



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-06371
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

August 11, 2008

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On October 16, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on November 2, 2007, and requested a hearing. The case was assigned to me on March 4, 2008, and was scheduled for hearing on April 10, 2008. A hearing was held on April 10, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of five exhibits; Applicant relied on one witness (herself) and six exhibits. The transcript

(R.T.) was received on April 18 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Appellant requested leave to supplement the record with documentation of her disputed debts with two of her listed creditors and a response from one of the creditors whose debt she has disputed. For good cause shown, Applicant was granted 20 days to supplement the record. Within the time permitted, Applicant supplemented the record with documented dispute correspondence and information. Her post-hearing exhibits were admitted and considered.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) accumulated six delinquent debts exceeding \$29,000.00 and (b) petitioned for Chapter 7 bankruptcy relief in March 1998 and was discharged in bankruptcy in July 1998. The SOR does not detail her creditor and asset schedules.

For her answer, Applicant admitted her bankruptcy petition and discharge, but denied the alleged debts, with explanations. She claimed to be an honest hardworking American, who tries to be a good example and live by the law (e.g., pays her fair share of taxes, never been arrested or committed a crime, save for minor traffic violations, and always tries to help people and organizations in her community when able to). She claimed the listed debts in the SOR are disputed and attributable to illegal collection practices, fraud, and identity theft. She addressed her reasons for her reasons for disputing each of them in considerable detail

Findings of Fact

Applicant is a 43-year-old scheduler for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant is married and has three children: ages 24, 21 and 17. Her two daughters are emancipated and live on their own. Only her son currently resides with her (R.T., at 125).

Applicant's finances tightened considerably in 1993 after her husband lost his job. Later in the same year, she was involved in an auto accident and incurred injuries that prevented her from working (R.T., at 108-09). While out of work with a disability, she settled with both her own workman's compensation carrier and the carrier of the third party responsible for her accident (see ex. M; R.T., at 112-15). Under the terms of her overall settlement with the two carriers, she became entitled to payment of her medical expenses and disability payments (see ex. M). When workman's compensation

ceased paying her medical charges, she was forced to invade her savings to satisfy her debts. Once she exhausted her savings, she turned to selling off her personal assets to cover her ongoing medical bills.

Based on the advice she received from a bankruptcy lawyer, Applicant petitioned for Chapter 7 bankruptcy relief in March 1998 (R.T., at 112-14). Her schedule of creditors included both medical and consumer-related debts, and exceeded \$50,000.00 (see ex. 3; R.T., at 129). She reaffirmed her car loan, though, and continued making payments on this loan following her bankruptcy discharge in July 1998 (see ex. 3).

For some period following her bankruptcy discharge, Applicant was able to restore her credit. For several years (*i.e.*, between 1998 and 2002), she was able to maintain current status with her creditors. This all changed for Applicant in 2002 following her layoff, her battles with cancer (see exs. H and M), and her husband's inability to work for medical reasons. During her extended layoff, she relied on her credit protection insurance to defer her monthly payment obligations on her creditor 1.b account.

Applicant disputes the five debts listed in the SOR. One of the debts (creditor 1.c) represents a credit card debt she believes to belong to her sister who assumed her identity (see exs. A and C through G; R.T., at 88-92). This debt reflects AF base charges that were incurred on a base facility in which her sister had access to, but Applicant did not (see ex. G; R.T., at 139-45). Applicant has written to the credit reporting agencies about these debts, and her dispute is reflected in her most recent credit report (see exs. A and B).

Another listed debt (creditor 1.b) involves a credit card debt that Applicant opened in 1998. She claims she had credit card protection that protected her during periods of medically-related work disruptions and disputes the entire debt (see exs. A, H and K; R.T., at 67-69). She had been fully employed and paying her bills when she suffered a layoff in November 2001. Several months following her layoff and initiation of cancer treatments (in February 2002), she filed for credit protection to cover the previous three months of work disruption and any continuing disruptions (R.T., at 75-76). It is not clear how many months (if any) her credit protection insurance covered her monthly payments.

Applicant does provide documentation of her creditor 1.b dispute (see ex. this dispute that she provided after the hearing (see exs. A and F). Her documentation does not contain any details of her specific disputes with the creditors. Her post-hearing documentation addresses her credit protection claims, but reflects much more limited credit protection (up to 24 months) available (see ex. K). The further documentation does not shed any further light on Applicant's claims that the creditor suspended its medical protection coverage long before the end of her cancer treatment. Applicant previously shredded the credit protection agreement she relies on, and must rely, accordingly, on coverage summaries (ex. K; R.T., at 67-71). While not fully verifiable,

her claims reflect sincerity and candor and absent any evidence from the creditor to challenge her claims are entitled to acceptance.

Applicant claims credit card fraud with the two smaller listed creditors (creditors 1.d and 1.e). She documents her successful efforts to obtain the removal of these two smaller debts listed in the SOR (see exs. A and I). Applicant assures she paid these debts and has not had accounts with either of these creditors in years (R.T., at 93-108). With their removal from her credit report, these debts are resolved.

Applicant also disputes the creditor 1.a debt listed in the SOR. This debt represents a \$4,000.00 deficiency on a repossessed vehicle in 2002 (see exs. 4 through 6, A, H, J and O; R.T., at 41-63). Applicant and her husband had been making regular payments on a Ford Explorer they purchased the previous year. When Applicant was diagnosed with skin cancer, her husband took off a good deal of time from work to help out at home with the kids. He soon lost his job, and missed some car payments (R.T., at 41). With her husband out of work and Applicant's ongoing cancer treatments, their finances at the time were very limited (see exs. H and M). Applicant claims she and her husband were able to work out a temporary payment agreement with the seller until they could get back on their feet that permitted them to make partial payments for a couple of months (R.T., at 57-58).

By Applicant's account, creditor 1.a reneged on its agreement with Applicant and her husband and repossessed the Explorer vehicle before they could ever develop their reduced payments. Breach of their agreement with the seller is the gravamen of their dispute with creditor 1.a. Applicant assures she never received a sale notice for the repossessed vehicle and disputes creditor 1.a's claimed deficiency on both breach and notice grounds. She documents correspondence covering a class action lawsuit and initiated complaints with the better business bureau in her community (see ex. A) that she joined against this creditor over notice issues. There has been no documented disposition of this class action.

Notwithstanding her continuing dispute with creditor 1.b over credit protection defaults in 2004 while she was receiving cancer treatment, she acknowledges some of the debt and is willing to pay on the debt, were the creditor to offer her a reasonable payment plan (R.T., at 84-85). With the class action still pending, she advised the credit reporting agencies that the creditor could not pursue collection of the debt (see ex. A; R.T., at 46-47). Unable to elicit any kind of supportive response from the creditor about pending class action litigation, the credit reporting agency just deleted the debt from her credit report in December 2007 (see ex. A; R.T., at 47-56). To date, though, creditor 1.b has not been willing to negotiate any kind of payment terms, and has continued to accrue interest (compounded) on the debt.

Applicant assures she is current with her other creditors. Her credit report provides general corroboration for her claims (see ex. B). She couldn't recall any past due accounts at the present (R.T., at 117).

To provide more liquidity for her family, she has put her home up for sale and seeks a little less than \$20,000.00 over the home's purchase price (R.T., at 130-31). She has less than \$1,200.00 in stock savings (down from the \$2,000.00 she used to have in her account) and \$47,514.00 in medical bills (R.T., at 132). She is responsible for about \$7,000.00 in co-pays on these bills (R.T., at 132). Applicant has two cars (a 1995 Blazer and a 2005 truck) that are paid off. Applicant is essentially providing most of the financial support for her family. Her husband has not returned to work for some time (R.T., at 117), and between the two of them, they estimate a monthly remainder of \$250.00, sometimes less (R.T., at 136).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts." See Adjudicative Guidelines, ¶18.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense

appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is a defense contractor employee with some history of recurrent debt issues. Medically-related issues prompted her to seek and perfect Chapter 7 bankruptcy relief in 1998, and she has accrued several listed delinquent debts (five in all) since 2002 that she seriously disputes on various grounds.

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual appellant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts that prompted her to seek Chapter 7 protection in 1998 and her recurrent problems with her finances since 2002 warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a) "inability or unwillingness to satisfy debts" and DC 19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to income shortages attributable to recurrent medical-related issues involving both herself and her husband that produced extended periods of disability and lay-offs for both spouses. Applicant disputes each of the debts listed and documents her disputes with the credit reporting agencies. Since receiving the SOR, she has initiated additional efforts to bring to closure the five listed debts she claims to represent erroneous delinquencies in her credit reports.

Given Applicant's exhibited extenuating circumstances associated with her medical disabilities and work layoffs, the limited resources that have been available to her to address her old debts when during financial crises, and her documented responsible efforts to resolve her acknowledged debts, through the dispute process afforded her by the credit reporting agencies, Applicant may rely on MC 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," of the Guidelines for financial considerations. With her increased flow of steady income and better management of her finances, Applicant has slowly begun to regain control of her finances.

Mitigation credit is also available to Applicant based on her credible proofs of good-faith disputes with all five of the listed creditors in the SOR. Age of the debts at issue is covered by two of the mitigating conditions for financial considerations: MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," has applicability, while not dispositive. MC (d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," has some applicability. MC 20(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," has applicability as well relative to the listed creditors she disputes.

Applicant seriously disputes each of the listed debts for different reasons: some over prior payment claims (creditors 1.d and 1.e), one over stolen identity (creditor 1.c), one over failure to honor her credit card's credit protection when there is proof of a medical disability (creditor 1.b), and one over the lack of notice of any intended resale of the vehicle (creditor 1.a). For each of these accounts, regardless of whether they may reflect otherwise valid debts, they may no longer be enforceable under the State's applicable statute of limitations for written contracts.

The state statute of limitations in Applicant's state for claims based on a written contract is four years (see 16.004(a)(3) of T Civ. Practice and Remedies Code) and claims not otherwise provided for (see 16.051 of T Civ. Practice and Remedies Code). All of Applicant's disputed debts are aged and appear to be covered by the State's four-year time bar.

While potentially applicable statutes of limitation have not been recognized by our Appeal Board to absorb security risks associated with unresolved delinquent debts. Statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation. They have never been equated with good-faith efforts, though, to repay overdue creditors. See, e.g., ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). Weight, if any, to be assigned to potentially applicable

statutes of limitations under the new Guidelines should be considered in light of all the circumstances surrounding the existing debts. Viewed in this whole person light, the controlling state statute of limitation for written contracts is entitled to be accorded considerable mitigation weight in evaluating Applicant's overall financial risk.

While the counseling advice from her bankruptcy attorney in 1998 is too aged to have any material bearing on resolution of her most recent debts, Applicant is to be credited with earnestly looking for sources of financial advice with the resources available to her and taking productive advantage of the public advice she received in addressing her debts. She may take limited advantage MC 20©), "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." Based on her initiated efforts to date, prospects for her gaining important insights in handling her finances in the future appear to be promising.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are present, too, in financial cases (as here). See Adjudicative Guidelines, ¶18.

From a whole person perspective, Applicant has shown considerable resilience in meeting the challenges posed by medical disabilities and layoffs (both herself and her husband), and demonstrated a remarkable turn around in her efforts to rebuild her credit status. She has disputed the debts she questions and acknowledged those that hers. Overall, she is credited with producing some very tangible improvements in her managing of her finances.

Taking into account all of the facts and extenuating circumstances surrounding Applicant's debt accumulations, her documented steps taken to resolve her disputed debts, Applicant mitigates security concerns related to her disputed debts. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.f of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Sub-paras. 1.a through 1.f:

FOR APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge