



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



In the matter of:)
)
) ISCR Case No. 07-12594
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

June 23, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed seven debts totaling approximately \$15,000. Five of the debts have been paid and she is paying the remaining two. After a thorough review of the case file, pleadings, exhibits, and evidence, I conclude Applicant has rebutted or mitigated the government’s security concerns under financial considerations. Eligibility for access to classified information is granted.

Statement of Case

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to

¹ 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)

Applicant a Statement of Reasons (SOR) on February 29, 2008, detailing security concerns about her finances.

On March 28, 2008, Applicant answered the SOR, and requested a hearing before an administrative judge. On April 22, 2008, I was assigned the case. On May 7, 2008, DOHA issued a notice of hearing scheduling the hearing held on May 20, 2008. The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through Q, which were admitted into evidence. The record was kept open to allow Applicant to submit additional matters. On June 2, 2008, additional documents were received. Department Counsel did not object to the material and it was admitted into evidence as Ex. R. On June 5, 2008, the transcript (Tr.) was received.

Findings of Fact

In her Answer to the SOR, Applicant admits the factual allegations in ¶¶ 1.a, 1.b and 1.e of the SOR. She denies the remaining allegations.

Applicant is a 30-year-old team analyst (Tr. 40) who has worked for a defense contractor since July 2005, and is seeking to obtain a security clearance. Supervisors, co-workers, friends, and family state Applicant is honest, dependable, responsible, ambitious, dedicated, committed to work, willing to take on new challenges, and a dependable team player. She is budget conscious, financially responsible, and willing to share her financial knowledge. (Exs. C, D, E) Applicant duty performance “Exceeded expectations.” (Exs. G, O)

In November 1998, Applicant — then 19 years old — was forced into bankruptcy when her mother chose bankruptcy. (Tr. 86) She had co-signed with her mother on a \$30,000 mobile home, which went to foreclosure.

Applicant has financially supported her mother and younger brother following high school. In August 2000, she obtained her bachelor’s of business administration degree and obtained employment. Applicant returned to school from August 2001 through December 2003, and obtained a master’s of business administration (MBA) degree. (Tr. 39, 65) Since graduation, she has had periods of unemployment. She was unemployed from March 2004 to May 2004 and in April 2005 and May 2005. She maintained contact with her creditors at that time. (Ex. F) She is currently working on a master’s degree in finance, which she hoped to complete in December 2008. (Tr. 39, Ex. R) Her student loans are deferred while she is still in school. (Tr. 66)

While unemployed in 2004, Applicant was overpaid \$1,630 by the state department of employment. (Ex. K) The amount of overpayment represents five weeks at \$326 weekly payments. (Tr. 71) She is repaying the amount at a rate of \$50 per month. (Ex. L) In 2004, Applicant entered into an agreement with a credit counseling

approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

service to help her pay her delinquent debt. (Ex. P) The agreement required her to pay \$315 per month. She paid six of the debts in the agreement and is making payment on the remaining two. The same debt is the obligations listed in ¶¶ 1.b and 1.e, which are two credit collection agencies each of which were attempting to collect the same debt, at different times. (Tr. 33) The other debt was the overpayment of unemployment compensation, which she is paying. (Tr. 33)

Applicant owes a department store/mail order company credit card debt, (Tr. 30) which is listed twice in the SOR as owed to two different creditors (¶¶ 1.b and 1.e). This is a single debt. (Tr. 51) Applicant starting making payments on this debt in April 2007. She currently has \$86.22 plus \$9.95 automatically deducted monthly from her checking account. She has made 14 monthly payments on the debt, paying \$1,346 on this debt. (Ex. A, Ex. 2)

Applicant purchased a car and made prompt payments for three years. Due to her 2004 unemployment, Applicant gave the car to her mother with the understanding her mother would make the payments. (Tr. 46) Her mother was unable to continue with the payments and the car was repossessed leaving an \$8,400 debt. (¶ 1.a) Applicant established a repayment plan with the law firm collecting the debt. Starting in November 2007, Applicant has made seven months payments on the debt paying \$1,850 on this debt. (Exs. A, R) In June 2008, she will increase her monthly payments from \$250 to \$300.

Applicant satisfied a \$147 debt (¶ 1.c) in January 2008 as evidenced by withdrawals from her checking account. (Tr. 28, Ex. A, Ex. 2) Applicant satisfied a \$201 health care debt (¶ 1.d) in March 2008 as evidenced by withdrawals from her checking account. (Tr. 29, Ex. A, Ex. 2) Applicant satisfied a \$1,649 credit card debt (¶ 1.f) in May 2007 as evidenced by a July 2007 letter from the creditor stating the account was settled in full. (Tr. 30, Ex. A) Applicant satisfied a \$82 telephone debt (¶ 1.g) in November 2007 as evidenced by a December 2007 letter from the creditor stating the account was paid in full. (Ex. A)

In April of 2005, Applicant was unemployed and then obtained a minimum wage position. Her previous job was \$30,000 and the job she obtained was \$6 per hour. (Tr. 34) Since July 2005, she has been with her current employer with a current yearly salary of \$51,125. (Ex. G) She earns \$1,966 every two weeks. (Ex. R) Her annual salary has increased approximately \$11,000 in the three years she has been employed. (Tr. 75) Applicant is current on her rent, car payments, and her one remaining credit card. (Tr. 34, Ex. N) She maintains the single credit card because the credit counseling service told her this was one way to improve her credit score. (Tr. 34) She has not incurred any new debt. (Tr. 34)

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.

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

Under Guideline F (financial considerations) a security concern typically exists due to significant unpaid debts. 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.²

An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owed approximately \$15,000 on seven debts. Disqualifying Conditions (DC) ¶ 19. a "inability or unwillingness to satisfy debts" and AG ¶ 19. c "a history of not meeting financial obligations," apply.

The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20 d, the disqualifying condition may be mitigated where, "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has paid five of the debts and is making monthly payments on the remaining two obligations (SOR ¶ 1.a and ¶ 1.b/1.e). Applicant has been making her payments long enough to find she will continue these payments until the obligations are paid. I find AG ¶ 20 d applies.

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 were contributed to by periods of unemployment and underemployment. She has paid the majority of her debts and is making payment on the remaining two obligations. I find

² Revised adjudicative guidelines (AG) ¶ 18.

the behavior occurred under such circumstances that it is unlikely to recur, and it does not raise concerns about her current reliability, trustworthiness, or good judgment. The evidence establishes AG ¶¶ 20 a.

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, she suffered periods of unemployment and underemployment. Since obtaining her current job, she has not incurred additional debt and is current on her rent, car payment, and single credit card. I find the evidence establishes this mitigating condition.

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 is current on her debts and is not living beyond her means. Her financial problem is under control. I conclude this mitigating condition applies.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Unemployment and underemployment contributed to her financial problems. Applicant has acted responsibly to resolve her debts and improve her current financial picture. She is a mature, responsible adult who has exhibited reliability and sound judgment on duty. She is acting to ensure her past financial difficulties will not recur. The majority of her bills have been paid and the two remaining debts are being paid. Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and

suitability for a security clearance. The facts and circumstances presented do not pose an unacceptable risk to the interests of national security. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations and personal conduct concerns.

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, Financial:	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

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's request for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge