



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-15143
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

August 13, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 23, 2007. On February 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F 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 28, 2008, and requested a decision without a hearing. On April 30, 2008, the government submitted a File of Relevant Material (FORM) consisting of seven exhibits (Items 1-7). 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 May 15, 2008, to which the government did not object. On June 9, 2008, the case was assigned to another DOHA administrative judge to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The case assignment was transferred to me on June 27, 2008. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 2) and her response to the FORM (Ex. A), eligibility for access to classified information is granted.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes eight delinquent debts totaling \$22,056 (SOR ¶¶ 1.a through 1.h). Applicant admitted the debts alleged in SOR ¶¶ 1.a, 1.e, 1.g, and denied the other debts. She indicated she had no knowledge of the debt in SOR ¶ 1.b, had started making payments on those debts in SOR ¶¶ 1.c, 1.d, and 1.f, and had paid the debt in SOR ¶ 1.h in full. After considering the evidence of record, I make the following findings of fact.

Applicant is a 33-year-old human resource specialist ("personal assistant IV lead"), who has been employed by her present employer, a defense contractor, since November 2006. She is seeking a secret security clearance for her duties as lead of a 20-person team servicing a warrior transition unit (Item 3, Item 4, Ex. A).

Applicant graduated from high school in June 1993. She attended a local community college during the fall semester of 1993. The record available for review does not indicate whether Applicant held a job until February 1997, when she began working as a legal secretary. In February 2005, she switched legal employers, but stayed there only until that August 2005. In September 2005, she began working in the defense industry, taking a job as a material expeditor for a defense contractor on a military installation. Once that company's contract ended, she continued on with the new contract holder in November 2006 (Item 3, Item 4, Ex. A).

In July 2005, Applicant's spouse (then fiancé) broke his right femur in a motorcycle accident. He subsequently suffered medical complications that left him unable to work for about three months. Applicant was financially responsible for paying their expenses, and payment of some credit cards and her student loans was not a priority (Ex. A).

In request for a secret security clearance, Applicant completed an e-QIP on May 23, 2007.¹ Applicant responded affirmatively to delinquent debt inquiries under section

¹The e-QIP submitted as Item 3 does not contain the signature form, but it indicates that Applicant certified the accuracy of the information on May 23, 2007. The government also submitted as Item 4 a Questionnaire for Sensitive Positions (SF 86) dated June 26, 2007, which was apparently prepared from the information provided on the May 23, 2007, e-QIP. E-QIP release forms signed by Applicant on May 24, 2007, are appended to the June 2007 SF 86 (Item 4).

28, “a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?” and “b. Are you currently over 90 days delinquent on any debt(s)?” and indicated that she owed about \$10,000 in credit card debt to four named creditors (SOR ¶¶ 1.a, 1.b,² 1.f and 1.h). She added in explanation that the accounts were delinquent because her fiancé had been out of work for three months following an accident, and she had helped him “get back on his feet.” (Item 3, Item 4). In a section provided for additional comment, Applicant stated:

As I stated previously, the only reason for my credit card debt is because of my trying to help my fiance get back on his feet after his accident. We are still trying to dig out of the hole and I am almost in the place where I can start paying those bills again and get myself caught up. (Items 3, 4).

A check of Applicant’s credit on June 26, 2007, revealed she was making her automobile loan payments on time. She had taken out a loan of \$20,341 in March 2005 (Item 6) that she was repaying at \$370 per month. She owed a total of \$6,668 on five revolving charge accounts that were rated as current, including a jewelry store debt with a balance of \$2,145 (high credit \$7,600 opened in December 2005). The four accounts listed as delinquent on her e-QIP had a balance of \$9,296. She was also reportedly past due on three student loans initially totaling \$8,825 but now up to \$9,572 (SOR ¶¶ 1.c, 1.d, and 1.e). The student loan debt in SOR ¶ 1.e had been charged off. Also included on her credit report was a \$6,882 student loan reportedly taken out in January 2005 that was in deferred status (Item 6). It is unclear whether this student loan is in addition to those in SOR ¶¶ 1.c, 1.d, and 1.e. Applicant listed on her e-QIP one semester of study at a community college in fall 1993. The discrepancy in dates between her studies and the student loans cannot be resolved based on the limited information available for review.

On December 3, 2007, Applicant responded to a request from DOHA to verify payments of her debts. She disputed that she owed as much as \$3,090 on the debt in SOR ¶ 1.h, but she admitted she had not paid anything on her four delinquent credit card accounts or her three student loans. Applicant again cited the negative financial impact of her fiancé’s unemployment for three months, although she provided no specifics of the income loss, and added that she was paying for her wedding scheduled for late 2007. Applicant expressed her intent to make payments as soon as she was able. At DOHA’s request, Applicant completed a Personal Financial Statement (PFS) on which she indicated a net monthly remainder of \$587.17 but zero assets (Item 7).

On January 19, 2008, Applicant entered into a consent judgment with the law firm collecting the debt in SOR ¶ 1.f. Under the terms of the consent judgment, Applicant was to pay \$3,165.11, \$1,000 due by January 25, 2008, and then \$180

²As of February 2008 (Item 5), Equifax was reporting that the creditor in SOR ¶ 1.g had transferred or sold the debt. It is obvious from the account numbers listed and the high credit amounts that the creditor in SOR ¶ 1.b is actively pursuing collection of the debt in SOR ¶ 1.g. As conceded by the government in the FORM, SOR ¶ 1.b is an updated balance of SOR ¶ 1.g and does not represent additional debt.

monthly. On January 24, 2008, \$963 was debited from Applicant's checking account to settle the debt in SOR ¶ 1.h.³ On receipt of that payment, the creditor holding the debt released her from any obligation to pay the remaining \$404.04 debt balance (Item 2, Ex. A).

Applicant's credit report of February 3, 2008, showed updated outstanding balances of \$2,588 on SOR ¶ 1.a, \$2,547 on SOR ¶ 1.b (SOR ¶ 1.g, same debt), \$4,533 in collection on SOR ¶ 1.c, \$2,887 in collection on SOR ¶ 1.d, and \$2,676 as a charge off balance on SOR ¶ 1.e. The debts in SOR ¶¶ 1.f and 1.h were reported as transferred accounts with zero balances (Item 5). While the debt in SOR ¶ 1.h had been settled (Ex. A), she had yet to make her first payment on the debt in SOR ¶ 1.h. Her credit report included no new delinquent accounts (Item 5).

On or about February 11, 2008, Applicant made her first payment toward SOR ¶ 1.h under the consent agreement (Ex. A). On March 30, 2008, Applicant made a payment of \$225 to bring the debt balance of SOR ¶ 1.e to \$2,070 (Item 2). The payment was sent before March 18, 2008, but was made by check dated March 30, 2008. As of May 2008, she was paying \$180 monthly on the debt in SOR ¶ 1.f, \$103 monthly to the agency collecting the student loan debts in SOR ¶¶ 1.c and 1.d, and about \$75 on the student loan in SOR ¶ 1.d.⁴ Applicant had not yet contacted the creditors in SOR ¶¶ 1.a or 1.b. She had been unaware previously that the creditor in SOR ¶ 1.b was a collecting agency for the debt in SOR ¶ 1.g. Once she satisfies existing payment arrangements, she plans to contact the creditors in SOR ¶¶ 1.a and 1.b. Applicant estimates that she has about \$220 per month in discretionary funds but this does not include any cost increases for food and fuel (Ex. A).

Applicant has administrative responsibility for over 230 injured military personnel. She has demonstrated professionalism, trustworthiness, and reliability in fulfilling her duties, which include leading a 20-person team. She has earned the strong endorsement of those military personnel who have had the opportunity to observe her work ethic and dedication to the soldiers she serves (Ex. A).

³In her Answer, Applicant denied SOR ¶ 1.h on the basis that it had been paid off as shown in a letter proving it had been satisfied. There is no such letter included in Item 2. Instead, there is a statement of her checking account as of January 24, 2008, which shows a debit from her account of \$963. However, Applicant provided in rebuttal to the form a letter confirming she had paid the \$963 to settle the debt in SOR ¶ 1.h (Ex. A).

⁴Applicant credibly indicated that she is repaying the student loans in SOR ¶¶ 1.c and 1.e at \$103 per month, and that payments are being made to another creditor servicing the student loan in SOR ¶ 1.d. The available records confirming payments do not identify the student loans by their original account numbers. However, Applicant's credit reports show that the accounts in SOR ¶¶ 1.c and 1.d were referred to the same collection agency so they are likely the loans being repaid at \$103 monthly and that the debt in SOR ¶ 1.e is being repaid through another assignee. Under existing repayment arrangements, she was paying \$358.29 per month. Since \$180 was going to the law firm collecting the debt in SOR ¶ 1.f and \$103 to the assignee for two of her student loans, her payment on the other student loan would be about \$75 per month.

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 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 on four credit card accounts and three student loans. As of her response to DOHA interrogatories on December 3, 2007, Applicant had made no payments toward her total delinquent debt of about \$19,763. 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 May 2007, Applicant disclosed four delinquent credit card obligations totaling about \$10,000, a good estimate given she owed about \$9,296 on those accounts. She also had not repaid three student loan accounts that had been charged off and placed for collection.

Applicant has attributed her financial delinquencies to her fiancé being out of work for three months following a motorcycle accident in July 2005. Mitigating condition 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") is implicated. While she has not provided the specific income and expense figures, her credit reports confirm that her financial problems began in the summer of 2005 when she fell behind on the debt in SOR ¶ 1.a. However, for AG ¶ 20(b) to fully apply, she must have acted responsibly under the circumstances. She made no payments on the four delinquent credit card obligations or on the three student loans between November 2006 and January 2008. Applicant explained in December 2007 that she continued to struggle financially. While she averred that she had caught up in her "mortgage" payment, there is no indication that she had a mortgage. On her PFS, she indicated she had a rental obligation of \$300 a month. She also listed monthly discretionary income of \$578.17, although this did not include any payments on her debts. Her credit reports reveal that she was repaying on time a \$7,600 jewelry store debt on an account opened in December 2005, her car loan taken out in March 2005 at \$370 per month, and a couple of open credit card accounts.

It is unclear whether the car payment was included in the \$740.67 she estimated in monthly car expenses, but her discretionary funds were apparently going toward her wedding expenses. Applicant presented little to show that her expenses were reasonable and justified her complete disregard of the delinquent credit card and student loan debts for more than a year.

After the assignee collecting the debt in SOR ¶ 1.f filed a civil action against her, Applicant began repaying that debt. Before she received the SOR, she had also settled the debt in SOR ¶ 1.h, and had entered into repayment terms with the creditor collecting the student loans in SOR ¶¶ 1.c and 1.d. Thereafter, she has made monthly payments of \$103 on those student loans, and made at least one payment of \$225 on the other. While Applicant has not furnished proof of all the payments made, her assertions of repayment are accepted given her credibility as to her financial situation overall and the evidence of payments documented in the record. AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) does not fully apply, given her efforts to resolve her debts are in response to collection efforts, in the case of SOR ¶ 1.f by resort to a civil complaint, and she has yet to even contact the creditors in SOR ¶¶ 1.a and 1.b.

As to whether she has done enough to warrant favorable application of 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”), Applicant is not required to settle or satisfy each debt for classified access. However, there must be adequate assurances that her financial situation is stable and she is not likely to fall behind in her financial obligations, including her living expenses, while she is repaying her delinquent accounts. Applicant has not provided a PFS since she has begun repaying her delinquencies other than to indicate that with the payments she is making, her monthly net remainder “has come down considerably to \$219.88.” (Ex. A). She remains concerned about the potential negative financial impact of any emergency situation, which suggests a tight financial situation, although the figures she provided do not include any income from her spouse. Her February 2008 credit report (Item 5) does not show any continuing reliance on consumer credit and there is no evidence that she was behind on her day-to-day expenses as of the close of the record in May 2008. In light of her intent to continue to resolve her debts and the fact that she has the present means to do so, I conclude AG ¶ 20(c) applies. The amount of delinquent debt that remains to be paid is about \$15,000. Applicant is not likely to engage in illegal acts because of the debt.

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, due in part to an unforeseen accident that left her future spouse unable to work. She exhibited questionable judgment when she put her personal interest in paying for her wedding ahead of her delinquent consumer credit and student loan obligations, but has shown good judgment of late in making efforts to resolve her debts. Military personnel who have had the opportunity to observe her work performance attest to her dedication and reliability to the soldiers she serves. Despite the recency of her financial problems, her candor with the Department of Defense and her ethical reputation at work strongly suggest she will make good on her intent, which is to continue to resolve her debts.

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
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
Subparagraph 1.h:	For Applicant

Conclusion

In light of 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.

ELIZABETH M. MATCHINSKI
Administrative Judge