



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



In the matter of:)	
)	
)	ISCR Case No. 07-13766
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: Pro Se

July 15, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be granted.

Applicant submitted her Security Clearance Application (SF 86), on July 26, 2006. On March 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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.

Applicant acknowledged receipt of the SOR on March 28, 2008. She answered the SOR in writing on April 14, 2008, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on May 7, 2008. Applicant received the FORM on May 12, 2008. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not respond or submit additional evidence. DOHA assigned this case to me on July 7, 2008. The government submitted eight exhibits, which have been marked as Item 1-8 and admitted into the record.

Findings of Fact

In her Answer to the SOR, dated March 25, 2008, Applicant admitted the factual allegations in ¶¶ 1.a-1.h, and 1.j-1p of the SOR, some with explanations. She denied the factual allegations in ¶¶ 1.i and 1.q of the SOR. She also provided additional information to support her request for eligibility for a security clearance.¹

Applicant, who is 39 years old, works as a composition specialist for a Department of Defense contractor. She began her employment in May 2006 and completed her security clearance application (SF-86) shortly thereafter.²

In November 1991, Applicant and her husband filed a petition for bankruptcy under Chapter 7, and the court discharged their debts on March 25, 1992. Applicant and her husband again filed a petition for bankruptcy under Chapter 7 on May 25, 2000, and the court discharged their debts on September 14, 2000. The record contains no evidence as to why Applicant and her husband filed for bankruptcy on these two occasions.³

Within one year of her 2000 bankruptcy discharge, Applicant and her husband began to experience financial problems. Her husband sustained serious injuries in a motorcycle accident in September 2001 and was unable to work for at least six months. Although she took a second job, Applicant was unable to meet their monthly expenses, which included medical bills, a car payment and the mortgage. As a result, the mortgage company foreclosed on their house and the bank repossessed their car. The mortgage company received sufficient money from the foreclosure sale to satisfy the loan on Applicant's house. The bank sold the repossessed car in 2001, but did not receive sufficient funds to satisfy the loan. Applicant has not paid anything on this seven year old debt with a remaining balance of \$11,296. (SOR ¶ 1.m) In 2001, Applicant wrote a check and asked the payee to hold the check for a week. Instead the payee

¹Item 2 (Applicant's Response to the SOR, dated April 14, 2008).

²Item 3 (Applicant's security clearance application) at 1, 3.

³Item 7 (Copy of 2000 Bankruptcy court docket sheet); Item 8 (Copy of 1991 Bankruptcy court docket sheet).

cashed the check and the police charged her with writing a bad check. She paid restitution.⁴

In August 2004, Applicant's employer of six years laid her off. She received unemployment and began attending a technical college from which she graduated with an associates degree in 2006. In January 2005, her husband stopped working for health reasons. In March 2006, medical doctors diagnosed him with Myotonic Muscular Dystrophy, Type 2. He applied for social security disability benefits and currently receives \$953 a month in disability benefits. He uses a wheel chair when needed.⁵

Applicant earns \$2,162 a month in gross income and \$1,756 in net income. With her husband's social security benefit, their total household net income is approximately \$2,709 a month. Their monthly expenses for rent, food, utilities, car expenses, medical expenses, student loans, two credit accounts, and miscellaneous expenses totals \$2,615, leaving approximately \$94 a month to pay old debts. She drives a 1998 vehicle and her husband has a 1996 vehicle. Both vehicles are loan free. With the exception of \$251 in unpaid medical bills, Applicant and her husband have lived within their financial means for the last five years. She timely pays her current bills and limits her credit debt.⁶

Applicant's \$251 in medical bills are approximately two years old and not paid. (SOR ¶¶ 1.a-1.d) Applicant challenged the \$1,996 gas bill, but has not provided documented evidence of her challenge to the gas company. (SOR ¶ 1.e) She did provide copies of pictures documenting a gas leak problem, which caused the high bill. The credit card debt listed in SOR ¶ 1.f is not listed in either credit report in the record. Even though Applicant admitted the debt, given the lack of evidence as to the existence of this debt, this allegation is found in Applicant's favor.⁷

The debts listed in SOR ¶ 1.g -1.i total \$3,657. All of these debts are between five and seven years old. They are not paid, nor has Applicant challenged the validity of the debts. Applicant has not consulted with a credit counseling service about her debts.⁸

The remaining SOR allegations are evidentiary factors discussed above, which I must consider in making my decision.

⁴Item 3, *supra* note 2, at 10; Item 5 (Credit report, dated September 20, 2006) at 9; Item 6 (Financial interrogatories and answers) at 3.

⁵Item 3, *supra* note 2, at 2-5; Item 6, *supra* note 4, at 4, 5, 7.

⁶Item 6, *supra* note 4, at 6-7.

⁷Item 4 (Credit report, dated November 2, 2007); Item 5, *supra* note 4.

⁸*Id.*; Item 2, *supra* note 2.

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

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 conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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 worries arose between about 2000 and 2001. The record reflects that Applicant has a long history of debt problems, which continues to the present. Her current bills are paid, but finances remain tight. Although she is prudently managing her resources, there is some likelihood that problems might occur in the future. The evidence is insufficient for this potentially mitigating condition to apply.

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." Applicant's latest financial problems arose when her husband sustained significant injuries in a motorcycle accident and could not work for more than six months. Two years after he returned to work, her employer laid her off. Six months later, her husband stopped working permanently for health reasons. He now receives social security disability benefits because he is totally disabled from working due to Myotonic Muscular Dystrophy. During her husband's recovery from the motorcycle accident, Applicant worked a second job, but still could not earn enough money to pay their living expenses. Subsequent to her lay-off, Applicant returned to school to develop new skills which would increase her earning capabilities. She is now employed, and with her husband's disability benefit, they are able to pay the monthly household expenses. Applicant

acted reasonably under the circumstances in which she found herself. This mitigating condition applies.

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). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not received financial counseling, nor has she made a good faith effort to resolve these debts either by payment or settlement. For the last five years, Applicant has managed her household income. She keeps current on her monthly bills. She lives frugally. I conclude these potentially mitigating conditions have minimal application.

If “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”, mitigation may be established under AG ¶ 20(e). Applicant indicates that she routinely talked with the gas company about a gas leak problem in the property she was renting and provided evidence of a problem. However, she has not provided documented evidence of her contacts with the gas company and the results of these conversation as it relates to her unpaid gas bill in SOR ¶ 1.e. This mitigating condition has some applicability as to this debt.

She also receives some credit in the whole person analysis, *infra*, for the application of the State’s 4-year statute of limitations, which applies to all the debts listed in the SOR except the debts in allegations 1.a through 1.d, 1.f, and 1.n to 1.q. Under State law, the creditors are time barred from collecting these debts See State Code. Ann. §§ 2725 and 5525.⁹ Elimination of these delinquent debts through the statute of limitations has ended her potential vulnerability to improper financial inducements related to these debts as she no longer has any legal responsibility for these debts. The fact that these debts are very old and not collectible under state law does not negate her past conduct in not paying her outstanding debts, a factor I must consider.

⁹A State Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[ll]ed into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 609 S.E.2d 548, 552 (Ct. App. 2005) (internal quotation marks and citations omitted).

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 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's financial problems began at least 20 years ago. (See AG ¶ 2(a)(4).) Nine years after the bankruptcy court discharged the debts of she and her husband, they again filed for bankruptcy protection. The reason for their second bankruptcy, other than excessive spending, are unknown. One year after their second bankruptcy discharge, the mortgage company foreclosed on their house and the bank repossessed their car. These major financial negatives occurred not because of simple financial mismanagement and overspending, but as a result of unexpected income loss beyond their control. Their inability to pay these bills reflects that Applicant and her husband's expenses equaled their income. Thus, they had not yet learned how to live conservatively and manage their finances in a manner which would not cause financial disaster if problems developed.

Applicant's debts problems began in 2001 when her husband sustained serious injuries in a motor cycle accident and did not work for more than six months. Not only did he lose income, but he incurred medical expenses, which are paid. The loss of his income caused severe financial problems with their budget, even though she worked a second job. Apart from the car repossession debt, their unpaid debt from this period of time totals about \$5,600 including the gas leak problem. These debts arose following a six-month loss of household income. Recovery from such an income loss takes time. For Applicant, her ability to fully recover financially from her husband's injuries was derailed when she lost her job in 2004. Six months later, her husband's health forced him to quit working permanently, leaving him without income for at least 18 months. He now receives social security disability benefits, which are significantly below his previous income level. These factors made it impossible for Applicant and her husband to repay old debts. To their credit, they managed to pay their monthly expenses and not

incur significant additional debts. Their unpaid debts from 2004 forward amount to \$251. Applicant returned to school to develop additional skills which would enhance her earning power, but, as most individuals, she used loans to pay for her education. The monthly payment on her school loan debt is over \$500, which she timely pays each month.

Applicant has undergone significant behavioral changes. In regards to fiscal management, she and her husband they have developed a budget which they follow. They live more frugally, as shown by the very old cars they own and limited credit card spending. They timely pay their current bills. She has not been able to pay her old debts and currently lacks the resources to pay most of the debts, except the outstanding \$251 in medical bills. Her old debts were never reduced to a judgment and the Statute of Limitations has expired, making these debts uncollectible. (See AG ¶ 2(a)(8).) Thus, these debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. For a long time, Applicant and her husband lived beyond their monthly income. Twice they used legal means to resolve their financial problems. While they have not have paid their debts incurred when her husband was injured, which is the majority of her unpaid debt, she never resorted to illegal activities to raise money to pay these debts. Rather, she learned to manage her limited finances and curtailed her spending habits. She changed her lifestyle. Even though her old debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her 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-1.q:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge