



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



In the matter of:)
)
-----) ISCR Case No. 07-15586
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

April 22, 2009

Decision

HARVEY, Mark W., Administrative Judge:

Applicant mitigated the financial consideration security concerns. Applicant's statement of reasons (SOR) lists 11 delinquent debts, totaling \$14,859. Because of duplications, she had seven delinquent debts totaling about \$9,500. Applicant settled and paid her SOR debts. She does not currently have any delinquent debt. Clearance is granted.

Statement of the Case

In December 2006, Applicant submitted an undated Electronic Questionnaires for Investigations Processing (e-QIP) Security Clearance Application (SF 86) (Tr. 55; GE 1). On April 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued an SOR detailing the basis for its preliminary decision to deny Applicant eligibility for access to classified information, citing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended

(Regulation), 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. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 16, 2008, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 23, 2009. The case was assigned to me on March 25, 2009. On March 26, 2009, DOHA issued a hearing notice. The hearing was held on April 6, 2009. At the hearing, Department Counsel offered five exhibits (GEs 1-5) (Transcript (Tr.) 20-22), and Applicant offered five exhibits (Tr. 23-27, 48-49; AE A-E). There were no objections, and I admitted GEs 1-5 (Tr. 22), and AEs A-E (Tr. 27, 48-49). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GEs 6-8). I received the transcript on April 15, 2009. I received a letter from a character witness (AE F) after the hearing and the letter was admitted without objection (AE F). I closed the record on April 20, 2009 (Tr. 12-13).

Findings of Fact¹

In her SOR response, Applicant admitted her responsibility for the debts listed in the SOR; however, she said some debts were duplications (GE 8). She also provided proof some debts were paid, settled and paid, or otherwise resolved. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 28 years old (Tr. 6, 28). In 2002, she received her bachelor's degree in psychology with a minor in criminal justice (Tr. 6, 28). In 2003, she moved to a different state and worked as a social worker (Tr. 29). She has worked for a government contractor as a financial systems analyst since 2006 (Tr. 29). She married in April 2003 (Tr. 31). Her husband has been in the U.S. Navy for nine years (Tr. 60). He is a Lieutenant in the U.S. Navy (Tr. 31, 56). Her husband is a pilot (Tr. 32). She does not have any children (Tr. 31). She is seeking a Secret clearance (Tr. 30).

Financial considerations

Applicant's statement of reasons (SOR) lists 11 delinquent debts (SOR ¶¶ 1.a to 1.k), totaling \$14,859. Because of duplications, she actually had seven delinquent debts, totaling about \$9,500. Applicant incurred delinquent debts in 1999 when she was in college (Tr. 19). She was ill and missed work for about three weeks causing her to fall behind on her payments to her creditors (Tr. 20, 50-51; AE E). After her illness, she

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

changed employment; however, her new employment paid a lower salary (Tr. 51-52). She moved and she lost contact with her creditors (Tr. 20). After she moved to a different state, her pay was still low because she worked as a social worker (Tr. 53).

Applicant established through her hearing statement and the documents she provided that her SOR debts were all resolved. The resolution of her SOR debts is more specifically described as follows:

(1) The debts in SOR ¶¶ 1.a (\$2,075), 1.j (\$2,033) and 1.k (\$2,096) are duplications of the same account. This credit card account was settled for \$1,200. Applicant made \$600 payments on May 8 and 16, 2008 (Tr. 33-34, 43-44, 46; GE 8 at 1, 3, 5; AE A at 1, 2, 3, 12, 13). Applicant sent several letters to the creditor to obtain proof that the accounts were duplications; however, she did not receive replies (Tr. 43-44). I accept her statement that the accounts are duplications as credible (Tr. 43-44);

(2) This department store account of \$566, was settled for \$469. She paid \$469 on May 8, 2008 (SOR ¶ 1.b; Tr. 35; GE 8 at 1, 6; AE A at 1, 2, 3);

(3) The debts in SOR ¶¶ 1.c (\$956) and 1.f (\$957) are the same debt. This credit card debt was settled and paid as follows: \$282 paid on March 21, 2008, and \$225 paid on April 16, 2008 (Tr. 35-38, 40; GE 2 at 3; GE 8 at 2, 7, 8; AE A at 4, 8);

(4) This credit card debt of \$2,059, was settled for \$1,100, and Applicant made payments as follows: \$200 on March 21, 2008, \$225 on April 16, 2008 (SOR ¶ 1.d, GE 8 at 2). The creditor provided a letter indicating this debt was paid (Tr. 38; AE A at 5);

(5) The debts in SOR ¶¶ 1.e (\$343) and 1.h (\$258) are the same debt, and they pertain to a clothing store account. This credit card debt was settled for \$300 and paid on May 8, 2008 (Tr. 38-40; GE 8 at 2, 9, 10; AE A at 6, 7, 10). Although Applicant did not have documentation proving these two accounts were duplications of each other, the creditor in SOR ¶ 1.h could not find the account (Tr. 41-42). I accept her statement that the accounts are duplications as credible (Tr. 41-42);

(6) This credit card debt of \$2,627, was settled for \$1,383, and she provided proof of payments made as follows: \$433 on March 21, 2008, and \$225 on April 16, 2008 (SOR ¶ 1.g; Tr. 41; GE 8 at 2; AE A at 9). A letter from the creditor, dated March 12, 2009, indicates the account is resolved (Tr. 41; AE A at 9);

(7) This department store account for \$889 was settled for \$642. Applicant paid this debt on March 18, 2008 (SOR ¶ 1.i; Tr. 43; GE 8 at 3, 15, 16; AE A at 11).

Applicant's salary from her employment as a government contractor has tripled from when she started working for the contractor, and she is now earning about \$55,000 annually (Tr. 31, 53). She earns an additional \$600 monthly from her part-time employment as an aerobics instructor (Tr. 30, 31). Her husband's annual salary is about \$54,000. Applicant and her husband have ample income for their lifestyle and save

about \$1,500 monthly (Tr. 58). They have retained about \$3,000 in their checking account, \$10,000 in their savings account, and \$20,000 in certificates of deposit, as “rainy day” funds (Tr. 58-60). She has one credit card and it is current (Tr. 61). Credit reports in March 2008, June 2008, and March 2009, do not show any currently delinquent accounts (Tr. 61-62, 64; GE 3-5).

Character Evidence

Applicant’s friend has known Applicant for more than 20 years (AE F). She has attended the same schools with Applicant. She has closely followed Applicant’s career after Applicant completed college. She vouches for Applicant’s honesty, integrity and trustworthiness. She recommends approval of Applicant’s security clearance (AE F).

Another character witness has known Applicant since 2005 (AE D). She lauds Applicant’s intelligence, organizational skills, trustworthiness, and high ethical standards. She recommends Applicant for a security clearance (AE D).

Applicant provided two performance evaluations, which showed her solid work product (AE B and C). She is a hard worker, who is progressing in her development. She has strong ratings in job knowledge and communication skills. She maintains the highest professional standards.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in her SOR response and at her hearing. In 1999, she fell behind on some of her credit cards and department store accounts. As indicated in SOR ¶¶ 1.a to 1.k, she had 11 delinquent debts, totaling \$14,859. Because of duplications, she actually had seven delinquent debts, totaling about \$9,500. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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 conduct does not warrant full application of AG ¶¶ 20(a), 20(b) or 20(e) because she did not act more aggressively and responsibly to resolve her delinquent debts. Her delinquent debts are “a continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Applicant receives partial credit under AG ¶¶ 20(a) and 20(b) because her financial problems initially resulted when she was ill and unable to work. After her illness, she was underemployed for several years. Her delinquent debts also “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.” Moreover, she established that she acted responsibly under the circumstances, when she paid or settled and paid all of the

delinquent SOR debts.² AG ¶ 20(e) does not fully apply because she did not dispute all of her SOR debts. AG ¶ 20(e) does fully apply to the debts that were duplications.

AG ¶ 20(c) fully applies. Applicant paid or settled and paid her delinquent debts. There are “clear indications that the problem is being resolved or is under control.” She understands the security implications of delinquent debt and will scrupulously avoid future delinquent debt. She has also established mitigation under AG ¶ 20(d) because she showed good faith³ in the resolution of her SOR debts.

Although Applicant should have been more diligent and made greater efforts sooner to resolve her delinquent debts, her payment of the remaining SOR debts is adequate to fully mitigate financial considerations security concerns.

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

²“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

³The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There is evidence against mitigating Applicant's conduct. In 1999, Applicant's debts became delinquent because of her brief illness. However, years passed without resolution of her delinquent debts. The SOR lists 11 delinquent debts (SOR ¶¶ 1.a to 1.k), totaling \$14,859. Because of duplications, she actually had seven debts, totaling about \$9,500 that were at one time or another delinquent during the last four years. She failed to keep her accounts current and negotiate lesser payments when her income decreased, showing some financial irresponsibility and lack of judgment. When she returned to full employment, she did not aggressively seek debt repayment or resolution. Her history of delinquent debt raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole person concept is more substantial. There is no evidence of any security violation. She is a law-abiding citizen. A brief medical illness caused her income to significantly decline, and her credit card accounts became delinquent. Ultimately, she paid or settled and paid her delinquent SOR debts. Her remaining debts, such as one credit card, and car payments are current. She and her husband have savings and certificates of deposit totaling about \$30,000. The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts

actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is 28 years old. She has earned her bachelor's degree. She had worked for a government contractor as a financial systems analyst since 2006 and her salary from the contractor has tripled from when she started working for the contractor. She now earns about \$62,000 annually (includes her part-time employment as an aerobics instructor). She married in April 2003. Her husband is a Lieutenant in the U.S. Navy, and has an annual salary of about \$54,000. She made mistakes, and debts became delinquent. There is, however, simply no reason not to trust her. Moreover, she has established a "meaningful track record" of debt payments by actually paying all of her delinquent SOR debts. These factors show responsibility, rehabilitation, and mitigation. She has demonstrated her loyalty, patriotism and trustworthiness through her service to the Department of Defense as a defense contractor and through her support of her husband, a Naval officer. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude she is eligible for access to classified information.

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 to 1.k: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

Mark W. Harvey
Administrative Judge