



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



In the matter of:)
)
) ISCR Case No. 07-13871
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro Se*

February 28, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns raised by her financial history. Eligibility for access to classified information is granted.

On November 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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 in writing on December 19, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on January 9, 2008. DOHA issued a notice of hearing on January 14, 2008. I convened the hearing as scheduled on January 30, 2008. The government offered Exhibits (GE) 1 through 5,

which were received without objection. Applicant testified on her own behalf and submitted Exhibits (AE) A through Z, without objection. I granted Applicant's request to keep the record open until February 11, 2007, to submit additional matters. Applicant submitted her letter dated February 5, 2008 (AE AA), copies of checks (AE BB), and copies of bank statements (AE CC), without objection. Department Counsel's memo is marked Hearing Exhibit (HE) I. The record closed on February 11, 2007. DOHA received the transcript of the hearing (Tr.) on February 11, 2008.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by changing the amount of the debt in ¶ 1.b from "\$2,401" to "\$361." Applicant did not object and the motion was granted.

Findings of Fact

In her Answer to the SOR, dated December 19, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.d, 1.e, 1.i, 1.m, 1.n, 1.q, 1.r, 1.s, and 1.t of the SOR, with explanations. She denied the remaining allegations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is a 41-year-old employee of a defense contractor. She attended college but did not obtain a degree. She is married for the fourth time. Her first two marriages ended in divorce. Her second husband is deceased. She separated from her third husband shortly after they were married, but the marriage ended when he passed away. She has two children from her first marriage; ages 23 and 19; two children from her second marriage, ages 15 and 12; and an adult stepchild from her current marriage.¹

Applicant has had financial issues for a number of years. She was married to her second husband from about 1992 to 1997. He did not work but liked to spend what he had not earned. They went through a difficult divorce and he did not pay his share of the debts or child support for their two children. He passed away in about 2001, owing Applicant about \$24,000 in back child support. Applicant was a single mother with four children and she could not pay her debts. She filed Chapter 7 bankruptcy in about October 1998. Her debts of approximately \$30,000 were discharged in about February 1999.²

Applicant's husband was laid off in April 2005. He found work with a temporary agency, but did not obtain permanent employment until about June 2006, at a much

¹ Tr. at 55, 76-81; GE 1.

² Tr. at 21-22, 54-56, 79; Applicant's Answer to SOR; GE 1-4.

lesser salary than before he was laid off. Applicant lost her job in about June 2005. She found sporadic work as a waitress and a bartender but did not resume full time employment until January 2007. Applicant and her husband had a total income in 2004 of almost \$159,000, which included about \$23,000 withdrawn from Applicant's retirement account. Their total income for 2005 was about \$172,000, which included about \$95,800 withdrawn from her husband's 401(k) retirement account. Income taxes were withheld from the withdrawals from the retirement accounts in 2004 and 2005. Their total income in 2006 was about \$50,000. They bought a house before they lost their jobs and were involved in remodeling the house. They used the money withdrawn from the 401(k) to pay off the contractors and subcontractors but the house went to foreclosure. They had equity in the house and sold the house before foreclosure. They made about \$50,000 net profit from the sale. They used a sizable amount of that money for the costs of renting and moving to their new home.³

Applicant became very ill after she lost her job. Her medical insurance was through her husband's employment. They could not afford to maintain the very high premiums after they both lost their jobs and they lost their medical insurance. They incurred substantial medical bills that they are still paying. One of Applicant's children has a severe learning disability which was very expensive to diagnose and treat. Another child has emotional problems and incurred costs for counseling and treatment.⁴

The SOR alleges 19 delinquent debts totaling approximately \$17,188. Individual debts are discussed below.

SOR ¶ 1.b alleges a debt of \$361 to a telephone/internet company placed in collection with a collection company in about October 2001. Applicant denied this debt and stated it belonged to her deceased ex-husband. She testified she has never used that telephone/internet provider and that the service was for an address where she has never lived. She stated the address is where her deceased ex-husband and his widow lived. The debt of \$413 as alleged in SOR ¶ 1.c is to the same collection agency as in SOR ¶ 1.b, on behalf of a cable company. Applicant denied this debt and stated she never lived in the city covered by this cable company. She sent dispute letters to the collection company on December 20, 2007, but has not yet received a response about either debt. The credit bureau report (CBR) of January 4, 2008, lists the debt as alleged in SOR ¶ 1.c. It also lists the collection agency, amount, and account number for the debt as alleged in SOR ¶ 1.b and states the account is disputed. However, it lists the underlying creditor as the cable company from SOR ¶ 1.c, instead of the telephone/internet company in SOR ¶ 1.b.⁵

³ Tr. at 44-47, 53; GE 1; AE X-Z.

⁴ Tr. at 47-49, 90.

⁵ Tr. at 28-31, 71-74; Applicant's Answer to SOR; GE 3-5; AE H, I.

Applicant admitted to the debt of \$422 as alleged in SOR ¶ 1.d. She stated she thought she paid the debt. She sent a letter to the creditor on December 20, 2007, asking to start paying \$50 per month in January 2008. She testified that she mailed the first payment, but the check had not cleared her bank as of the date of the hearing.⁶

Applicant stated the debt of \$4,340 as alleged in SOR ¶ 1.e was to a home improvement retailer. She has made arrangements to pay \$100 per month. She made \$100 payments in November and December 2007 and January 2008.⁷

SOR ¶ 1.f alleges a debt of \$1,384 to a collection company for an account placed in collection in 2001. The underlying creditor is not named. Applicant stated she has no idea who the creditor is and that she has never received a phone call or letter from this creditor. This debt is listed on the CBR of October 12, 2007 and the CBR of October 23, 2007, submitted by Applicant with her response to Interrogatories. It is not listed on the CBR of February 27, 2007, or the most recent CBR of January 4, 2008.⁸

Applicant initially denied but later admitted the debt of \$840 to a collection company on behalf of an athletic club, as alleged in SOR ¶ 1.g. The account number associated with this debt only appears on the CBR of October 12, 2007. SOR ¶ 1.o alleges a debt of \$1,061 to the same collection company. The evidence indicates these are duplicates and represent the same debts. Applicant sent a letter to the collection company on December 20, 2007, asking to start paying \$50 per month and included a \$50 payment.⁹

Applicant disputed the debt of \$1,291 to a financial institution as alleged in SOR ¶ 1.h. The creditor responded to Applicant on January 7, 2008, and stated they were deleting the account from her credit file.¹⁰

SOR ¶ 1.i. lists a debt to an automobile financing company of \$2,639, which was charged off in 1998. This was a 36 month auto lease. Applicant stated this debt was included in her bankruptcy and she did not reaffirm the debt. She testified that the vehicle was in her name but her ex-husband kept it after the divorce. His wife told Applicant that the vehicle was repossessed at some point after his 2001 death. The debt is not listed on the two most recent CBRs submitted as evidence.¹¹

⁶ Tr. at 31-32; Applicant's Answer to SOR; GE 3-5; AE L.

⁷ Tr. at 32-33; Applicant's Answer to SOR; GE 3-5; AE BB.

⁸ Tr. at 37-38; Applicant's Answer to SOR; GE 2-5.

⁹ Tr. at 38; Applicant's Answer to SOR; GE 2-5; AE C, W.

¹⁰ Tr. at 38-39; Applicant's Answer to SOR; AE K, Q.

¹¹ Tr. at 22-26, 39; Applicant's Answer to SOR; GE 2-5.

SOR ¶ 1.j alleges a debt of \$1,105 to a financial institution for a credit card account. Applicant denied owing this debt and did not recognize the creditor. This debt is listed on the CBRs submitted as evidence, but they all indicate a zero balance on the account.¹²

Applicant denied owing the \$654 debt to a gas and electric utility as alleged in SOR ¶ 1.k. She stated this was for power at her ex-husband's house and she has never lived at that address. She contacted the utility company and disputed the debt. She was waiting for a response. The debt is not listed on the two most recent CBRs submitted as evidence.¹³

The \$203 debt alleged in SOR ¶ 1.l is to a collection company on behalf of a telephone services company. Applicant stated she never had an account with this company. The debt is not listed on the three most recent CBRs submitted as evidence.¹⁴

Applicant and her family had extensive medical issues and a number of medical debts. She paid many bills in addition to what was alleged in the SOR. She admitted owing the two \$50 medical debts as alleged in SOR ¶¶ 1.m and 1.n, but indicated she was unaware she owed the debts as she never received notification of the debts. The debts were being collected by the same collection agency. The CBRs listed different account numbers and addresses for the collection agency. She sent \$50 checks to both addresses, but one was returned as not deliverable as addressed. It appears Applicant may have been one digit off on the address. SOR ¶ 1.p alleges a medical debt of \$850 to a collection agency. She sent a letter to the collection company on December 20, 2007, asking to start paying \$50 per month and included a \$50 payment. SOR ¶¶ 1.q and 1.r allege medical debts to a collection agency in the amounts of \$154 and \$284. She sent letters to the creditor on December 20, 2007, asking to start paying \$50 per month in January 2008. She submitted proof that she made two \$50 payments in January 2008. SOR ¶ 1.t alleges a medical debt of \$340 to a collection agency. The debt rose to \$500 with interest. Applicant initiated a payment schedule of \$50 per month starting in June 2007. She made seven monthly payments of \$50 and lowered her balance to \$150, with the last payment scheduled for February 2008.¹⁵

Applicant admitted owing the debt of \$747 as alleged in SOR ¶ 1.s. She has made arrangements to pay \$100 per month and made a payment of \$103 on December 28, 2007.¹⁶

¹² Tr. at 39; Applicant's Answer to SOR; GE 2-5.

¹³ Tr. at 39-40; Applicant's Answer to SOR; GE 2-5.

¹⁴ Tr. at 40-41; Applicant's Answer to SOR; GE 2-5.

¹⁵ Tr. at 41-44; Applicant's Answer to SOR; GE 2-5; AE A, B, F, G, P-W.

¹⁶ Tr. at 43; Applicant's Answer to SOR; AE N, W.

In addition to the debts alleged in the SOR, Applicant has paid other debts. She owes the Internal Revenue Service (IRS) and her state for back taxes. Applicant and her husband have made regular payments for the past few years through automatic deduction of \$115 per month to the IRS and \$118 per month to their state. The IRS and the state also keep any refund due Applicant and her husband.¹⁷

Applicant has not received financial counseling. She and her husband are considering it but they are concerned because of the number of companies in that business that are not reputable. Unlike some of her previous husbands, Applicant's current husband is a responsible individual. He adopted Applicant's two youngest children and is supportive of their combined efforts to resolve their finances. They plan on paying their delinquent debts. Once one debt is paid they will concentrate on paying another. She testified that they hope to have their delinquent debt paid by the end of this year.¹⁸

Applicant has worked for her current employer since January 2007. She is very highly regarded and received a promotion from a supervisor position to a manager position after six months. Character letters on her behalf describe Applicant as a consummate professional, intelligent, self-motivated, dedicated, efficient, dependable, trustworthy, and mature, with a high degree of integrity, responsibility, and ambition.¹⁹

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, Administrative Judges apply the guidelines 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

¹⁷ Tr. at 50-53, 70; AE AA, CC.

¹⁸ Tr. at 63-66, 80-81, 91.

¹⁹ AE O.

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay her obligations for a period of time. The evidence is sufficient to raise the above potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and,
- (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.

Applicant's second husband did not work but liked to spend money. He did not accept responsibility for their debts or his children after the divorce. He died in 2001, owing Applicant about \$24,000 in child support. Applicant was on her own with four children and could not pay all the debts. She filed for bankruptcy and had her debts discharged in about 1999. She was back on track by 2005, then both she and her husband lost their jobs. Applicant did not resume full time employment until January 2007. Her husband also was underemployed through at least 2006. They lost their medical coverage and their financial problems were aggravated by a series of costly medical expenses for Applicant and her children. These are conditions that were largely beyond Applicant's control. They have been repaying their debts since they both started

working again, including debts and medical costs that were not alleged in the SOR. I find her behavior was responsible under the circumstances. AG ¶ 20(b) is applicable. They have payment plans for several debts and are still waiting to hear from some creditors, but Applicant is committed to paying all the debts that are legitimately hers. AG ¶ 20(d) is partially applicable. She has not received counseling, but there are clear indications that her financial problems are being resolved and are under control. AG ¶ 20(c) is partially applicable.

Applicant disputed a number of the debts. She stated some of the debts belonged to her ex-husband. The manner in which the debts alleged in SOR ¶¶ 1.b and 1.c are listed on the CBRs provides a basis to question their legitimacy. The debts in SOR ¶¶ 1.g and 1.o appear to be duplicates. A number of the debts, including those in SOR ¶¶ 1.f, 1.g, 1.i, 1.k, and 1.l, are not listed on the most recent CBRs in evidence. The debt in SOR ¶ 1.j is listed on the CBRs submitted as evidence, but they all indicate a zero balance on the account. The creditor in SOR ¶ 1.h responded to Applicant in a letter and stated they were deleting the account from her credit file. AG ¶ 20(e) is at least partially applicable to the above allegations in the SOR.

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 went through a difficult marriage in the 1990s. After her divorce she was unable to cover her living expenses as a single mother and ended up filing for bankruptcy. She met her new husband and their finances were in order until they both lost their jobs in 2005. They lost their medical coverage and incurred substantial medical bills for Applicant and her children. Since they returned to work, she paid several debts, disputed some debts, and has payment plans in effect for other debts. Applicant is highly regarded by her company and was promoted to a manager position after six months. She credibly testified that she is committed to paying all the debts that are legitimately hers. Applicant's finances are not perfect. However, the issue is not whether Applicant has unpaid debts; the issue is whether Applicant's debts make her a security risk. I find they do not.

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 has mitigated the security concerns arising from her financial issues.

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.t: 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.

EDWARD W. LOUGHRAN
Administrative Judge