



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-11883
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

March 28, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted her security clearance application (e-QIP) on March 5, 2007. On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F. 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 November 8, 2007. She answered the SOR in writing on November 26, 2007, and requested a hearing. Department Counsel was prepared to proceed on December 17, 2007. On December 27, 2007, the case was assigned to me to conduct a hearing on Applicant’s security suitability. On January 8, 2008, I scheduled a hearing for February 14, 2008.

I convened the hearing as scheduled. Three government exhibits (Ex. 1-3) and seven Applicant exhibits (Ex. A-G) were received into evidence without any objections, and Applicant testified, as reflected in a hearing transcript (Tr.) received by DOHA on February 27, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant failed to make her mortgage payments and the lender bank filed for foreclosure in the amount of \$85,006 in February 2006 (SOR ¶ 1.a), and that she owes several other debts charged off and/placed for collection: \$96 for cable television services (SOR ¶ 1.b), \$456 for medical (veterinary) services (SOR ¶ 1.c), \$921 for utility services (SOR ¶ 1.d), \$437 for veterinary services (SOR ¶ 1.e), \$3,860 for telephone services (SOR ¶¶ 1.f, 1.h, 1.i, 1.j, 1.k), \$1,818 for jewelry (SOR ¶ 1.g), \$5,827 in department store charges (SOR ¶¶ 1.l, 1.m, 1.n), and charged off balances of \$1,319 (SOR ¶ 1.o) and \$3,835 (SOR ¶ 1.p) to the same lender. Applicant admitted the debts with the exception of a \$3,593 retail store debt (SOR ¶ 1.n) that was a former boyfriend's account on which she had been added. She also raised extenuating circumstances, primarily a late diagnosed mental illness of her husband that led him to miss work and then eventually quit working. Applicant expressed her intent to file for bankruptcy in early 2008 and to press her spouse's claim for social security disability. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 42-year-old administrative assistant. She began working for a defense contractor in September 2003, and was issued an interim secret clearance in 2004. Before her background investigation was completed, Applicant was transferred to another employer due to a tasking change in December 2006. In about April 2007, that company sold her section to her current employer. Applicant does not require a security clearance for her administrative assistant duties, but she has been cross training for auditing duties that require a clearance. (Ex. 1, Tr. 50-51)

Applicant was married to her first husband from April 1984 to June 1986. They had a daughter in July 1985. Applicant had another daughter in June 1989 and a son in August 1990 in another relationship. She raised the three children on her own until February 2003, when she married her current spouse. (Ex. 1, Tr. 47) Applicant did not receive child support with the exception of two months of payments from her first husband for their daughter in about 2003. (Tr. 48-49)

Applicant was consistently employed as a bookkeeper from about April 1999 to April 2001. From May 2001 to June 2003, she was employed as a customer service representative for a printing company. She collected unemployment for three months thereafter until she accepted her administrative assistant position with a defense contractor in September 2003. (Ex. 1)

Applicant's spouse has had a history of working on and off due to problems with anxiety and impulse control that led him to not report for work or to abruptly quit. Before their marriage, he drove a fruit and vegetable delivery truck full-time in a neighboring state (Tr. 53-55). After he relocated to be with Applicant, he worked as an oil technician full-time at \$8.00 an hour (Tr. 64) and then as a customer service representative. He did not work at all in 2004. From January 2005 to August 2005, he was employed full-time at \$10 an hour delivering furniture and appliances. (Ex. C)

Applicant's spouse began seeing his family physician, a doctor of osteopathy, for complaints of mood swings in July 2005. He was placed on Lexapro and then Zoloft for depression. He did well initially, but began taking his medications intermittently, and he abruptly quit his job in August 2005. During a February 2006 office visit, he complained of irritability and being unable to keep a job. He had missed two medical appointments and was counseled about that. (Ex. D) From March 25, 2006 to June 15, 2006, he worked full-time as a tire technician at \$8.00 an hour. (Ex. C)

In September 2006, he worked for less than a month (Tr. 66) as a yard worker, placing lumber planks on trailers, receiving shipments of wood and steel, and cleaning up the yard. He was paid \$10 an hour. During the latter quarter of 2006, he worked full-time for a rent-a-center at about \$12.65 an hour. From December 20, 2006 to January 25, 2007, Applicant ran an injection molding press part-time (20 hours weekly on average) at \$9.00 an hour. (Ex. C)

Following a blowup at work in February 2007, Applicant's spouse complained of increased stress and depression to his physician. He was counseled and placed on mood stabilizer medications. (Ex. D) In April 2007, he got a job as a warehouse worker in receiving at a discount retailer where he was paid \$8.00 an hour. (Ex. C) Despite his mood stabilizing medications, he continued to isolate himself, on occasion spending days shut up in a dark room. By mid-May 2007, he was again unemployed and began pursuing a disability claim for his depression and anxiety. (Ex. C, Ex. D)

Applicant struggled financially, even before her husband's intermittent employment, but her difficulties mounted when she could not count on him contributing to the household finances. In February 2003, she refinanced her mortgage, taking out a 30-year conventional real estate loan of \$81,175 (SOR ¶ 1.a). Her monthly mortgage payment increased from about \$414 monthly to \$638,¹ but with the loan monies she managed to pay off some of her other debts (Tr. 57). In June 2003, Applicant paid a delinquent \$495 cellular debt after charge off. In January 2004, a cable television provider placed a \$96 debt balance for collection (SOR ¶ 1.b). Applicant made payments toward a \$2,567 debt for their wedding rings, but a balance of \$1,632 was charged off in 2004 (SOR ¶ 1.g). In March 2004, Applicant's three accounts with a

¹Applicant testified that her monthly mortgage payment had been about \$386 monthly. (Tr. 56) Her credit report of March 2007 shows she had two mortgage loans before she refinanced, of \$7,490 at \$34 monthly for 240 months, and of \$46,800 at \$380 monthly for 361 months. (Ex. 3) Her total mortgage was about \$414 per month.

nationwide retailer were placed for collection in the amounts of \$1,425 (SOR ¶ 1.l), \$799 (SOR ¶ 1.m), and \$2,951 (SOR ¶ 1.n).² In September 2004, the town filed a real estate tax lien of \$203 against Applicant. She paid it in December 2004, but that month a cellular telephone services provider placed a debt balance of \$890 for collection (SOR ¶ 1.f). (Ex. 3, Tr. 74-79)

In May 2005, a local veterinarian referred an unpaid debt of \$437 for collection (SOR ¶ 1.e). (Ex. 2) That August, the town filed a \$414 tax lien against her for unpaid property taxes. She satisfied the lien in December 2005. Applicant also fell behind in two auto loans that had been opened in November 2004, one for \$6,218 (SOR ¶ 1.o) and the other for \$11,590 (SOR ¶ 1.p). In an effort to keep her home Applicant voluntarily surrendered both cars in about October 2005 so that she would no longer have to make her car payments (Ex. 1, Tr. 42, 72). Respective balances of \$1,319 (SOR ¶ 1.o) and \$3,810 (SOR ¶ 1.p) were charged off. (Ex. 3)

In about November 2005, Applicant was 120 days or more past due in her mortgage and it was transferred to a new lender. She was put on a waiting list for low-income legal help (Tr. 41), and even cashed out her 401(k) at work and used the \$900-\$1,000 to make a mortgage payment. (Tr. 98) After months of struggling to catch up in her mortgage, Applicant stopped paying it in March 2006. (Tr. 59) There were forced to leave her home in November 2006, and the bank filed for foreclosure in February 2007 in the amount of \$85,006 (SOR ¶ 1.a). The mortgage was \$10,079 past due. (Ex. 3)

In about April 2006, Applicant incurred about \$456 in veterinary charges for her horse (Tr. 75) that she did not pay. In October 2006, the debt was referred for collection (SOR ¶ 1.c). She was also behind \$336 on a telephone bill, and a \$754 debt balance was in collection as of April 2007 (SOR ¶ 1.k). In September 2006, yet another tax lien was filed against Applicant in the amount of \$199. She paid it in November 2006, but also that month, a cellular phone account held since March 2004 was charged off in the amount of \$1,427 and then placed for collection (SOR ¶ 1.j).³ In December 2006, a \$685 wireless telephone debt delinquent since December 2003 was placed for collection (SOR ¶ 1.h). (Ex. 2, Ex. 3) In March 2007, her local power company (Tr. 76) placed a \$921 debt balance for collection (SOR ¶ 1.d). That September, she closed a telephone services account opened in January 2007. It was \$103 past due (SOR ¶ 1.i). (Ex. 2, Tr. 74-79)

On March 5, 2007, Applicant applied for a security clearance. On her Electronic Questionnaire for Investigations Processing (e-QIP), she reported her voluntary

²Applicant disputes any legal responsibility for the debt in SOR ¶ 1.n, asserting it is a former boyfriend's debt (Tr. 80-81). Her credit report of March 20, 2007 (Ex. 3) shows that it was a revolving charge account in her name only. She was listed as an authorized user on a different revolving charge with the same retailer. There is no delinquency listed under that account number.

³Applicant testified that her husband incurred a lot of the charges ("Making phone calls to people and just talking for a long time, like he'd call his father [state omitted] and talk and talk and talk when he was having episodes or he'd call me at work." Tr. 77).

surrender of two vehicles in 2005 “due to an illness that kept [her] husband out of work for over 3 months,” and the tax lien filed against her in 2005. In response to any financial delinquencies over 180 days in the last seven years and any debts currently delinquent over 90 days, Applicant disclosed that she was late in her mortgage payments, and that she had “several past due balances on [her] credit report at this time . . . due to [her] husband being ill and out of work for at least a 3-month period last year without any income.” Applicant added that she was “in the process of getting things organized and back on track.” She hoped to have her mortgage situation rectified by the end of the month. (Ex. 1)

In about May 2007, Applicant gave her spouse an ultimatum to obtain treatment for his problem or he would have to leave (“I lost my house and I had lost enough.” Tr. 106). After he suffered an anxiety attack, he admitted himself for inpatient treatment in a hospital psychiatric unit from May 21, 2007 to June 5, 2007, for a mood disorder, not otherwise specified. He was discharged on antidepressant and anti-anxiety medications to an intensive outpatient program. (Ex. B) His application for social security disability benefits was twice denied. As of February 2008, he was continuing to appeal the denial. (Ex. A, Tr. 68) Other than one week of work at an animal shelter in October 2007, Applicant’s spouse has been unemployed since about May 2007. (Tr. 101-02) His psychiatrist has advised him to refrain from working until his medication issues are settled. (Tr. 102)

Checks of Applicant’s credit in March 2007 and October 2007 revealed that her mortgage was in foreclosure and that she had made no progress toward resolving her delinquent debts. As of October 2007, Equifax Information Services reported her jewelry debt (SOR ¶ 1.g) had increased to \$1,818. The debts in SOR ¶¶ 1.h (\$685), 1.i (\$103), 1.j (\$1,427), 1.k (\$754), 1.l (\$1,435), 1.m (\$799), and 1.n (\$3,593) were in active collection status. The deficiency balances of the two repossessed automobiles were listed at \$1,319 (SOR ¶ 1.o) and \$3,810 (SOR ¶ 1.p). Applicant was also \$572 past due in her repayment of a \$9,055 student loan that she cosigned on for her daughter (Tr. 95, 103-04). Her mortgage was listed in foreclosure with a zero balance (SOR ¶ 1.a). (Ex. 2) In June or July 2007, Applicant was notified of a \$37,000 balance on the loan after the foreclosure. (Tr. 60-61) A credit card account that she had opened in June 2006 with a \$300 credit limit had a \$515 balance but it was not past due. (Ex. 2)

In December 2007 or January 2008, the jewelry store lender pursued collection in court of the \$1,818 debt balance (SOR ¶ 1.g). The lender is willing to wait six months to give Applicant some time to stabilize her financial situation. (Tr. 81) The credit union also brought suit in late 2007 to recover the deficiency balances of the automobile loans (SOR ¶ 1.o and 1.p), but then wrote off the debts when it became clear she could not pay them. (Tr. 81). Her credit card with the \$300 limit was delinquent as of February 2008. (Tr. 95)

Applicant was supporting the family on take home pay of about \$853 every two weeks as of November 2007 plus public assistance (food stamps). (Ex. E, Ex. F) Effective January 1, 2008, she had taken in a tenant, who has agreed to be responsible

for half of some monthly living costs (rent, utilities, telephone, cable, internet, groceries). (Ex. G, Tr. 42, 89-90) Applicant has a household budget that leaves her with about \$300 per month, provided her tenant pays his share. As of February 14, 2008, he had contributed to the power bill and groceries but had not yet paid rent. (Tr. 90, 94)

Applicant intends to contact her creditors, starting with those owed the smaller amounts. (Tr. 96) She is considering bankruptcy to eliminate the debt burden of the mortgage but is still waiting to be assigned a lawyer under a state program. (Tr. 88) She had consulted with a consumer debt counseling organization but was told she would have to pursue another avenue because her debt was from other than consumer credit cards. (Tr. 83) In late 2007, she disputed the debt in SOR ¶ 1.n in writing with the creditor but has yet to receive a reply. (Tr. 43) Her younger daughter is finishing high school by taking night classes and she lives at home. (Tr. 48, 104) Her son, who is only 17, moved to another state in late December 2007 and is supporting himself, although he is still covered on her car insurance policy. (Tr. 48-49, 102-03) She has not collected food stamps since he moved out as she is no longer eligible. (Tr. 85) Applicant has about \$25 in savings and \$125 in her checking account. (Tr. 98)

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 that 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

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.

As a single parent supporting three children without any help, Applicant still managed to get by financially until her marriage in February 2003. In 2004, a \$96 cable television debt was referred for collection and she was delinquent in paying for their wedding rings. A nationwide retailer from whom she had bought appliances referred about \$5,175 in delinquent debt for collection. While she disputes one of the debts, all three are listed on her credit report and she has not disproved her legal responsibility for any of the debts. In 2005, she did not pay the veterinary charges for care of a horse that she owned at the time, and she surrendered two cars to free up funds for her mortgage. She even withdrew her pension funds to make a mortgage payment but eventually lost her home to foreclosure. Delinquent utility and telephone charges totaling \$3,890 have been placed for collection since 2005. Although one lender has apparently elected to write off the deficiency balances on her two automobile loans (SOR ¶¶ 1.o and 1.p), she is being held liable for about \$37,000 of her mortgage loan balance after the foreclosure and over \$13,000 in additional delinquent debt covered in the SOR. Significant security

concerns are raised by “inability or unwillingness to satisfy debts” (AG ¶ 19(a)) and by “a history of not meeting financial obligations” (AG ¶ 19(c)).

Applicant had to support her family of five solely on her income for substantial periods of time. Documents filed for social security disability for her husband show that he has not held a job for longer than three months since he began treatment for mood swings in July 2005. The available records and testimony reflect he did not work in 2004 and he has been unemployed since May 2007 with the exception of a one-week stint at an animal shelter in October. As of late 2007, Applicant’s take-home pay was \$853.65 every two weeks or about \$22,195 annually, assuming 26 pay periods. Even when Applicant’s spouse worked full-time from January 2005 to August 2005, their joint take-home income was less than \$40,000 annually. Whether or not Applicant could have done more to make sure that her spouse took all his medications and made all his appointments, his inability or unwillingness to report to work was due to anxiety and depression symptoms over which Applicant had little control. AG ¶ 20(b) (“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances”) is implicated, but it does not mitigate the security concerns raised by her substantial debt.

Applicant’s delinquent debt amounts to more than twice her annual salary. At her hearing in mid-February 2008, Applicant expressed a credible desire to resolve her indebtedness, but she has yet to make any payments on her debt. She has taken a tenant into their apartment to pay half of some of the household expenses (rent, utilities, groceries, internet, cable television) starting January 1, 2008, but the tenant had yet to make his first rent payment (Tr. 90). Her husband recently received his second denial of social security benefits. His attorney’s expectation of eventual success (Ex. A) is not a guarantee that the denial will be overturned. Even if the disability claim is resolved in her spouse’s favor, it would take some time for Applicant to get out from under the burden of her substantial debt. Furthermore, Applicant’s failure to remain current in her payments on a low-limit credit card raises doubt about whether she can be counted on to avoid incurring new delinquencies. As of September 2007, her debt balance of \$515 exceeded the \$300 limit on the card (Ex. 2). She was not paying anything on the account as of February 2008 while interest on the delinquent debt was continuing to accrue (“They’ve sent me just statements showing the addition to interest and saying its delinquent.” Tr. 95). She also exercised poor financial judgment in continuing to open new cellular phone accounts when others went unpaid. This financial irresponsibility is not mitigated by any of the mitigating conditions under AG ¶ 20.

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) the 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. Applicant is credited for being candid about her financial problems which unfortunately are substantial and ongoing. She may well be in a better position financially a year from now, especially if her spouse is successful in his appeal of the denial of disability benefits, but I am unable to conclude at this time that it is clearly consistent with the national interest to grant her access.

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:	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:	Against 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 ⁴

⁴Although the creditor has decided to not pursue collection, the evidence shows Applicant had a history of late payments on both SOR ¶¶ 1.o and 1.p. (Ex. 3).

Subparagraph 1.p:

Against Applicant

Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge