



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-12021
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Per Se*

May 29, 2008

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On November 29, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on January 17, 2008, and requested a hearing. The case was assigned to me on January 28, 2008, and was scheduled for hearing on February 21, 2008. A hearing was held on February 21, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of four exhibits; Applicant relied on three witnesses (including herself)

and six exhibits. The transcript (R.T.) was received on February 29, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Appellant requested leave to supplement the record with documentation of her payment and payment agreements with her listed creditors. For good cause shown, Applicant was granted 14 days to supplement the record. Department counsel was afforded three days to respond. Within the time permitted, Applicant supplemented the record with documented payments and repayment agreements with two of her creditors. Her post-hearing exhibits were admitted and considered.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) petitioned for Chapter 7 bankruptcy in July 1998 (discharged in November 1998) and (b) accumulated four debts exceeding \$16,000.00. Applicant admitted most of the allegations. She admitted her Chapter 7 bankruptcy, attributing the action to financial mistakes, and claiming better financial decisions. She admitted her creditor 1.b and 1.d debts, attributing the debt to a voluntary car repossession and inability to reach agreement on a repayment plan. Applicant also admitted her creditor 1.d debt, while claiming to have reached a repayment agreement with the creditor. Applicant denied the creditor 1.c debt, however, claiming the debt has been paid off.

Findings of Fact

Applicant is a 38-year-old equipment custodian officer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Never married, Applicant lived with her fiancé for several years (between 1993 and 1998). While they were together, they shared living expenses. After they separated, she could no longer pay all of the debts she and her fiance had accumulated in her name. At the time, she was a college student and working part time at a local AFB for minimum wages. With her limited wages, she could not afford to pay her debts on her level of income (R.T., at 33-34, 37-38). Receiving no help from her finance, she made the decision to file for bankruptcy. In July 1998, Applicant petitioned for Chapter 7 bankruptcy, scheduling around \$15,000.00 in unsecured debts (see R.T., at 48-49). She was discharged in November 1998 (R.T., at 33).

In June 2002, Applicant purchased a 2002 Ford truck for around \$24,000.00 (see ex. H). In October 2004, Applicant was involved in an accident, in which the vehicle was declared a total loss by the insurance company. Unable to continue paying on the

vehicle, Applicant agreed to a voluntary repossession with creditor 1.b two weeks later 9still in October 2004. The lender's furnished records document that insurance proceeds were received from the insurance company in December 2004 for \$8,200.00 (the presumed market value of the vehicle at the time). According to creditor 1.b's records, this left a deficiency balance owing of \$14,449.61 (see ex. H). Records also reflect that Applicant purchased a replacement vehicle (a 2002 Ford Taurus) in October 2004 from another creditor for \$14,076.44 (Ex. J). Applicant retains this vehicle and continues to finance it with the same seller.

Following the hearing, Applicant documented a repayment plan she worked out with creditor 1.b in January 2008. Under her January 2008 repayment agreement with creditor 1.b, Applicant will make \$100.00 monthly payments on a calculated \$18,034.99 balance until the deficiency is satisfied (see ex. I). This is designed to be a temporary repayment plan until Applicant can work out a lump sum repayment of the remaining deficiency balance (R.T., at 51-52). Applicant efforts to date to reach an accord with creditor 1.b on a lump sum satisfaction have been unsuccessful.

Applicant incurred two other debts that have since become delinquent. She became indebted to creditor 1.c on a credit card account she opened in September 1999 (see ex. 3). Earlier efforts to pay off this and her other debts through debt consolidation were not successful. Applicant attributes her debt consolidation failure to her credit history which reflected her 1998 bankruptcy (R.T., at 58-59).

More recently, Applicant was able to work out a settlement agreement with the creditor in October 2007 that enabled her to settle her account for about half of the owed amount: Applicant documents payment of the agreed \$708.81 account balance in October 2007 (see ex. A). She settled this debt with funds she withdrew from her 401(k) retirement plan (ex. A; R.T., at 54). Her 401(k) loan will be repaid out of monthly deductions from her pay check.

With respect to Applicant's other incurred delinquent debt (a creditor card debt with creditor 1.d for \$2,031.00), records reflect that Applicant entered into a repayment agreement with this creditor in December 2007 (see ex. B; R.T., at 35-36). Under the terms of her repayment agreement with this creditor, Applicant is obligated to make monthly payments of \$97.41 on an agreed debt balance of \$2,337.84 (see ex. B; R.T., at 56-57). Applicant documents making her first earnest payment under this agreement in January 2008 (see ex. B).

Applicant currently nets \$2,405.00 a month from her work (see ex. 2; R.T., at 61). Her monthly expenses total \$1,350.00, and her other monthly deductions total \$1866.00.(ex. 2; R.T., at 63). After deducting her monthly expenses and other deductions, she has a net monthly remainder of \$189.86 (see ex. 2; R.T., at 62).

Applicant has received numerous performance awards between 2001 and 2004 in recognition of her outstanding technical support she has provided her current employer (see E; R.T., at 40-42). Her first line supervisor tracks her outstanding

progress with his company. As an equipment custodian officer, Applicant is responsible for tracking valuable government equipment (ex. D). She is credited with carrying out her responsibilities in an organized, efficient, and competent manner, and according to a high level of standards. Her supervisor characterizes her as an honest and trustworthy person (see ex. D). Witnesses who work with Applicant and are familiar with her work describe her as honest and trustworthy (R.T., at 83-89). Applicant's updated credit report shows good payment history with her current creditors (see ex. F).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

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." See Adjudicative Guidelines (AG), ¶ 18.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may

draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is a highly regarded equipment control officer for a defense contractor who accumulated a number of delinquent debts over a six-year period spanning 1998 and 2004 attributable to a number of unforeseen circumstances ranging from the loss of a second income following her split with her fiancé and some difficult times with several of her creditors following an accident in October 2004. Considered together, and without resolution, they raise security significant concerns.

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of several delinquent debts and her past inability to address these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a) "inability or unwillingness to satisfy debts" and DC 19(c) "a history of not meeting financial obligations."

Applicant's Chapter 7 bankruptcy in 1998 is mostly attributable to cash shortages following her separation from her fiancé. With no financial support from her ex-boyfriend to help her discharge the debts they incurred in her name, she could not pay them all and decided to discharge them through Chapter 7 bankruptcy.

Following her bankruptcy, Applicant was able to maintain her finances for several years and reestablish her good credit. As the result of her accident in 2004, the insurance company declared her financed vehicle a total loss, and dispensed a

check for only \$8,200.00 on a carried balance of around \$22,000.00 at the time. Unable to continue paying this balance and purchase a replacement vehicle (a Ford Taurus) to drive, she agreed to a voluntary repossession. This repossession left her with a deficiency balance of over \$14,000.00 on the original purchase, minus the received insurance proceeds. Until recently, she has not been able to pay off either this deficiency balance or the other two listed debts covered by creditors 1.c and 1.d.

Since receiving the SOR, Applicant has initiated considerable efforts to resolve the debts she acknowledges as her own, and documents paying off one of her creditors (creditor 1.c), and reaching repayment agreements with her two remaining listed creditors 9creditors 1.b and 1.d).

Considering Applicant's exhibited extenuating circumstances associated with her sudden loss of joint income in 1998 and again in 2004 following the loss of her Ford truck, and her demonstrated responsible efforts to resolve her acknowledged debts, Applicant may rely on MC 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," of the Guidelines for financial considerations. Her limited financial income, while improving, precludes her from paying off her two remaining debts in lump sums.

Mitigation credit is also available to Applicant based on her credible proofs of payment and age of the debts. Age of the debts at issue is covered by two of the mitigating conditions for financial considerations: MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," has applicability, while not dispositive. MC 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is fully applicable.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Both from a whole person assessment that a consideration of all of the facts and circumstances surrounding Applicant's debt accumulations, her documented steps taken to resolve them, and the responsibility and trustworthiness she is credited with in her work and personal life, Applicant mitigates security concerns related to her proven debt delinquencies. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.d of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Sub-paras. 1.a through 1.d: FOR APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge