in SOR ¶ 1.h. She paid the remaining \$121 owed to the cable company on January 30, 2008.¹⁴

⁸ Tr. at 59-60; Applicant's Answer to SOR; GE 5; AE B, E.

⁹ Tr. at 56-58; Applicant's Answer to SOR.

¹⁰ Tr. at 49-50; Applicant's Answer to SOR; GE 5; AE B, E.

¹¹ Tr. at 55-56; Applicant's Answer to SOR; AE C, K.

¹² Tr. at 59-60; Applicant's Answer to SOR; GE 4, 5; AE D.

¹³ Tr. at 60, 69; Applicant's Answer to SOR; AE F.

¹⁴ Tr. at 60-61, 81-84; AE G, H, L.

Applicant plans on paying all her delinquent debts. She chose not to file for bankruptcy because she felt a moral obligation to pay her debts. She has not received financial counseling.¹⁵

Applicant received raises, promotions, and positive performance evaluations at her company. Her security manager has known her for two years and works with her on a daily basis. He described Applicant as a person of high moral character, organized, efficient, extremely competent, professional, solid, law abiding, responsible, and trustworthy.¹⁶

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, Administrative Judges apply the guidelines 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.

¹⁵ Tr. at 70, 95; Applicant's Answer to SOR.

¹⁶ Tr. at 21-22; AE M.

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

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations.

Applicant accumulated several delinquent debts and was unable to pay her obligations for a period of time. The evidence is sufficient to raise the above potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and,

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant and her former husband accumulated credit card debt in an unsuccessful internet business. He was physically and mentally abusive and they separated in 2002, leaving her accountable for the credit card debt. From 2002 to 2005, Applicant was a single mother and barely made ends meet. She moved to another state in 2005, where her new husband was stationed, leaving her child with her former husband. She spent \$20,000 in legal fees and obtained custody of her child in 2007. Applicant chose not to file for bankruptcy and felt a moral obligation to pay her debts. Her husband is supportive of her endeavor to pay her delinquent debts. She started repaying her debts in 2005, before she applied for a security clearance in 2006.

The SOR listed \$38,306 in delinquent debts. Applicant's legal expenses slowed her ability to repay the debts, but she still managed to clear approximately \$19,400 of that amount. She has approximately \$18,900 left to pay. She has payment plans in effect with two of the remaining debts and has made regular payments on those debts. The only remaining debt that Applicant has not acted on is the \$2,862 debt to her college. Applicant credibly testified that she will pay this debt in full in about August 2008, with a loan from her retirement fund. Applicant's financial problems were related to a failed business, her husband not accepting responsibility for the business debts, and her living on low wages as a single mother after her divorce. These are conditions that were largely beyond Applicant's control. She met her new husband and started repaying her debts in 2005, before they became an issue for her security clearance. That is acting responsibly under the circumstances and constitutes a good-faith effort to repay overdue creditors. AG ¶¶ 20(b) and (d) are applicable. She has not received counseling but there are clear indications that her financial problems are being resolved and are under control. AG ¶ 20(c) is partially applicable.

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 security clearance 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. Applicant went through a difficult marriage and an unsuccessful internet business. After her divorce she barely made enough money to cover her living expenses as a single mother. She met her new husband who is supportive of her intent to pay her delinquent debts. She started paying back her delinquent debts in 2005. She has established a proven track record that she will adhere to her payment plans to address her remaining debts. Applicant is well regarded by her company. Her finances are now in order and no longer a security concern.

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 has mitigated the security concerns arising from her financial issues.

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
Subparagraphs 1.a-1h:	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.

EDWARD W. LOUGHRAN
Administrative Judge