



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-13059
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

July 28, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 3, 2006. On February 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns that provided the basis for its action 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 for SORs issued as of September 1, 2006.

Applicant acknowledged receipt of the SOR on March 10, 2008. She answered the SOR in writing on March 26, 2008, and requested a decision without a hearing. On May 20, 2008, the government submitted a File of Relevant Material (FORM) consisting of nine exhibits (Items 1-9). DOHA forwarded a copy of the FORM to Applicant and

instructed her to respond within 30 days of receipt. Applicant filed a response (Exhibit A) on June 11, 2008, to which the government did not object. On June 23, 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 Applicant. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 4) and her response to the FORM (Ex. A), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes 12 delinquent debts totaling \$26,178 (SOR ¶¶ 1.a through 1.l). Under Guideline E, personal conduct, Applicant was alleged to have deliberately withheld information about her debt from a September 2006 e-QIP because she did not want her employer to become aware of her financial situation (SOR ¶¶ 3.a and 3.b).¹ When she responded to the SOR, Applicant admitted owing the debts in SOR ¶¶ 1.a-1.c, 1.f, and 1.j. She indicated that the debt in SOR ¶ 1.e had been sold to the creditor in ¶ 1.b, and that the debts in SOR ¶¶ 1.d, 1.g, 1.i, 1.k and 1.l had been paid or settled. Applicant denied that she deliberately falsified her e-QIP:

I was always cognizant of the fact that the government has the capability to pull such reports with full details, the same as a mortgage or auto lenders. Listing all creditors and indebtedness was viewed as unnecessary by me, in addition to primarily wanting to protect the privacy of my information from fellow co-workers whom I knew could not be confided in to protect the confidentiality & privacy of my personal information.

(Item 4). In the FORM, the government conceded that the debt in SOR ¶ 1.h had been mitigated, as the credit reports confirm the debt was satisfied. After considering the evidence of record, I make the following findings of fact.

Applicant is a 50-year-old human resources administrator who has worked for her employer since June 1991 (Item 5). She was granted a DoD secret clearance in about August 1986 (Item 5).

Applicant was married from June 1981 to November 2004. She and her ex-husband have two children, a son born in December 1982 and a daughter born in September 1985. As of August 2006, both children were living with her (Item 5).

On August 3, 2006, Applicant completed an e-QIP on which she responded "Yes" to financial delinquency questions 28.a, "In the last 7 years, have you ever been over

¹The file contains only one e-QIP for review, and it was signed by Applicant on August 3, 2006 (Item 5). The government offered no explanation for the discrepancy, and did not move to amend the SOR. Furthermore, the Guideline E concerns were alleged under paragraph 3. There is no paragraph 2 in the SOR and the government did not address it in the FORM.

180 days delinquent on any debt(s)?,” and 28.b, “Are you currently over 90 days delinquent on any debt(s)?.” She disclosed two credit card debts in the amounts of \$1,500 (SOR ¶ 1.h) and \$3,700 (SOR ¶ 1.f) (Item 5).

A check of Applicant’s credit on August 24, 2006, revealed that Applicant owed \$1,688 on SOR ¶ 1.h. and \$2,844 on SOR ¶ 1.f (in collection since about December 2001), and that she had other outstanding debts as well. A \$1,519 charge off balance (SOR ¶ 1.e) was placed by a creditor for collection with the agency in SOR ¶ 1.b.² A property management company had placed for collection in September 2004 \$5,513 in outstanding rental fees (SOR ¶ 1.c). An outstanding installment debt had been in collection since June 2005 with a \$4,772 balance (SOR ¶ 1.a). She also reportedly owed a charged off unsecured loan debt balance of \$469 as of July 2006 (not alleged), a \$155 past due balance on a credit card account closed in May 2001 (SOR ¶¶ 1.d and 1.k, same debt), a \$3,474 delinquent credit card balance in collection since February 2004 (SOR ¶ 1.j). A charged off credit card balance of \$3,281 was included on her credit report, even though she was only an authorized user on the account (SOR ¶ 1.i). A \$99 medical debt placed in January 2001 (SOR ¶ 1.l) had been paid after collection. Applicant was repaying a \$27,022 auto loan on time at \$572 per month (Item 9).

On February 23, 2007, Applicant was interviewed about her unresolved credit issues. She expressed her belief that the \$4,772 debt listed on her credit report variously as a medical debt and as an installment account was actually a credit card debt that she disputes. She claimed to not recognize the \$1,966 collection debt (SOR ¶ 1.b), which she planned to dispute within 30 days, but did not dispute that the original lender had charged off a past due balance (SOR ¶ 1.e). Applicant indicated she had paid the debt in about June 2005. She admitted she had prematurely terminated a rental lease (SOR ¶ 1.c) because she could not afford to pay rent, medical bills, and college tuition for her children. She expressed an intent to contact that creditor within 30 days but would not be able to begin repayment before April 2008 due to other obligations. Applicant similarly admitted her responsibility for the credit card debts in SOR ¶¶ 1.f, 1.h, 1.j, but averred that she could not begin to repay them until October 2007. Applicant indicated she would pay a \$469 unsecured tuition loan balance (not alleged) within 30 days. Applicant denied ever having a relationship with the creditor in SOR ¶ 1.i (listed as authorized user on her credit report). Applicant indicated that if the \$155 credit card debt (SOR ¶ 1.k) was legitimate, she would pay it. The \$99 collection debt (SOR ¶ 1.l) was for dental costs denied insurance coverage but then covered. When asked why some adverse credit information had not been listed on her e-QIP, Applicant responded that she knew other employees in her department could have

²Applicant indicated in her Answer that the debt originally owed the creditor in SOR ¶ 1.e was purchased by the creditor in SOR ¶ 1.b (Item 4). The evidence indicates that the debt in SOR ¶ 1.b is an updated balance of SOR ¶ 1.e. As of August 2006, the credit bureaus were reporting that the revolving charge held by the creditor in SOR ¶ 1.e had been charged off in December 2003 in the amount of \$1,519 and transferred to another lender. The high credit of the account held by the collection agency (SOR ¶ 1.b) matches the amount transferred for collection by the creditor in SOR ¶ 1.e (Item 9). Presumably, the government alleged SOR ¶¶ 1.b and 1.e as separate debts due to the different account numbers but it is not unusual for a collection agency to assign its own account number.

access to the form. She also explained that she did not have direct knowledge of some of the accounts on her credit report and that others were in dispute. Applicant reported she had \$704 remaining each month after payment of expenses and two debts (car loan and personal loan). She averred that once her car was paid off in full in October 2007, she could begin to address her delinquent accounts (Item 6).

In September 2006, a \$579 past due balance was placed for collection (SOR ¶ 1.g). In early October 2006, the creditor collecting the debt in SOR ¶ 1.h notified Applicant that it would be willing to negotiate a settlement. In late February 2007, Applicant paid \$729 to settle the \$1,108.26 balance of the debt (Ex. A).³ She also settled her son's delinquent credit card account on which she was listed as an authorized user (SOR ¶ 1.i), and she paid the tuition debt after it had been charged off (Items 4, 8).

In April 2007, the creditor collecting the debt in SOR ¶ 1.e (SOR ¶ 1.b same debt) filed suit to recover \$1,364.64 plus attorney fees and costs. Applicant countered in May 2007 with an offer to settle the account by paying \$50 per month from mid-June through December 2007, and then 70% of the remaining balance in January 2008. (Item 7). The available record does not reflect any payments.

On September 17, 2007, the government checked Applicant's credit which showed no progress toward resolving the debts in SOR ¶ 1.a (liability being disputed with the credit bureau), ¶ 1.b (¶ 1.e same debt), ¶ 1.c, ¶ 1.d (¶ 1.k same debt), ¶ 1.f, and 1.g⁴ (Item 8). She had paid the unsecured tuition loan after it had been charged off (not alleged). In response to DOHA interrogatories, Applicant indicated in late October 2007 that she had not heard anything in response to her counteroffer to settle the \$1,364 balance of the debt in SOR ¶ 1.b. She also admitted she had not yet paid the debts in SOR ¶ 1.c, ¶ 1.d,⁵ and ¶ 1.f because she had helped her son and her daughter pay off some of their debts, but she would pay on her debts in 2008. Applicant added that the assignee in SOR ¶ 1.a had failed to send a representative to a court-ordered mediation session scheduled for October 2, 2007, and that the assignee had asked for a settlement agreement (Item 7).

In November 2007, Applicant took out a new auto loan for \$28,431. As of late February 2008, she was making her payments according to terms. Applicant paid the

³Applicant's credit report of September 2007 (Item 8), which predates the SOR, indicated that a settlement had been accepted on the account. Evidence of the settlement is contained in Exhibit A.

⁴Applicant claims the debt was paid in 2007 (Item 4), but the account was reported to have a past due balance of \$579 in collection as of July 2007 (Item 8). She provided no proof of payment.

⁵Applicant treated the debts in SOR ¶¶ 1.d and 1.k as separate delinquencies, although she provided documentation with her Answer showing that they are one debt.

debt in SOR ¶ 1.d (SOR ¶ 1.k same debt) in January 2008 (Item 4, Ex. A).⁶ As of June 2008, she still owed about \$18,606.64 in delinquent debt.⁷

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

⁶Applicant provided documentation showing that the assignee was collecting for the creditor in SOR ¶ 1.k. The original account number provided on the documentation proving satisfaction matches the account number for the original creditor as reflected on the August 2006 credit report (Item 9).

⁷The \$18,606.64 in total debt is based on the following debt balances: \$4,773 on SOR ¶ 1.a, \$1,364.64 on SOR ¶ 1.b, \$5,513 on SOR ¶ 1.c, \$3,263 on SOR ¶ 1.f as reflected on her February 2008 credit report (Ex. A), \$579 on SOR ¶ 1.g, and \$3,474 on SOR ¶ 1.j. While the debt in SOR ¶ 1.j had been removed from her credit record (Ex. A), there is no indication it has been paid or otherwise settled for less than the full balance.

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 December 2001, when one lender (SOR ¶ 1.f) placed a \$2,844 past due balance for collection. However, the majority of her debts were charged off and/or placed for collection over the 2003/05 time frame. While she has satisfied or settled for less than the full balance those debts in SOR ¶¶ 1.d (1.k same debt), 1.h, 1.i, and 1.l, she still owes more than \$18,000 in delinquent debt. 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’s financial problems are too recent to satisfy mitigating condition 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”). When she completed her e-QIP in August 2006, Applicant reported two delinquent credit card obligations, but indicated she did not know the account numbers. This failure to remain attentive to her personal financial obligations raises concerns about her judgment.

Mitigating condition AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) is implicated because of the recent resolutions of those delinquencies in SOR ¶¶ 1.d (1.k same debt), 1.h, and 1.i. The \$99 medical debt in SOR ¶ 1.l had been paid after collection in or before February 2002. Applicant indicates she paid off her son’s credit card debt (SOR ¶ 1.i) in 2007. While it is

not clear whether she paid the entire \$3,281 balance or something less to settle, it has been removed from her credit report. She paid \$729 to settle the debt in SOR ¶ 1.h.

With only about a quarter of her total delinquent debt resolved, she remains under a significant debt burden. The Directive does not require that she be debt free, but there are no clear indications that her remaining debt is likely to be resolved in the near future. Her evidence falls short of satisfying 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”). In October 2007, she indicated that her financial situation would allow her to pay all her debts in 2008 (“I helped my son and daughter pay off some debts this year that set me back a few months. But I’m going to be ok in ‘08, everything will be paid.” Item 6). The evidence of record shows she has paid only \$192 toward her delinquent debt in 2008. She reported a monthly disposable income of \$704 as of late February 2007 (Item 6), and there is no indication that her expenses have appreciated significantly or that her income has decreased since then. Applicant did not present evidence that could reasonably justify her failure to make payments since January 2008 on her remaining delinquency.

The limited financial information available shows that Applicant took on a new car loan of \$28,431 (Item 4) in November 2007. The terms of her new loan are not available for review, but it is difficult to see how she is better off financially by the new loan. Even if her monthly payments are lower than the \$572 per month she had been paying on a car loan taken out in 2001, she now has a sizeable debt that has to be repaid. By August 2007, Applicant had only \$6,424 left to pay on her old car loan of \$27,022. Applicant also indicated in response to the FORM that since the start of her background investigation, she has increased her assets by more than \$200,000 (Ex. A). She provided no explanation as to the nature of the assets, so it cannot be determined whether they are a potential source for repaying her old debts.

Applicant attributes her credit problems to her divorce and to her son’s mental illness (Item 4). Applicant did not provide any detail showing the extent to which her divorce or her son’s mental health issues impacted her financial situation. Since most of her delinquent debts coincide with the dissolution of her marriage, there is a basis to consider 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”). However, AG ¶ 20(b) requires that Applicant act responsibly once she is in a position to rectify her financial situation. The evidence of record suggests an unacceptable tendency to put her self-interest ahead of her obligations to her creditors.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The government alleges that Applicant was not fully forthcoming about her delinquencies on an e-QIP completed on September 1, 2006 (SOR ¶¶ 3.a and 3.b). The only e-QIP of record is dated August 3, 2006. The government made no effort to amend the SOR to conform to its own evidence or to explain the variation in date, but Applicant does not deny that she failed to list all of her delinquent accounts on her security clearance application. However, since she disputes knowing and intentional concealment, the burden is on the government to prove the intent required under AG 16(a) ("deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities").

On the e-QIP submitted as Item 5 of the FORM, Applicant responded "Yes" to questions 28.a (over 180 days delinquent in the last seven years) and 28.b (currently over 90 days delinquent), and she listed the debts in SOR ¶¶ 1.f and 1.h. While she cited her concern over coworkers becoming knowledgeable about her personal financial situation, she also expressed her belief that the government could obtain the full details about her debts (Item 4). When asked in February 2007 about her failure to include all of her debts on her e-QIP, Applicant responded that some of her coworkers could have access to her security form. In addition to wanting to protect her privacy, Applicant added that she was not fully aware of what was on her credit report. Concerning the debts listed on her August 2006 credit report, Applicant disputed the debts in SOR ¶ 1.a and ¶ 1.l, did not recognize the assignee in SOR ¶ 1.b or the creditor holding the debt in SOR ¶ 1.k, and the debt in SOR ¶ 1.i was not in her name. She was able to provide some detail about her breaking her apartment lease (SOR ¶ 1.c) and about the furniture purchases that led to the credit card debt in SOR ¶ 1.j. While neither of those two debts was listed on her e-QIP, I am persuaded that she lacked the intent to conceal or to deceive the government. By listing two substantial credit card delinquencies, she placed the government on notice that she was behind on some debts. She believed that the government would obtain her credit record, and that some coworkers could access her e-QIP. Applicant's explanations for the omissions have been consistent and are accepted as credible. AG ¶ 16(a) does not apply. The intent underlying AG ¶16(a) is absent in this case.

Personal conduct issues related to vulnerability to exploitation, manipulation, or duress as set out in AG ¶ 16(e) (“personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal, professional or community standing”) must also be considered. Applicant cited her desire to keep the details of her personal financial situation from her coworkers as a primary basis for her not listing some known debts on her e-QIP. In response to DOHA interrogatories in October 2007, she added:

I am requesting you to keep all info I provide here strictly confidential and these details are not to be provided to my employer. I didn’t ask for this clearance. My employer wants me to get it (Item 7).

Applicant has a reasonable expectation of personal privacy about her finances. Her request that the government respect the confidentiality of her financial information does not raise concerns of heightened vulnerability where she has credibly denied she would ever allow herself to be pressured, blackmailed, or coerced because of her finances (see Item 6).

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 disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The government must be assured that those 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 significant debt burden that she had promised would be paid in 2008. She indicated in February 2007 that she

would have funds available after her car loan was paid in full in October 2007, but she then took out a new car loan in November 2007. She has not presented any evidence of recent payments from which I could conclude that her debt is likely to be resolved in the near future.

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:	For Applicant
Subparagraph 1.e:	Against Applicant ⁸
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant

Paragraph 3, Guideline E: FOR APPLICANT

Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For 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

⁸SOR ¶¶ 1.b and 1.e pertain to the same debt, so SOR ¶ 1.e does not represent additional delinquency. However, a finding is entered against her because the debt is in collection as set forth in SOR ¶ 1.b.