



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



In the matter of:)	
)	
)	ISCR Case No. 07-09098
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

January 30, 2009

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA) on March 4, 2008. On April 4, 2008, 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 submitted her answer to the SOR on June 2, 2008 by facsimile. DOHA issued a notice of hearing on October 3, 2008, and the hearing was held on October 27, 2008. At the hearing, six exhibits (GE 1 through 6) were admitted in evidence without objection to support the Government's case. Applicant testified and submitted exhibits (AE A through AE V). In the time allowed for Applicant to furnish additional documentation, she submitted AE W through AE FF, which were received in evidence

without objection. These exhibits contain position statements, federal tax documents, revised credit information showing that several listed creditors were no longer reporting, and character evidence about Applicant. DOHA received a copy of the transcript (Tr.) of the proceedings on November 6, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The SOR alleges 21 delinquent debts totaling \$42,482.00 under the financial considerations guideline. Applicant essentially admitted all the allegations. Her denial of a student loan debt in **SOR 1.b.** is based on a consolidation offer the Government made to her recently where all four past due loans were placed in one repayment plan. Applicant's denial of **SOR 1.n.** is based on her claim she paid the debt. **SOR 1.t.** and **1.u.** refer to the same debt, and are found in Applicant's favor based on the documentation provided to show the debt was paid (AE CC).

Applicant has been employed as an industrial coordinator with her employer since December 2002. She seeks a security clearance.

Applicant's first marriage in July 1983 ended in divorce in February 1999. Applicant encountered federal tax problems beginning in 1996.

Applicant's second marriage began in December 2001 (GE 1).¹ However, her husband's layoff from his airline employer after September 11, 2001 created emotional problems her husband could not resolve, and the marriage could not survive. Applicant separated from her husband and has been living by herself in August 2004 (Tr. 84). She points to the problems of her second husband, e.g., depression, and his failure to look for work (Tr. 101), as two of the reasons she still has financial problems. Her second husband filed a Chapter 7 bankruptcy in 2005 that she did not join because she did not want to jeopardize her security clearance (Tr. 44-46). Applicant indicated she was not in a position to pay these debts until the last six months (2007) because her husband had a mental breakdown after the bankruptcy, and they lost their home (Tr. 45).

In October 2007 Applicant enrolled in a debt consolidation organization with a \$500.00-down payment on October and November 2007 (GE 3; Tr. 97). However, because of the rise in energy prices and maintaining her mortgage (Tr. 99), she has not begun the monthly payments of \$300.00. She is scheduled to begin the payments on October 31, 2008 (*Id.*). Under the plan she is to pay \$300.00 a month until the target figure of \$2980.00 is reached, then certain debts in the plan will be eliminated or forgiven (Tr. 96). No additional information was provided. Applicant also signed up with a credit service firm to challenge debts for validity and amount (Tr. 90; GE 3). That service, which cost her about \$80.00 a month, completed the list of disputed creditors and debt amounts in August 2008 (Tr. 98).

¹ However, in GE 3 Applicant indicated she married her second husband in 2000.

Applicant began a part-time job in June 2008 that concluded in the middle of November 2008. Her payment stubs appear in AE AA. She is scheduled to begin a new part-time job on November 21, 2008, and will be working out of her house (AE W).

When Applicant was interviewed by the Government in November 2006, her monthly remainder was about \$31.30, but her monthly remainder currently is about \$400.00 due to salary increases (Tr. 103). Applicant testified that based on the advice of her church counselor she is using a monthly budget to maintain better accountability over her expenses (Tr. 104). She submitted AE X as her budget. The one page exhibit dated November 3, 2008, is a list of her monthly expenses, but does not provide information about other elements of her budget.

The delinquent debts will be discussed in the order they appear in the SOR. The debts became delinquent at different times between July 1999 and 2007. Applicant testified she made sporadic payments on the debts in 2008 but few payments in 2007 because she had to meet a state requirement of working through the divorce (Tr. 83-84). No additional information was provided. In addition, she stressed that she had to make several sacrifices in starting her life anew in 2007 (Tr. 83-84; AE W).

SOR 1.a., 1.b., 1.l., and 1.m. These four debts are delinquent student loans totaling \$19,714.00. The loans were opened in March 2004. The last activity on the accounts was June 2005. Applicant testified she paid about \$5,000.00 on the loans over the years, but has made no payments since 2006 (Tr. 81). She entered into the revised student loan payback plan (containing all four student loans) in May 2008, and made her first monthly payment of \$200.00 in October 2008 as required (Tr. 82; AE C, AE Y). This paragraph is resolved against Applicant.

SOR 1.c. The last activity on this personal loan account (\$124.00) was in May 1999. Applicant admitted this account and explained it would be in her payment plan which apparently was formulated (Tr. 48). Applicant requested a research of this debt by one of the credit agencies. She was informed on August 29, 2008 that the debt is no longer being reported by the creditor (AE BB). This allegation is resolved against Applicant.

SOR 1.d., 1.e. These two allegations refer to two checks that were returned to Applicant due to insufficient funds to cover the checks to purchase food at a national grocer. The value of the checks is \$124.00. The checks were written in July 1999. AE BB reflects that the creditor is no longer reporting the debts. Applicant agreed she still is responsible for the checks, and stated they would be a part of her payback plan (Tr. 48-49). These two allegations are resolved against Applicant.

SOR 1.f. The last activity for this collection account of \$88.00 was December 2000 (GE 6). Applicant acknowledged she owes the overdue debt. This account is resolved in Applicant's favor. AE BB reflects the creditor is no longer reporting the account. I find against Applicant under this account.

SOR 1.g. The services for this medical account of \$288.00 were rendered on March 2002 (GE 4, 6), and placed for collection in July 2002. AE CC contains a one-page document from a local hospital (See, **SOR 2.t.**) and the remaining documentation from a systems/account inquiry records system relating to medical services rendered at another, undisclosed location. Though several pages show a zero balance for medical services performed, the documentation reflects that the medical services were performed from January 1997 to April 2001. There is no documentation reflecting that she received medical services in March 2002, the date identified in the allegation and credit reports (GE 5, GE 6). I find Applicant has not established this account has been paid.

SOR 1.h. The Internal Revenue Service (IRS) federal tax lien (\$6,602.00) was filed against Applicant in August 2003 and applies to tax years 1996 and 1997. When Applicant was with her husband in 1996, she was making regular payments to the IRS for unpaid taxes. When she separated, she could no longer make payments, and was put in a suspended status for the last five years (Tr. 94-95). Any refund Applicant is entitled is being withheld by the IRS to pay down the lien (*Id.*). According to AE P1, the outstanding balance as of March 2008 was \$5913.00. This allegation is resolved in Applicant's favor. Applicant resolved her delinquent state tax obligation (unlisted) in 2007 (GE 3).

SOR 1.i. According to Applicant (Tr. 87), this account (\$11,488.00) should be reduced to \$1,999.00 to correctly reflect the deficiency balance after the auto was sold at an auction. Applicant believed this debt was discharged in her husband's Chapter 7 bankruptcy. A review of the AE FF, a partial copy of an undated motion entitled AMENDMENT TO CHAPTER 7 SCHEDULES, lists five creditors. Neither the **SOR 1.h.** nor the **SOR 1.q.** creditors are listed in the incomplete motion documents. See *also*, AE W and AE BB. I find against Applicant under this allegation.

SOR 1.j. The delinquent account is \$336.00, according to GE 6. The last activity on the debt was in May 2002. In her answers to interrogatories (GE 3), Applicant stated she would settle the debt by January 2008. Applicant claimed the debt belonged to her husband. She has not paid this account.

SOR 1.k. The account (\$288.00) is a collection debt for a utility. The last activity on the account was January 2005. In GE 2, Applicant stated the company would accept payments on this account until paid in full. No additional information was provided. This allegation is resolved against Applicant.

SOR 1.n. Applicant claims she paid this account (\$66.00) and destroyed the receipt. She tried to retrieve the receipt, but has been unsuccessful to this as of the date of the hearing (Tr. 53). The allegation is resolved against Applicant.

SOR 1.o. This is a credit card account for \$220.00. Applicant indicated in GE 2 and her testimony (Tr. 54) that she reached a settlement with the creditor, and the next

action was to pay the figure (Tr. 54). No additional information was provided as to whether the settlement was paid. Applicant is still responsible for this account.

SOR 1.p. Applicant admitted this account (\$501.00) but disputed the amount with the assistance of a credit assistance law firm. She learned the debt amount is accurate, and is no longer disputing the amount (Tr. 90-91). Applicant is still liable for this account.

SOR 1.q. This account (\$1,999.00) is owned by the creditor who had a lien on the auto described in **SOR 1.i.** Though Applicant considered the two allegations referred to the same debt (Tr. 87), she also acknowledged they might represent different debts. AE N2 dated March 2008, reflects the debt has increased. Applicant is still responsible for this account.

SOR 1.r. This delinquent account amounts to \$330.00. In GE 3, Applicant advised the account was being disputed. Applicant is no longer disputing the account, and is responsible for the past due debt.

SOR 1.s. According to GE 3, Applicant considered this account (\$544.00) to be a double entry that was being disputed. She presented no additional evidence. This account is resolved against Applicant.

SOR 1.t., 1.u. Both allegations refer to the same delinquent debt for medical services. The medical account was paid on September 16, 2008 (AE CC). These two accounts are resolved in Applicant's favor.

The total number of debts is reduced by one to 20, as the **SOR 1.u.** medical debt (\$50.00) was entered twice in the list of delinquent debts appearing in the SOR. The total amount of past due debt is \$35,426.00.

Character Evidence

Several character statements were admitted in evidence. AE H is from the project coordinator who has known Applicant professionally for several years. In 2006 and 2007, Applicant was a security officer in the project coordinator's office. Applicant's dedication to a secure environment provided repose for all employees working in the office.

The information technician (IT) has worked with Applicant for five years, and believes she is dependable and reliable. The IT opines that Applicant is very security conscious (AE I).

The personnel security specialist has known Applicant as a coworker and a friend for a year. Applicant advised the security specialist she was trying to pay her overdue debts in good faith.

The senior project manager wrote a character statement (GE 2) and testified about Applicant. He indicated that Applicant has demonstrated honesty and trustworthiness in the 2 ½ years he has known her (Tr. 38). He is aware she has financial problems but he does not know what she has done (Tr. 39).

The associate facility security officer provided a written character statement (GE 2), and also testified about Applicant. The officer highlighted Applicant's security responsibilities include (1) ensuring that all attendees at the 12 government symposiums have the proper badges, and (2) that all classified information is monitored at all times, (3) and that all security rules in the transfer of secured information are conducted appropriately. Since being reassigned to unclassified responsibilities, Applicant has excelled at tracking classified information that is transferred to the government or other contractors (Tr. 31).

Applicant received several certificates of recognition or training in AE EE, including an acknowledgment in 2004 of her security support by the lab division of her employer. Applicant received her notary seal in March 2007. In August 2008, Applicant received a certificate for two days of training on certain software.

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. Reasonable 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.

Analysis

Financial Considerations (FC)

18. *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."

Applicant encountered tax problems in 1996 when she was married to her first husband. She testified she was involved in a payment agreement with the IRS for unpaid taxes. The credit reports reflect corresponding tax problems with the state tax agency. The credit reports also show that the debts listed in the SOR became delinquent between 1999 and 2007. The age and amount of overdue debt brings Applicant's financial problems within the scope of FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) FC DC 19.c. (*a history not meeting financial obligations*).

There are four mitigating conditions (MC) that have potential application to this case. 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 reliability, trustworthiness, and good judgment*) is not applicable. The IRS lien, which was filed in August 2003, covers tax problems that surfaced in 1996 and/or more recently. The insufficient funds checks occurred in 1999, and may be no longer enforceable. On the other hand, there are at least three overdue debts that fell delinquent in 2006, less than three years ago. There are 20 debts that are still delinquent. Though Applicant spent \$500.00 in October 2007 to enroll in the debt services program, and was informed she would be paying \$300.00 a month under the

plan, she has not paid her first monthly installment. She paid approximately \$80.00 a month to have the credit services firm challenge debts for accuracy. Yet, the only significant payments she has made on her debts were the involuntary payments to IRS, and a \$200.00 payment on the student loan after neglecting to pay the debt for about three years. Applicant's decision not to pay the smaller debts, even after her official challenge of certain debts ended in August 2007, precludes the application of FC MC 20.a.

Applicant gains some benefit from FC MC 20.b. *(the conditions that resulted in the financial problem were largely beyond the person's control and individual acted responsibly under the circumstances)*, as her former husband and her current husband (she is separated from) bear some blame for her financial problems. Her first husband contributed to her tax problems with the IRS, leading to the lien being filed in August 2003 for taxes owed in 1996. Applicant ran into marital discord following September 2001, when her current husband lost his job and developed mental problems.

Applicant exercised good judgment by separating from her current husband in August 2004, after concluding she could no longer live with his mental condition. And, she receives mitigation for that period. However, FC MC 20.b. also calls for the individual to act responsibly under the circumstances by continuing to handle their affairs in a responsible manner. Four years have passed and Applicant owes more than \$35,000.00 to 20 creditors. If she did not know before October 2007 that she owed several creditors, during that month, she was informed by the Government that she owed the listed creditors. She provided lengthy explanations of the debts, and, in several responses, indicated she would pay several of the creditors in early 2008. The record reflects only one of the smaller debts was paid. Even though Applicant faced an unanticipated situation with her husband, she only receives limited mitigation under FC MC 20.b. by not paying more of the smaller creditors when she had the opportunity, particularly in the last six months. Her claim she did not pay the smaller debts because of the increasing cost of energy in the last year is not mitigating. Considering her part-time employment since June 2008, her increased energy costs should not have prevented her from paying these smaller debts.

FC MC 20.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)* applies in part based on Applicant's good judgment in enrolling in a debt service and credit review service. However, the large number of overdue debts makes it impossible for me to conclude Applicant's problems are being resolved or are under control.

Paying a debt service a credit review service more than \$800.00 does not provide the same mitigation as actually paying the creditors. Nonetheless, FC MC 20.d. *(the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts)* receives some consideration in Applicant's favor, as she incurred a large debt with the debt and credit review service. However, she has made only one payment on her consolidated student loan since 2006, and that payment was in October 2008. Other than the one \$50.00 medical debt and her payments to IRS, Applicant presented

no documented proof of payment of any of the other debts. The mitigation provided by FC MC 20.d. is limited due to the lack of a sustained record of payments other than to the IRS.

FC 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*) applies to bona fide disputes. I am unable to discern whether or not Applicant had a good faith dispute with any of the creditors. Applicant admitted the debts. None of the debts were removed from her credit report because they were false or erroneous. These two facts subvert the credibility of Applicant's dispute claims. The removal of debts listed in SOR 1.c., 1.d., 1.e., and 1.f. from Applicant's credit report is due to the fact that the time period in which the creditors could get a judgment in court against Applicant has expired. In addition, Applicant admitted the debts. Based on the totality of all the record evidence, including her favorable job performance and security consciousness, Applicant does not prevail under the FC guideline.

Whole Person Concept (WPC)

The adjudicative process is an examination of a sufficient period of a person's life, and a careful consideration of nine variables that comprise whole person model:

(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 was 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 and recurrence. ¶ 2, p.18 of the Directive.

I have considered the disqualifying and mitigating factors in light of the all the facts and circumstances surrounding this case. Applicant has had two marriages that burdened her with tax and debt problems. Some of the debts became delinquent in 1999. Some of the debt fell delinquent in 2004, and some reached the delinquent status in 2006. She informed the Government in October 2007 she paid a debt service to consolidate her debt. She also advised the Government of the credit review service to evaluate her debts for accuracy. Yet, she did little to pay even some of the 10 smaller debts covered in the SOR. While her action regarding the IRS debt weighs in her favor because she has developed a record of paying down the deficiency, she has only paid \$200.00 on the education debt since 2006.

Applicant has a successful job performance evaluation for the 2007 appraisal period, and is considered to be a very responsible security official by her former supervisor and her employee's facility security officer. The respect the two individuals

have for Applicant is commendable, but they also were largely uninformed about Applicant's financial problems. Moreover, an individual who seeks a security clearance has to show the same vigilance in their personal affairs as they do in conducting their security responsibilities. Failing to achieve a successful control on her financial indebtedness during Applicant's uninterrupted employment since December 2002, raises lingering questions about her security suitability which she has not overcome. Accordingly, Applicant has not mitigated the security concerns arising from her financial difficulties.

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): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant.
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant
Subparagraph 1.k.	Against Applicant
Subparagraph 1.l.	Against Applicant
Subparagraph 1.m.	Against Applicant
Subparagraph 1.n.	Against Applicant
Subparagraph 1.o.	Against Applicant
Subparagraph 1.p.	Against Applicant
Subparagraph 1.q.	Against Applicant
Subparagraph 1.r.	Against Applicant
Subparagraph 1.s.	Against Applicant
Subparagraph 1.t.	For Applicant
Subparagraph 1.u.	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge