



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



In the matter of:)
)
) ISCR Case No. 07-06897
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

Decision

HEINY, Claude R., Administrative Judge:

Applicant had a past due judgment and 21 past due accounts totaling \$17,000. Applicant obtained a loan from the Thrift Savings Program and paid the debts. Applicant has successfully mitigated financial considerations concerns. Clearance is granted.

History of the Case

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

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)

Statement of Reasons (SOR) on August 30, 2007, detailing the security concerns under Guideline F, financial considerations based on a history of financial problems as evinced by delinquent debts.

On August 30, 2007, Applicant answered the SOR, and requested a hearing before an administrative judge. On October 25, 2007, I was assigned the case. On November 13, 2007, DOHA issued a notice of hearing for November 29, 2007. The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on her own behalf. The record was kept open to allow Applicant to submit additional matters. Additional documents were received on December 21, 2007. Department Counsel did not object to the material and it was admitted into evidence as Ex. A. On December 7, 2007, the transcript (Tr.) was received.

Procedural and Evidentiary Rulings

Name Change

Following the issuance of the SOR, Applicant married. Her current name is listed in the heading.

Findings of Fact

In her Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.x. She denies the debt listed at SOR ¶ 1.y stating it was a duplicate of SOR ¶ 1.x. The admissions are incorporated herein as findings of fact. After a thorough review of the record, I make the following findings of fact.

Applicant is a 30-year-old data technician who has worked for a defense contractor since March 1996, and is seeking to maintain her security clearance. In October 2007, Applicant received a certificate of achievement for her job performance. (Ex. A)

Applicant was 15 years old when her son was born. He suffered from a lung disorder, and many of the debts listed in the SOR are medical debts related to her son's asthma. The smaller bills, those less than \$100, represent co-payments for medical treatment. (Tr. 38) Because of her son's asthma, Applicant had to take time off from work without pay. At the time, she was living pay check to pay check. Her son is now 14 years old and his asthma condition has substantially improved. (Tr. 48)

In February 1998, Applicant—then age 20—filed for Chapter 13, Wage Earner's Plan, bankruptcy protection. The debts included medical bills for her son's asthma

promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

treatment and treatment for her back problems. (Tr. 24) The plan required her to make monthly payments to the bankruptcy trustee. She was unable to make the monthly payments and in May 1998, the bankruptcy was dismissed. She refilled for Chapter 13 protection in June 1998, and it was dismissed in July 1999. She had made payments for 13 months before the second bankruptcy was dismissed. In 2000, Applicant underwent gallbladder surgery and was unable to work, which contributed to her medical debts and financial problems.

A friend lent her money to purchase a car, which was later involved in a wreck. In August 2005, the friend obtained a \$6,000 judgment against Applicant. In July 2007, Applicant sent a letter to the creditor holding the \$6,000 judgment listed in ¶ 1.c, indicating she would like to arrange payments on the debt. The attorney for the creditor indicated his records had been destroyed by a hurricane. Applicant intends to pay this debt.

In June 2007, Applicant completed a personal financial statement, which listed her gross net monthly income at \$1,810 and her net monthly remainder at \$190. She has recently married and received a salary increase. Her salary increase was \$2.50 per hour, which represents a 15 percent raise. (Tr.48) Applicant no longer has a \$200 per month car loan, the car having been recently paid off. (Tr. 49) For the past two years, Applicant has had a garnishment of her wages, taking \$75 from her pay every two weeks to pay the debt listed in SOR ¶ 1.s. She has contacted all of the creditors listed in the SOR. (Ex 2)

At the time of the hearing, Applicant had applied for a Thrift Savings Plan (TSP) loan. (Tr. 43) On December 11, 2007 she received the loan, at a 4.5 percent interest rate, which provided her with \$18,950, and she used it to pay all the debts listed in the SOR.

The SOR lists a judgment and 22 accounts charged off or placed for collection as listed in her credit reports. (Exs. 3, 4) The debts total approximately \$17,000. Half of the accounts are for debts less than \$200 and 83 per cent of her debts are obligations of less than \$500 each. Only six of her debts exceed \$500 each.

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 her 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 the holding of 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 approximately \$17,000 on 23 past due obligations. Disqualifying Conditions (DC) ¶ 19(a), "inability or unwillingness to satisfy debts" and 19(c), "a history of not meeting financial obligations," apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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 her son's asthma. Not only were medical expenses incurred, but Applicant lost time from work to obtain treatment for her son.

Frequently medical problems associated with asthma are lessened as children get older. This is the case with Applicant's son for his asthma condition has substantially improved. Applicant accumulated some delinquent debt due her medical issues, her son's medical issues, and reduced income from having to obtain treatment. These circumstances are no longer extant. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about her current reliability, trustworthiness, or good judgment. This mitigating condition applies.

Under AG ¶ 20(b), it may be mitigating where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a

² Revised adjudicative guidelines (AG) ¶ 18.

business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” As noted above, some of the financial problems arose from her and her son’s medical problems, including the substantial medical bills and her loss of income due to having to take time off to take her son to treatment. She acted responsibly in identifying and resolving these debts. I find this mitigating condition applies.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, 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 received a \$18,950 TSP loan and resolved her delinquent debts. Documents showing payment to each creditor have not been supplied. However, after hearing her testimony, observing her demeanor, and evaluating all the evidence of record, I found her testimony credible that she would use the TSP loan to pay her bills. She is now married, has received a substantial raise in pay, and has an additional \$200 per month each month now that her vehicle is paid off. She is now financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions apply.

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. When these problems first began, Applicant was very young woman. Her son was born when she was 15. She was a single mother. Mounting medical bills resulted in her—then age 20—filing for bankruptcy protection. She was able to make her payments for more than a year before she was unable to continue with the monthly payments. She accumulated debt due to

circumstances largely beyond her control, including time off from work to take her son to treatment and large, unexpected medical expenses. (See AG ¶ 2(a)(2).)

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 were not incurred on luxuries, but were for medical treatment, flood clean up, and needed transportation. The modest amounts spent on the vehicles purchased fails to show extravagance on Applicant's part or living beyond her means.

Since the filing of her bankruptcy, medical bills and loss of time from work have continued, but Applicant has undergone significant changes in her life including marriage and salary increases. Most significantly, she has taken affirmative action to pay or resolve the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) These debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

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.y: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge