



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-12290
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Edmunds, Esquire
For Applicant: *Pro se*

June 27, 2008

Decision

CURRY, Marc E., Administrative Judge:

On February 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its denial of Applicant's request for a security clearance. Specifically, it alleged facts which raise concerns under Guidelines F, Financial Considerations, and E, Personal Conduct. 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 answered the SOR on March 14, 2008, and requested a hearing. I was assigned the case on April 29, 2008. On April 30, 2008, the hearing was scheduled for May 20, 2008. At the hearing, I received four government exhibits, 11 Applicant exhibits, and the testimony of three Applicant witnesses. The transcript (Tr.) was received on

June 11, 2008. Upon reviewing the record evidence, I conclude that Applicant's application for eligibility to hold a security clearance is granted.

Preliminary Ruling

At the close of the record, Department Counsel acknowledged that Applicant had mitigated the government's Guideline E security concern (Tr. 58), as alleged in Paragraph 2. I have resolved Paragraph 2 in Applicant's favor, and will not address it further in the Decision.

Findings of Fact

Applicant is a 37-year old woman with two children, ages 15 and 13. She has been married since 2006. This is her second marriage. Her first marriage, to the father of her children, lasted from 1992 to 2003. She has a high school diploma and has taken a semester of college courses.

Applicant works as a financial assistant for a defense contractor. She is highly respected on the job and in her community. A coworker describes her as a "conscientious and reliable employee," (Exhibit C), and a friend describes her as a "hardworking, generous, and a trustworthy citizen" (Exhibit E).

Applicant's credit reports reflect approximately \$17,600 of delinquent debt. Approximately \$15,000 originated from charges that her first husband incurred (SOR subparagraphs 1.a through 1.g). He was a spendthrift who seldom worked on a steady basis, and repeatedly accrued debt that he failed to satisfy. After the first time her husband accrued delinquencies on their joint credit cards, she successfully obtained a consolidation loan and, by the late 1990s, had satisfied it (Answer at 2).

Then, without Applicant's knowledge, her first husband opened credit card accounts, either in her name or both of their names, concealed the bills, and used them to finance an extra-marital affair (Exhibit 2 at 4; Tr. 17). In approximately 2001, Applicant discovered these debts, left her husband, and filed for divorce.

In May 2003, the divorce was finalized (Exhibit K). The court granted custody of the children to Applicant, and ordered her husband to pay \$215 in weekly child support (Exhibit K at 2). The court also stated as follows:

The parties have divided the marital property and debt to their own satisfaction. Each of the parties shall keep such property as they now have in their possession. Each of the parties shall be responsible for the credit card debts that exist in their respective names (*Id.* at 3).

After the divorce was finalized, Applicant continued to discover credit card accounts that her ex-husband had opened without her knowledge (Answer at 2). Also, she began receiving phone calls from collection agents. When she tried to direct them

to her ex-husband, the creditors told her that she was ultimately responsible because they were in her name (Tr. 17). Applicant then confronted her ex-husband. He refused to pay them (*Id.*). She then entered consumer credit counseling in late 2003 and developed a payment plan for her debts (Answer at 2).

Applicant's ex-husband's child support payments grew increasingly sporadic, rendering her unable to adhere to the credit counselor's payment plan. After six months, she abandoned it. She has made no further effort to pay these delinquencies or contact the creditors (Tr. 23). All of these debts have delinquent since 2001.

Approximately \$2,200 of the SOR delinquencies constitute Applicant's children's medical bills accrued after the 2003 divorce (SOR subparagraphs 1.h through 1.t). Both children have behavioral and/or medical disorders requiring costly treatment (Tr. 35-36). Her insurance covers the children's health care. The delinquencies are amounts that exceeded the yearly deductibles. She contends that the medical bills are her ex-husband's responsibility. She contacted the collection agent for the medical collection agency listed in subparagraphs 1.h through 1.k to dispute the bills, and to give the agency her ex-husband's contact information (Exhibit I). When she locates him, her intention is to compel him to pay for her these bills. Her efforts at contacting him have thus far been unsuccessful.

She did not contact the collection agent for the remaining medical bills (SOR subparagraphs 1.l through 1.t) because she thought all of them were being managed by the collection agency listed in SOR subparagraphs 1.h to 1.k (Tr. 23).

Approximately \$400 of the debt listed in the SOR is a credit card account accrued after the divorce (subparagraph 1.u). Applicant is in the process of contacting the creditor. Excluding this debt and the medical debts, which she disputes, she is current on all of her other expenses and debts, including her monthly rent payments and her car note (Tr. 27-28; Exhibit 3).

Her ex-husband is approximately \$18,700 behind in child support payments (Exhibit H). His whereabouts are unknown. Applicant, with the help of the local social services agency that manages the child support payments, is trying to locate him and garnish his wages (Tr. 33; Answer at 2). He continues to change jobs frequently, moving from state to state.

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.

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 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.

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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 (AG ¶ 18). Here, Applicant's history of financial problems triggers the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Nearly all of Applicant's debt constitute either bills her ex-husband accrued surreptitiously, or her children's medical bills. During Applicant's first marriage, her ex-husband repeatedly abused the family finances. The first time he burdened Applicant with credit card debt, she obtained a consolidation loan, and gradually satisfied it. After her ex-husband's second episode of reckless overspending, she divorced him, and demanded that he pay the delinquencies. When he refused, she attempted to satisfy the debts again, but failed primarily because of financial difficulties caused by her ex-husband failure to pay court-ordered child support. 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," and AG ¶ 20(d), " the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," apply.

AG ¶ 20(b) also applies to Applicant's medical delinquencies. Her children have several medical and/or behavioral disorders that require costly treatment. She contends these bills, as copayments that exceeded her health insurance deductible, are her ex-husband's responsibility. She has been diligently pursuing court action to modify the child support order to compel him to satisfy them.

Under the state law where she resides, the custodial parent is required to pay copayments up to \$250 per year (Exhibit K). The court has the discretion to divide any medical expenses exceeding this amount between the custodial and the non-custodial parent (*Id.* at 7). Given the years Applicant has spent raising her children with minimal financial support from her ex-husband, and the applicable state law governing non-custodial parents and their children's medical expenses, 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," also applies to Applicant's medical delinquencies.

SOR subparagraph 1.u is the only bill that does not relate to Applicant's failed first marriage and her ongoing problems with receiving steady child support. Given its minimal amount and the fact that she is current on major debts such as her rent and her car payment, I conclude it has minimal security significance.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant's financial delinquencies were caused almost entirely by her ex-husband who used their credit cards to, among other things, finance an extramarital affair. Her efforts at satisfying these debts, five year ago, were sidetracked by her husband's failure to pay child support. Consequently, any negative security inference

against Applicant from not satisfying these debts is negated by the circumstances surrounding their accrual.

All of the credit card delinquencies excluding subparagraph 1.u have been in delinquent status since 2001. Applicant's state of residence has a statute of limitations barring creditors from collecting debts that have been delinquent more than six years (See State Code Ann. §44-501). Consequently, she has no legal obligation to pay them, and no corresponding vulnerability to coercion. Typically, in ISCR cases, the tolling of a statute of limitations has no bearing on an applicant's security clearance-worthiness, because the analysis is focused on the conduct and/or deficient judgment that generated the debt. Here, the Applicant generated little, if any, of the credit card delinquencies.

Applicant is currently financially stable. She is engaged in an ongoing effort to locate her ex-husband and compel him through court to pay delinquent child support, and to pay the delinquent medical copayments. She has sought the help of the state child support enforcement agency.

Upon considering all of the disqualifying and mitigating conditions together with the whole person factors, I conclude that it is clearly consistent with the national interest to grant Applicant access to classified information. Clearance is granted.

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
Subparagraphs 1.a - 1.u:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	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.

MARC E. CURRY
Administrative Judge