



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-12105
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

October 16, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 7, 2007.¹ On February 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F that provided the basis for its decision to deny her a security clearance and refer the matter to an administrative judge. 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 as of September 1, 2006.

¹The government submitted as Item 4 a Questionnaire for Sensitive Positions (SF 86) dated March 29, 2007, to which the signature form for the e-QIP is attached. There is no information as to how that signature form came to be appended to an SF 86 that on its face is a property of the Office of Personnel Management (OPM).

Applicant acknowledged receipt of the SOR on March 5, 2008. She submitted an undated Answer to the SOR, which was received by DOHA on May 19, 2008. She requested a decision without a hearing, and on July 18, 2008, the government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. No response was received by the September 3, 2008, deadline. On September 26, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for her. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 2), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes 13 delinquent debts totaling \$16,073 (SOR ¶¶ 1.a through 1.m), including an \$8,317 judgment debt owed a former landlord (SOR ¶ 1.j). Applicant admitted the debts without any explanations when she answered the SOR (Item 2). Her admissions are accepted and incorporated as findings of fact. After considering the evidence of record, I make the following additional findings.

Applicant is a 27-year-old single mother who has worked as an outside machinist for a defense contractor since August 2006 (Item 4). The record does not reflect that she has held a security clearance.

Applicant had her first child in 1996, when she was still in high school. After high school, she worked for a succession of employers as a bill collector, sales representative, and a customer service pickup agent. From June 2002 to April 2003, she attended a vocational/training school from which she earned a medical assistant's diploma. Applicant did not work while she attended school and for a couple of months thereafter. In August 2003, she took a sales clerk position at a discount retailer, but stopped working in November 2003. In mid-February 2004, she gave birth to her second child (Item 4).

In September 2004, she began a new job as an account representative/bill collector, but was there for less than eight months. Applicant was again unemployed, for about two months until June 2005, when she accepted a position with a telemarketer. Within the month, she began working as a machinist for a plastics manufacturer. Following another period of unemployment from November 2005 to January 2006, she was placed by a temporary services agency in a customer care representative position. By May 2006, she was again out of work until August 2006, when she started her employment with the defense contractor as an outside machinist (Item 4).

Applicant completed an e-QIP on March 7, 2007, from which OPM prepared a SF 86 that was made available for review (Item 4). Applicant disclosed in response to

financial record inquiry (question 27D on the SF 86) that a judgment was awarded against her in May 2003 in the amount of \$8,371 (SOR ¶ 1.j):

THIS JUDGMENT WAS FILED AFTER AN APARTMENT FIRE. I WAS EIGHTEEN YEARS OLD, A FIRE STARTED ON THE KITCHEN STOVE. I PANICKED WHEN THE FIRE STARTED AND THREW WATER ON THE FIRE INSTEAD OF SALT. I DID NOT HAVE RENTERS INSURANCE. [The landlord] FILED FOR A JUDGEMENT, STATING THE FIRE WAS MY FAULT AND I WOULD BE HELD LIABLE FOR THE DAMAGES.

Applicant also listed six unresolved delinquent debts in response to the financial delinquency questions (on the SF 86, 28A, "LAST 7 YRS, OVER 180 DAYS DELINQUENT ON ANY DEBTS?" and 28B, "CURRENTLY OVER 90 DAYS DELINQUENT ON ANY DEBTS?"): a \$2,831.54 credit card debt (SOR ¶ 1.g), two cellular telephone debts of \$102 (SOR ¶ 1.m) and \$66 (SOR ¶ 1.d), and three medical debts of \$63 (SOR ¶ 1.h), \$373 (SOR ¶ 1.k), and \$63 (not alleged) (Item 4).

A check of Applicant's credit on March 29, 2007, revealed additional delinquencies of \$301 past due since September 2001 (SOR ¶ 1.a), \$847 on an auto loan owed since November 2001 (SOR ¶ 1.c), \$693 on a medical account in collection since January 2004 (SOR ¶ 1.l), and \$335 on a collection account placed for \$292 in September 2001 (SOR ¶ 1.b). Applicant was also listed as an authorized user on a credit card account with a retailer opened in December 2001 and charged off in the amount of \$417 in August 2002 (SOR ¶ 1.f). The collection balance of the debt in SOR ¶ 1.g had risen to \$2,942, and no progress had been made about resolving the other debts listed on her SF 86 as well (Item 5).

On June 13, 2007, Applicant was interviewed by a government investigator about her financial issues. Applicant indicated she did not recognize the collection agencies acting as assignees for the debts in SOR ¶¶ 1.d, 1.h, 1.k, and 1.m, even though she had listed each of these debts on her SF 86. She explained that the delinquent car loan debt was for a repossessed car. She thought she had cosigned on a vehicle loan for her then boyfriend but found out that it was solely in her name when it was repossessed. Applicant indicated she had heard nothing about the vehicle or loan since 2003 so she was unsure whether the debt had been paid. As for the delinquent retail credit card debt on which she was listed as an authorized user (SOR ¶ 1.f), Applicant expressed her belief her mother had opened the account. Applicant admitted that she had stopped making payments on a VISA card account balance of about \$2,200 (SOR ¶ 1.g), when she was between jobs and struggling to support herself and her children, and it was placed for collection in 2001/02. Applicant wanted to make payments on the debt but could not afford to do so. She also acknowledged one unpaid medical debt of \$693 (SOR ¶ 1.l), but she wanted to check on it since she has always been covered by Medicaid. Applicant explained that the \$8,000 judgment (SOR ¶ 1.j) was awarded a former landlord for fire-related damage to her apartment. She had not paid the judgment because she was contemplating filing for bankruptcy. She stated she would make

payments on the judgment and on the credit card debt (SOR ¶ 1.g) if she does not file. Based on estimated monthly expenses of \$1,079 (she was paying no rent), Applicant estimated a net remainder of \$14 (Item 7).

In July 2007, Applicant took out an automobile loan of \$11,787, to be repaid at \$305 per month. As of December 2007, the account was current with a balance of \$11,213 (Item 8).

On October 30, 2007, Applicant indicated in response to financial interrogatories from DOHA that she had done nothing to resolve her delinquent debt, including a \$666.17 balance of a March 2003 financial judgment that had not been listed on her March 2007 credit report:

As of right now I am not financially able to resolve these debts. I'm just making enough to cover my regular household expenses, especially being a single mother with two kids. I have decided to use my tax refund for the 2007 year which I should receive by February or March of 2008 to file bankruptcy on these debts because I don't know if and when I would ever be able to pay them all off. (Item 6).

As of December 2007, Applicant's net salary had increased from \$1,508 to \$1,617 per month. She estimated her monthly living expenses (rent, clothing, utilities, car expenses, car payment, and cell phone) at \$1,377.50 (Item 7), but this figure does not account for any food costs. It is also unclear whether she had miscellaneous expenses.

As of January 22, 2008, Applicant's credit report showed no progress toward resolving the \$8,371 judgment (SOR 1.j), the \$830 past due balance for the repossessed vehicle (SOR ¶ 1.c), or the collection debts in SOR ¶¶ 1.a, 1.g, 1.k, and 1.l. She reportedly owed \$903 on a telephone services debt placed for collection in March 2002 (SOR ¶ 1.e). The charged off \$417 retail credit card balance (SOR ¶ 1.f) was still on her credit report as past due (Item 8). The \$525 judgment (SOR ¶ 1.i) and the collection debts in SOR ¶¶ 1.b, 1.d, 1.h, and 1.l did not appear on her credit report (Item 8), but there is no indication that they have been paid.

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 overarching

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 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.

Applicant has a history of financial delinquency since about 2001, when debt totaling about \$1,500 became past due (SOR ¶¶ 1.a-1.c, and a \$63 medical debt). In 2002, additional debt balances totaling about \$3,644 (SOR ¶¶ 1.d-1.h) were placed for collection. Two financial judgments totaling \$8,896 (SOR ¶¶ 1.i and 1.j) were awarded against her, and two medical debts were placed for collection (SOR ¶¶ 1.k and 1.l) in 2003. In March 2004, a communications company placed a \$102 delinquent balance for collection (SOR ¶ 1.m). 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)).

When she completed her e-QIP in March 2007, Applicant reported six delinquent debts and the \$8,371 judgment, so she was clearly aware of the debt. In October 2007, Applicant expressed her intent to file for bankruptcy after she received her income tax refund in spring 2008. There is no indication that she has made any payments on her debts or that she has sought to relieve herself of the debt burden through bankruptcy. Under the circumstances presented, AG ¶ 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”), AG ¶ 20(c) (“the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control”), and AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) do not apply.

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”) applies to the extent that debts were incurred due to a personal calamity and to insufficient income. Her largest debt, the \$8,371 judgment, was apparently due to a fire in her apartment. While Applicant’s conduct caused or at least contributed to the damage, the fire was an unforeseen and unwanted circumstance. Her other debts became delinquent between 2001 and 2004, when she held a succession of various jobs not likely to pay enough to support herself and a child. A period of unemployment from June 2002 to August 2003 corresponds to her vocational/technical training for a career as a medical assistant, so it was within her control. At the same time, it was reasonable for her to pursue a new career in the hope of making a better life for herself and her family.

However, Applicant’s failure to address her indebtedness, especially the court judgments, is inconsistent with the responsible behavior required for AG ¶ 20(b) to fully apply. Applicant was aware as of March 2007, if not before, that she owed a debt of \$102 and three others of less than \$70 each. With only about \$14 per month in discretionary income, she was not in a position to make meaningful efforts to pay even her minor debts. Her salary had increased by December 2007. Based on income and expense figures she provided, she would have had a net monthly remainder of \$239.50, but this figure does not include any costs for groceries or miscellaneous expenses. As of June 2007, Applicant was spending \$200 per month on groceries and \$260 on

unexplained miscellaneous expenses.² So despite an increase in salary, her financial situation has not improved, in part because she now has to pay rent of \$437.50 and higher utility costs. Applicant told the government investigator in June 2007 that she had consulted with an attorney about filing for bankruptcy. While a planned bankruptcy could alleviate the financial pressures, there is no indication that she has filed or can be expected to do so in the near future.

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”) applies, but only to the debt in SOR ¶ 1.f. Although Applicant admitted the debt when she answered the SOR, and it appears on the credit reports included in the record for review, she denied opening the account when questioned by an investigator in June 2007. She surmised her mother had opened the account in her name, although her mother had denied it. Per the March 2007 credit report, Applicant was only an authorized user on the account. Although she may be legally responsible for the debt, concerns for her financial judgment are not raised in the absence of evidence showing she incurred the delinquency.

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 her 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The government must be assured that those

²Department Counsel indicated in the FORM that with the changes to her income and expense figures in December 2007, Applicant had a negative monthly net remainder of over \$200 (FORM at 5). Based just on the salary and expense figures provided, Applicant has a positive remainder of \$239.50, but it does not include the costs of groceries or any miscellaneous expenses.

persons with classified access can be counted on to exercise good judgment at all times. Applicant has not concealed from the government that she has had difficulty meeting her financial obligations, but her handling of her financial matters continues to raise significant security concerns. Applicant remains under a burden of delinquent debt, including a sizeable court judgment, that she has not repaid due to lack of funds. At the same time, she financed the purchase of a vehicle in July 2007, taking out a loan of \$11,787 and increasing her monthly car payment from \$215 to \$305 per month. Although Applicant has lower car costs (presumably maintenance and/or gasoline) of \$134 per month, her overall savings amount to only \$43 due to the higher car payment. Based on the total amount financed and the monthly payment amount, it is not scheduled to be paid off within 36 months. Whether or not this car was a discretionary purchase, her delinquent debt is likely to take a back seat to her car loan. Her January 2008 credit report does not show any new delinquent accounts, but that alone is not enough to overcome the judgment concerns raised by her failure to date to make any good faith efforts to resolve her delinquent debt.

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:	For 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

Conclusion

In light of 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