



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



In the matter of:)	
)	
)	ISCR Case No. 07-11814
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: Pro Se

May 14, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be granted.

Applicant submitted her Security Clearance Application (SF 86), on December 22, 2006. On November 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 December 7, 2007. She answered the SOR in writing on December 13, 2007. DOHA received the request on

December 20, 2007. She requested a hearing before an administrative judge on January 12, 2008, which DOHA received on January 17, 2008. Department Counsel was prepared to proceed on January 23, 2008, and this case was assigned to another administrative judge on January 25, 2008. Because of workload adjustments, this case was reassigned to me on March 4, 2008. DOHA issued a notice of hearing on March 19, 2008, and I convened the hearing as scheduled on April 10, 2008. The government offered four exhibits (GE) 1 through 4, which were received and admitted into evidence without objection. Applicant testified on her own behalf. She submitted 11 exhibits (AE) A through K. Except for AE D, all were received and admitted into evidence without objection. AE D would be admitted provided Applicant provided an additional document. DOHA received the transcript of the hearing (Tr.) on April 18, 2008. I held the record open for Applicant to submit additional matters. She submitted AE L-N and the additional document for AE D. Department Counsel responded to these submissions on May 8, 2008, which were received and admitted without objection. The record closed on May 8, 2008.

Procedural and Evidentiary Rulings

Notice

At the hearing, I discussed Applicant's receipt of the hearing notice on April 1, 2008, less than 15 days before the hearing. (Tr. at 9.) 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. (*Id.*)

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding ¶¶ 1.m and 1.n, alleging additional debts owed by Applicant. (Tr. at 10-11.) Applicant did not object to the motion, which was granted. (*Id.*)

Findings of Fact

In her Answer to the SOR, dated December 13, 2007, Applicant admitted the factual allegations in ¶¶ 1.d, 1.g, 1.i, 1.j, and 1.k of the SOR, with explanations. She denied the remaining factual allegations in the SOR. She also provided additional information to support her request for eligibility for a security clearance. Her discussions regarding allegations 1.m and 1.n at the hearing are treated as admissions of the debts. (Tr. 10-12.) At the hearing, Department Counsel agreed that the allegations in ¶ 1.a and 1.d of the SOR are the same debt.¹

¹Responses to SOR; Tr. 46-48.

Applicant is 50 years old. She works as a trainer for a Department of Defense contractor, a part-time position she has held for three years. The same employer hired her to work another position, which requires a security clearance. With the denial of her clearance, she is unable to work this second position.²

In 1982, Applicant entered into a long-term relationship with a man she never married. She ended this relationship in 2000. She has three children from this relationship, ages 23, 17, and 11, who still live at home. The oldest, a daughter, attends college and works part-time.³

During the long tenure of the above relationship, Applicant and her significant other purchased and paid for two trailers, where they lived. Most of the time, she placed the trailers on rural land she owned jointly with her mother, who lived nearby. They also purchased and paid for motor vehicles and held joint bank accounts. They had credit cards and other credit. They made the required payments. During this relationship, Applicant work full-time or part-time periodically. She worked when her mother could babysit the children. Her significant other worked intermittently, but never on a continuous basis and was not a reliable babysitter. She received no employment related benefits during this relationship. Her significant other liked to apply for and obtain credit cards, in his name and in her name without her knowledge, which began to cause issues with increased debt. Towards the end of the relationship, credit card debts mounted and past efforts to maintain the credit card payments were abandoned because of sporadic income.⁴

Applicant ended this relationship in 2000 because of debt issues and his infidelity. She immediately closed the joint bank accounts. After her gall bladder surgery, she found employment and has worked steadily since 2000. She has not spoken with her significant other since 2002. She currently works at a fast food restaurant and part-time with a government contractor in a non-clearance position. She completed an associates degree in Applied Science in 2005 and incurred no unpaid debt for her education. She bought a larger modular home for she and her children because they needed new housing. She timely pays her loan on this property. Because public transportation is not available to her, she bought and paid for two cars in the last seven years. She paid the remaining balance on her most recent car loan with her 2007 tax refund. She opened credit card accounts in her own name in the last three years. She timely meets her monthly payments on these cards. Through these efforts, she re-established her commercial credit worthiness.⁵

²GE 1 (Applicant's security clearance application, dated December 22, 2006) at 1, 6; Tr. 18-20, 118.

³Tr. 20-21, 23.

⁴Tr. 24, 60-82, 113.

⁵GE 3 (Credit report, dated February 6, 2007); GE 4 (Credit report, dated January 23, 2008); AE A (Copy of bank statement); AE B (February 11, 2008 letter showing final car payment); AE C (Bank statement); Tr. 21-22, 24-26, 79, 81-82, 84, 86, 89-90, 92, 118.

Applicant currently earns \$7.50 an hour at the fast food restaurant. She works as many hours as the restaurant will give her, usually between 32 and 40 hours a week. Her gross earnings through March 15, 2008 totaled \$2,600, and her net income totaled \$2,320. She works, on average, 10 days every six weeks for the Department of Defense contractor, earning \$12.50 an hour. Her gross income from this job, as of the hearing date, totaled \$1,936 and her net pay totaled \$1,800. Her monthly expenses include a mortgage of \$432, utilities of \$80, car insurance of \$110, \$400 for food, \$62 for telephone, \$80 for gasoline, \$48 for Direct TV, and \$40 for credit cards for a total of \$1,252. She does not receive any child support for her children. Her current income provides enough to pay her monthly living expenses.

With the exception of the two debts listed in ¶ 1.m and 1.n of the SOR, Applicant's unpaid debts occurred when her long-term relationship ended. She attempted to pay the debts, but between July 2001 and January 2002, she defaulted on the credit card debts, as she received no financial assistance from her significant other who had created much of the debt problem. In her response to the SOR, she denied many of the debts because she did not recognize the listed creditor. At the hearing, she acknowledged several debts after the original creditor was identified. She disagrees with the total amount she owes. Her January 23, 2008 credit report reflects she challenged the validity of the \$1,023 (SOR ¶ 1.a, a debt she does not recognize) and \$2,198 (SOR ¶ 1.c.) debts. Contrary to the SOR allegation in ¶ 1.h, the February 6, 2007 credit report indicates this account has a zero balance and a high credit of \$1,234, not an unpaid balance of \$1,234, and the account was transferred to recovery. The record does not indicate which creditor now holds this account and Applicant does not recognize the account.⁶

Applicant paid the debt listed in SOR ¶ 1.m., which arose over a dispute with the creditor over service not performed. The \$57 debt in SOR ¶ 1.n. relates to collect long-distances telephone charges from Mexico made to her home telephone when no one was at home. She spoke by telephone with her long-distance carrier about the charges on several occasions. Her calls lead to the removal of one call, but not the other calls. She cancelled her service with this long-distance telephone carrier, which is not the listed creditor. The actual bill is listed as a debt to her local telephone carrier because the long-distance carrier's bill is included in the local telephone carrier's bill. She continues her telephone service with the telephone carrier identified as the creditor and regularly pays her bill.⁷

Applicant enjoys her work as a trainer. Her employer describes her trainer skills as valuable because she demonstrates remarkable adaption skills in her various trainer roles. Former employers provide very favorable recommendations on her work skills and ethics, as do friends and former professors. When she learned that she would be

⁶GE 3, *supra* note 5; GE 4 *supra* note 5, at 3; Tr. 49-50.

⁷AE A (Copy of bank statement, dated February 14, 2008 through March 13, 2008) at 2; AE C (Copy of bank statement, dated January 16, 2008 to February 14, 2008) at 1; Tr. 53-60.

unable to do the security segment of her trainer job, she found other employment which enables her to provide her family with basic necessities including food and housing.⁸

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.

⁸AE E through AE J; Tr. 22.

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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Towards the end of her long-term relationship, Applicant and her significant other accumulated delinquent credit card debt. She attempted to pay the debt, but eventually defaulted on the obligations. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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 began to increase significantly toward the end of the 1990s, when her then significant other continued to obtain credit cards in both their individual names. After she ended this relationship, she attempted to continue with the debt payments, but could not do so. She defaulted on the credit card debts between about July 2001 and January 2002. Since that time, she has always paid the mortgage on her home and her car payments. She remains current on her existing credit card debts and does not have new, unpaid debt. She has not had any contact with her significant other for six years and he is no longer a part of her life. The credit problems created by his actions are not likely to reoccur. This mitigating condition applies because I find the behavior occurred under circumstances that are unlikely to recur, and it does not raise concerns about her current reliability, trustworthiness, or good judgment.

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

business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” As noted above, some of Applicant’s financial problems arose because her former significant other obtained and used credit cards without her knowledge, without sufficient financial resources to pay the debt incurred. She also used the credit cards and attempted to make the payments for sometime after she ended her long-term relationship with him. His failure to provide child support and her limited earning capacity prevented her from keeping up the payments. I find this potentially mitigating condition partially applies in this case.

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). Applicant has not met with a financial counselor. However, in the last eight years, she has always paid her mortgage and car payments. In the last three years, she acquired several new credit cards with a small credit line. She regularly makes these payments. She does not live beyond her income and manages her current financial resources prudently. This mitigating condition applies partially.

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 paid one recent overdue debt, but has not paid any other debts. She has not initiated any payments of her older debts, I conclude this potentially mitigating condition does not apply.

Applicant did not recognize many of the debtors listed in the SOR, although at the hearing, when the original creditor was identified, she did recognize the debt. When she did not recognize two debts, she challenged the validity with the credit reporting companies as shown by her January 2008 credit report. AG ¶ 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” partially applies.⁹

She also receives some credit in the whole person analysis, *infra*, for the application of the State’s 6-year statute of limitations, which applies to all the debts listed in the SOR except the debts in allegations 1.m and 1.n. Under State law, the creditors are time barred from collecting these debts See State Code. Ann. §44-501.¹⁰

⁹AG ¶ 20(f) is not relevant to this case.

¹⁰A State Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be

Elimination of these delinquent debts through the statute of limitations has ended her potential vulnerability to improper financial inducements related to these debts as she no longer has any legal responsibility for these debts. The fact that these debts are very old and not collectible under state law does not negate her past conduct in not paying her outstanding debts, a factor I must consider.

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 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's unpaid debts are a serious problem. Although finances were usually very limited during her long-term relationship, she always paid the mortgage and car payments. Her financial problems first became unmanageable when her significant other started obtaining credit cards and abusing the credit. While she used the cards for family needs and initially paid the bills, over time, the bills began to mount. When she ended her relationship, she tried, but could not continue making payments on the credit card debt, in part because she received no financial support from her significant other. (See AG ¶ 2(a)(1)-(3).)

Applicant obtained employment in 2000 and has worked steadily since this time. She returned to school, eventually earning an associates degree. With her additional education skills, she sought better paying employment in order to provide for her

ha[led] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 609 S.E.2d 548, 552 (Ct. App. 2005) (internal quotation marks and citations omitted).

children. Her credit reports show no outstanding debt from her education. See AG ¶2(a)(6).

Applicant became the sole financial provider for her three children when she ended her long-term relationship with their father. In determining how to use her limited resources, she made decisions which provided her children with their basic needs, such as livable housing, food and clothes. To meet these needs, Applicant needed transportation to and from work since the rural area where she lived lacked public transportation. She has purchased and paid for two used cars. Her two recent, small debts arose when she disputed the charges, one for services she did not receive and one for telephone calls not made by her family. On her own, Applicant has paid her bills in a timely manner and managed her limited financial resources prudently. She currently works two jobs. In the last eight years, Applicant had to make choices about using her scarce resources. She always made financial decisions which favored providing for the needs of her children. She made an effort to pay the credit card debt incurred during her long-term relationship, but ultimately decided that she needed to start fresh financially and went to school for better employment opportunities. Since that time, Applicant has undergone significant behavioral changes. She works steadily and consistently. She is a reliable and dependable employee. She pays her current bills and limits the amount of credit on her credit cards. She pays her bills and fights with creditors over bills she does not believe she owes. She acts responsibly in all aspects of her life. Her current finances are good. She has no criminal record and her children are doing well. She has focused her attention on providing a stable domestic environment for her family. Over the years, she has lacked sufficient resources to pay her old credit card debt; however, that debt was never reduced to a judgment and the Statute of Limitations has expired, making it uncollectible. (See AG ¶ 2(a)(8).) Thus, 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. While some old debts remain unpaid, they are insufficient to raise security concerns as she has demonstrated that she is a reliable and responsible individual. (See AG ¶ 2(a)(1), (7)-(9).)

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:	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

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.

MARY E. HENRY
Administrative Judge