



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



In the matter of:)	
)	
)	ISCR Case No. 07-10873
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Pro Se

June 9, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) January 23, 2007. On December 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for financial considerations and personal conduct under Guidelines F and E for Applicant. 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 acknowledged receipt of the SOR on January 11, 2008.

Applicant answered the SOR in writing in an undated response received at DOHA on January 30, 2008. She admitted ten and denied five of the allegations under Guideline F and denied the allegation under Guideline E. She provided an explanation for her admissions and denials. She requested a hearing before an administrative

judge. Department counsel was prepared to proceed on February 11, 2008, and the case was assigned to me on February 13, 2008. DOHA issued a notice of hearing on March 19, 2008, for a hearing on May 1, 2008. I convened the hearing as scheduled. The government offered six exhibits, marked government exhibits (Gov. Ex.) 1 through 6, which were received without objection. Applicant submitted eleven documents, marked Applicant Exhibits (App. Ex.) A-K, which were received without objection. Applicant testified on her own behalf. The record was left open for Applicant to submit additional documents. Applicant timely submitted three documents, marked App. Ex. L-N. The documents were admitted into the record without objection from Department Counsel (Gov. Ex 7). DOHA received the transcript of the hearing (Tr.) on May 9, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted

Findings of Fact

Applicant is 42 years old and has worked for almost three years as a senior management analyst for a defense contractor. Prior to working for her present employer, she was employed by other defense contractors for seven years. After graduating from high school, Applicant enlisted in the Army. She served almost 19 months on active duty before being discharged because she was pregnant. She later had a second child by the same father, who was also on active duty in the Army. The couple never married. For the next eight years, Applicant raised her two children as a single parent, received her associate's degree, and remained in the Army Reserves. Applicant then married another Army member who left active duty shortly after the marriage. He was employed in a civilian position before being laid-off. When he was laid off, he entered the Navy and Applicant moved with her children to his first duty station. Applicant had four more children, but unfortunately one died at two months of age. Applicant has five living children. Applicant missed work for periods of time because she was hospitalized for various serious illnesses. Applicant and her husband separated in July 2007, and the divorce will be final in July 2008 (Tr. 51-97, 117-123; Gov. Ex. 1, Electronic Questionnaire for Investigation Processing, dated January 23, 2007).

Applicant's monthly income is \$2,430, and she receives \$1,752 monthly in child support from her husband, and \$400 per month from the father of her two oldest children, for a combined monthly income of \$4,587. Applicant's five children range in age from 20-year-old to 20 months old. All live at home, including the oldest who is a student. Applicant's combined monthly expenses are approximately \$3,307, which includes payments for payment plans on her delinquent debts. She has a discretionary remainder each month of only \$280 (Tr. 80-99; See, Gov. Ex. 4, Interrogatories, dated October 23, 2007, at 4, Personal Financial Statement; App. Ex. J, support order, dated July 2007). Applicant's mortgage payments are current (Tr. 46; App. Ex. I, credit report, dated March 2008).

Credit reports and the SOR show fifteen delinquent debts for Applicant: a judgment for \$2,568 (SOR 1.a); a delinquent bill for \$539 (SOR 1.b); a collection account for \$1,348 (SOR 1.c); collection accounts on a returned check for \$591, \$30, and \$25 (SOR 1.d, 1.e, 1.f); a charged off automobile account for \$4,997 (SOR 1.g); a collection account for \$11,834 (SOR 1.h); a collection account for \$232 (SOR 1.i); a collection account for \$622 (SOR 1.j); a past due auto loan account for \$483 (SOR 1.k); a delinquent student loan account for \$239 (SOR 1.l); a collection account for \$457 (SOR 1.m); and a collection account for a cell phone debt of \$273 (SOR 1.n) (Gov. Ex. 2, credit report, dated February 9, 2007; Gov. Ex. 3, credit report, dated August 31, 2007; Gov. Ex. 4, Interrogatory, dated October 23, 2007; Gov. Ex. 5, Judgment, dated June 23, 2004; Gov. Ex. 6, credit report, dated April 23, 2008).

Applicant signed for her mother's hospital bill and is responsible for the \$2,568 debt (SOR 1.a). Applicant pays at least \$113 on this debt every other week. When she can, she makes additional payments. She has a payment plan and has reduced the balance to about \$1,139. She also has a plan to pay the debt early if funds that are anticipated become available for payment (Tr. 20-23, 99-100; App. Ex. A, payment receipt, dated April 29, 2008).

The judgment listed in SOR allegation 1.b is for dental work for her children. Applicant continues to go to the same dentist and is paying on her account. The balance is now \$450 (Tr. 20-23; 100; App. Ex. B, Account information, dated, March 4, 2008).

The collection account listed in SOR allegation 1.c is for \$1,348 for the funeral expenses of her minor child that died. The debt was paid in full by the family and the insurance company (Tr. 25-26, 100; App. Ex. C (Status letter, settled in full, dated, March 17, 2008).

SOR allegations 1.d, 1.e, and 1.f are for dishonored checks written on Applicant's account by her oldest son without her knowledge or permission for \$591, \$30, and \$25. The \$591 check was paid off in two installments of \$303.21 (Tr. 25-26, 100-102; App. Ex. D Bank account statement, dated April 3, 2008). The \$30 and \$25 checks have been redeemed and paid (Tr. 29-32, 103-104; App. Ex M Bank account statement, dated May 2, 2008).

The automobile loan for \$4,997 listed in SOR allegation 1.g is for the balance on a car destroyed in a hurricane. Applicant and her husband settled this account for \$3,300 and it paid in full (Tr. 32-35; App. Ex. E, Letter, dated March 18, 2008).

SOR allegation 1.h is the debt on a time share property previously owned by Applicant and her husband. The property was sold and the debt cleared. It was removed from Applicant's husband credit report and is being removed from her credit report (Tr. 32-36, 105-111; App. Ex F, credit report, dated March 6, 2008).

SOR allegation 1.i and 1.n are collection accounts of \$232, and \$273 for the same cell phone debt. Applicant moved from one cell phone plan to another within the same company, and the new plan absorbed the amount due on the old plan. Her cell phone account is current. The debts are not listed on the latest credit reports (Tr. 37; Gov. Ex. 6, credit report, dated April 23, 2008; App. Ex. K, credit report, dated April 29, 2008).

SOR allegation 1.j is a collection account for \$622 on a past due student loan. The debt has been paid in full (Tr. 37-39, 114-115; App. Ex G, proposed settlement letter, dated April 24, 2008; App. Ex. L, bank statement for paid settlement, dated May 19, 2008; App. Ex. N, credit report, dated May 19, 2008).

SOR allegation 1.k is an automobile loan payment past due for \$483. Applicant was late on one of her automobile payments because she was hospitalized. She made up the payment and the latest credit reports show the debt is current (Tr. 39-41; Gov. Ex. 6, credit report, dated April 23, 2008; App. Ex. K, credit report, dated April 29, 2008).

SOR allegation 1.l is a student loan past due for \$239. The loan has been deferred and Applicant has requested an extension of the deferment (Tr. 45-46; App. Ex. H, Deferment request, dated April 29, 2008).

SOR allegation 1.m is a collection account for \$457. This account has been paid in full (Tr. 43-45; App. Ex. D, bank statement, dated April 3, 2008).

In response to questions on her security clearance application concerning her finances, Applicant listed one debt as currently more than 90 days past due but listed no debts in the last seven years that were more than 180 days past due. Six debts were more than 180 days past due. Applicant informed a security manager of the one debt listed, and she was advised to note the debt on the form. She was paying on some of the older debts. She was informed that the debts she was paying did not have to be listed. She did not have knowledge of other debts caused by her son writing bad checks (Tr. 123-127).

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.

Analysis

Financial Consideration:

Under financial considerations, 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect 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 terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk

inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts admitted by Applicant and listed in credit reports are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations). Since two of the debts are listed twice, the established SOR allegations are for 13 delinquent debts.

Financial Considerations Mitigating Conditions (FC 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) does have some application. The debts happened years ago and some were paid in the past, two are still being paid, and some were just cleared recently. The behavior causing the debt did not happen long ago. There were a variety of debts from car loans, to dental and medical debts, to student loans, to time share loans. The accumulation of debt was not infrequent. Some of the debts were accumulated under unusual circumstances. Applicant had medical problems and one of her young children died. Her son wrote dishonored checks on her account without her knowledge. She and her husband are separated and are in the process of divorcing. I gave consideration to these unusual circumstances leading to some of the delinquent debts. Since the debts have either been paid or are being paid, they do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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) has some application to Applicant's financial issues. As noted, some of the debt arose because of her son writing dishonored checks on her account. She was sick and hospitalized for a period of time losing time at work and salary. One of her young children passed away requiring funeral expenses. Applicant either paid or is paying her debts. She acted reasonably under the circumstances.

FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) applies. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good effort to pay them. Applicant paid ten of the 13 delinquent accounts. She has payment plans on two accounts and is current with her payments. She has a student loan that is under deferment and no payment is required. Her present credit report and other documents show her accounts are paid or being paid. Applicant acted responsibly towards her debts and they are under control. Applicant established her good-faith efforts to resolve her debts, and mitigated security concerns related to her financial situation.

Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant's incomplete answer to a question on her security clearance application concerning her past due debts raises a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Appellant denied intentional falsification. Applicant credibly testified that when she completed her security clearance application, she listed the debt she knew that was past due more than 90 days. She thought other debts past due more than 180 days either were being paid and not past due, or had been paid. She discussed her debts with a security official, who informed her that any debts she was paying on or had paid did not have to be listed on the form. In addition, she was not aware of some debts that were caused by her son's bad check misconduct. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement submitted to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Since Applicant listed the one debt she was aware of, and she did not reasonably know she had other delinquent debts, the available information shows her failure to list delinquent debts was not knowing and willful. Applicant established she did not deliberately provide false information on the security clearance application with intent to deceive. I find for Appellant as to Personal Conduct.

“Whole Person” Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 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 potential disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant’s honorable service in the Army and Army Reserve. I considered that she is raising five children as a single mother, and has had medical problems causing periods of unemployment. I considered she took responsibility for the debts and either paid them or is paying them as agreed. I considered that Applicant’s financial obligations not listed as security concerns are paid as agreed. Her finances do not create a security concern. She did not provide incomplete information on her security clearance application with the intent to deceive. Overall, on balance the record evidence leaves me with no 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 financial considerations and personal conduct.

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:	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
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

THOMAS M. CREAN
Administrative Judge