



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



In the matter of:)	
)	
)	ISCR Case No. 07-13735
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Pro Se

June 30, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic questionnaire for investigations processing (e-QIP) on April 4, 2007. On February 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, for Applicant. 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.

On March 29, 2008, Applicant answered the SOR and requested her case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on April 23, 2008. The FORM was forwarded to Applicant on April 24, 2008. The record is not clear as to when Applicant received the FORM. She submitted a response to FORM on May 26, 2008. On May 29, 2008, Department Counsel did not object to Applicant’s response to the FORM. The FORM was assigned to me on June 9,

2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant admits to the allegations in her Answer to the SOR. (Item 4.)

Applicant is a 57-year-old employee with a Department of Defense contractor seeking a security clearance. She has been employed with the defense contractor since January 2005. She was widowed in 1999 and has two children and four stepchildren. They are all adults. (Item 5.)

Applicant's background investigation revealed two delinquent accounts consisting of a \$5,552 collection account placed for collection in May 2005 (SOR ¶ 1.a; Item 6 at 5-6; Item 7 at 2; Item 9 at 7); and a \$8,859 automobile account placed for collection in October 2003. Applicant co-signed a car loan for her daughter. (SOR ¶ 1.b; Item 6 at 5, 7; Item 7 at 2; Item 8 at 2; Item 9 at 12; Response to FORM, dated May 26, 2008.)

In response to interrogatories, dated December 18, 2007, Applicant indicated that she attempted to make payment arrangements with the creditors of the debts in SOR ¶¶ 1.a and 1.b. Neither creditor was willing to negotiate with her. She provided evidence that she resolved a delinquent \$315 cell phone account. (Item 6 at 11-14.) She also showed that she is current on her electric bill which used to be delinquent. (Item 6 at 9-10.) Applicant submitted a personal financial statement which showed that her net monthly income is \$1,962.64. Her total monthly expenses are \$2,094.59 which leaves a monthly balance of negative \$131.95. (Item 6 at 4.)

In her response to the SOR, Applicant indicates that she is making payments towards the debt alleged in SOR ¶ 1.a to the collection agency who is handling the account. She agreed to pay \$50 a month plus give the company her income tax return until the debt is paid. She made a payment of \$1,062 in February 2008 and a \$50 payment in April 2008 and May 2008. Her balance is now \$4,452.93. She states that it might take a couple years to settle the account. Once this account is paid, she intends to start paying on the debt alleged in SOR ¶ 1.b (Item 4; Response to FORM, dated May 26, 2008.) Applicant was unemployed between August 2004 and September 2004. (Item 5 at 13.)

Applicant states that she is an honest, hard working person. She does not try to "keep up with the Joneses." She lives in a 1974 mobile home. She is trying to make ends meet by doing an honest days work. (Item 4.) She would never jeopardize her job. (Response to FORM, dated May 26, 2008.)

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.

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

The security concern relating to the guideline 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations); apply to Applicant's case. Applicant had several delinquent debts that she has been unable to resolve based on her income. The largest debt is an automobile loan where she agreed to act as co-signer for her daughter who defaulted on the loan payments.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable because Applicant's attempt to resolve her delinquent accounts is recent.

FC 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) applies. Applicant was widowed in 1999 which more than likely created some financial hardship. In addition, she was unemployed for one month in August 2004. Applicant never fully explained how she encountered her financial problems. One can argue that her daughter's failure to meet the terms of her automobile loan was not within Applicant's control as well. Applicant does not appear to live beyond her means. She is paying what she can towards her delinquent accounts and has acted responsibly under the circumstances.

FC MC ¶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) does not apply. There is no evidence that Applicant attended financial counseling. She has taken steps to resolve her financial situation. She satisfied two

debts that were not alleged in the SOR. She is making payments towards the debt in SOR ¶ 1.a.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debt alleged in SOR ¶ 1.a. Applicant entered into a payment plan and has been making payments towards this debt. She agreed to sign over all of her tax returns and pay \$50 per month until the debt is paid off. The balance has been reduced from \$5,552 to \$4452.93. While one unresolved delinquent account remains, Applicant is not the primary debtor on the debt that remains unresolved. Her daughter has primary responsibility for this automobile loan. While as co-signer, Applicant is legally responsible for this debt, she should not be penalized for her daughter's financial irresponsibility. While Applicant's financial situation is very tight, she does not appear to live beyond her means. She is making a good-faith effort to resolve her debts.

Under the revised AG, the overall concern under financial considerations is not only whether a person who is financially over-extended is at risk of having to engage in illegal acts to generate funds, but also the 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. Although Applicant struggles financially, she has taken steps to meet her financial obligations. Her financial problems are controllable. Her financial situation does not raise a security concern. She has mitigated the security concerns raised under financial considerations.

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 common sense 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. Applicant paid two delinquent debts prior to the SOR being issued. Only two delinquent accounts remain. She entered into a repayment agreement pertaining to one debt. She is meeting the terms of the

repayment agreement. The remaining debt is for an automobile which she acted as co-signer. Applicant intends to resolve that debt when she completes the payment plan for the first debt. Based on her financial situation, this is a reasonable approach. Applicant has mitigated the security concerns raised under financial considerations.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.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.

ERIN C. HOGAN
Administrative Judge