



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



In the matter of:)
)
) ISCR Case No. 07-16554
)
)
Applicant for Security Clearance)

Appearances

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

October 15, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

On April 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, 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 May 7, 2008, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on June 30, 2008. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file

objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 16, 2008. She responded with an undated letter and four documents. Department Counsel did not object to her response. I have marked Applicant's response as Applicant Exhibits (AE) A through E, and they are admitted. The case was assigned to another Administrative Judge on September 9, 2008, and reassigned to me on September 11, 2008. I requested Department Counsel to set up a conference call with Applicant. I had a conference call with Department Counsel and Applicant on September 18, 2008. I told Applicant that I would hold the record open until September 24, 2008, for her to submit additional information. She was directed to fax a copy of any matter to both Department Counsel and me. Department Counsel had until October 1, 2008, to respond to Applicant's submission. Applicant submitted two documents which I have marked AE F and G, and admitted without objection. Department Counsel's memo is marked Hearing Exhibit (HE) I.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. She has worked for her current employer since March 2007. She attended community college. She was married but has been divorced for more than ten years. She has four children, ages 22, 21, 18, and 17.¹

Applicant's 21-year-old son is serving in the U.S. Marine Corps. He deployed to Iraq in August 2007, and served there until his return in the spring of 2008. Her two youngest children were living with their father in another state. Her 18-year-old daughter moved to live with Applicant last year when she was 17 years old and pregnant. She gave birth to a premature baby, which led to many medical bills above what was covered by insurance. Her 17-year-old son also came to live with her last year. Her son and daughter brought almost no clothes with them and Applicant had to buy them clothes. Her oldest son moved from the state where his siblings used to live in about April 2008, and at least initially lived with Applicant until he could find his own place. It is unclear if he moved out of Applicant's house as was the plan.²

Applicant lived in the state that her children lived until September 2005. She was in an abusive relationship with a man in that state from 2004 through September 2005. She was the victim of domestic violence. She received a Personal Protection Order (PPO) against him by the state court. Her car was vandalized on several occasions while the PPO was in effect. She strongly suspected he was responsible for the damage to her car but she had no proof. She missed work because of car problems. She eventually dropped the PPO and moved back in with him until she could relocate to her current state in September 2005, and get away from him. She was unemployed for about three months when she arrived at her current location.³

¹ Items 3, 4.

² Items 2-4.

³ Items 3, 4.

The SOR alleges 17 delinquent debts, totaling \$7,640. SOR ¶¶ 1.a and 1.b total \$5,874. The remaining 15 debts total \$1,766. She admitted to owing all the debts with the exception of SOR ¶¶ 1.c, 1.g, 1.i, 1.j, and 1.p, which she denied.

Applicant and her domestic partner in the other state rented an apartment together. When she moved to the state where she now lives, she assumed that he would maintain the payments until the end of the lease. He did not. SOR ¶1.a reflects a judgment awarded to the apartment landlord in February 2006, for \$2,033. SOR ¶1.b reflects a delinquent debt of \$3,841 owed to a collection company, collecting on behalf of the same apartment landlord. Applicant first became aware of the debt to the landlord when she obtained her credit report in May 2007, in anticipation of submitting her Questionnaire for National Security Positions. Applicant paid the debt to the landlord, which had risen to \$3,942, on April 29, 2008. Applicant submitted a credit report dated April 18, 2008, with her response to the SOR. She handwrote on the credit report that this debt was paid on April 29, 2008. Her handwritten comment was corroborated by a credit report dated September 8, 2008, which reported that the debt had a zero balance and was paid in May 2008. Applicant handwrote on both credit reports that the judgment to the same landlord was paid. Neither credit report lists the judgment as paid. Applicant indicated that the judgment was paid and that it would be reflected on a new credit report not yet obtained after the court documents reported that the judgment was satisfied.⁴ I find that Applicant paid the underlying debt that the judgment was based upon and that SOR ¶¶1.a and 1.b have been resolved.

SOR ¶ 1.c alleges a medical debt of \$20. Applicant handwrote on the credit report of April 18, 2008, that the debt was paid, but that she did not have the receipt yet. This debt was paid as verified by the credit report of September 8, 2008. Applicant wrote on the credit report of September 8, 2008, that the debt of \$648, as alleged in SOR¶ 1.d, was paid on September 19, 2008. She stated that she did not have the receipt yet. Applicant wrote on the credit report of April 18, 2008, that she would pay the debts of \$198 and \$58, as alleged in SOR ¶¶ 1.e and 1.f, on May 9, 2008. The credit report of September 8, 2008, verifies that both debts were paid in May 2008.⁵

Applicant paid the \$20 medical debt alleged in SOR ¶ 1.g in March 2008. Applicant wrote on the credit report of April 18, 2008, that she would pay the \$178 medical debt alleged in SOR ¶ 1.h, on May 9, 2008. The credit report of September 8, 2008, still lists this debt with a balance of \$178.⁶

The credit report of May 30, 2007, lists a debt of \$141 to a collection company, collecting on behalf of a cable provider, as alleged in SOR ¶ 1.i. Applicant denied owing

⁴ Items 2, 5, 6; AE G.

⁵ Items 2, 5, 6; AE G.

⁶ Items 2-6; AE E, G.

this debt. It is not listed on any of the later credit reports.⁷ There is insufficient evidence for a finding that Applicant currently owes this debt.

Applicant denied owing the debt of \$72 to a collection company, collecting on behalf of a medical provider, as alleged in SOR ¶ 1.j. The debt is listed on the credit report of May 30, 2007, but not on any of the later credit reports.⁸ There is insufficient evidence for a finding that Applicant currently owes this debt.

SOR ¶¶ 1.k through 1.n allege debts of \$20, \$25, \$10, and \$25 to a collection company, collecting on behalf of a medical provider. Applicant wrote on the credit report of April 18, 2008, that the debts were paid. None of the debts appear on the credit report of September 8, 2008.⁹ I find that the debts were paid.

Applicant wrote on the credit report of April 18, 2008, that she would pay the \$139 debt to a collection company, collecting for an insurance company, as alleged in SOR ¶ 1.o. The credit report of September 8, 2008, still lists this debt with a balance of \$139. She wrote on that report that she paid the debt on September 19, 2008, and provided a phone number. She indicated that she had not yet received a receipt.¹⁰

Applicant denied owing the debt of \$162 to a utility company, as alleged in SOR ¶ 1.p. The debt is listed on the credit report of May 30, 2007, but not on any of the later credit reports.¹¹ There is insufficient evidence for a finding that Applicant currently owes this debt.

SOR ¶ 1.q alleges a debt of \$50 to a collection company, collecting on behalf of a medical provider. Applicant wrote on the credit report of April 18, 2008, that she paid the debt on April 19, 2008. She submitted documentation from the creditor that the debt was paid. The credit report of September 8, 2008, also corroborates that the debt was paid.¹²

In her final response, Applicant indicated that she has reduced her delinquent debt to \$365 and that she would pay that on October 3, 2008. In addition to the debts listed in the SOR, Applicant paid \$1,048 owed in back child support in April 2008, through a withholding of her income tax refund. She paid a \$332 judgment in August 2003, and a \$590 judgment to a medical collection company in October 2003.¹³

⁷ Items 2-6; AE G.

⁸ *Id.*

⁹ *Id.*

¹⁰ Items 2, 5, 6; AE G.

¹¹ Items 2-6; AE G.

¹² Items 2-6; AE A, C, G.

¹³ Items 2-6; AE A, B, D-G.

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 to be used 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 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 the 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 adverse 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 *a/so* 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; and
- (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 both of these 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 only recently paid many of the debts and a few are still owed. Applicant has not been financially stable long enough to warrant the benefit of AG ¶ 20(a). Much of her financial problems can be linked to an abusive relationship. Her former companion did not maintain the rent payments on their apartment after she moved out. She has since paid the landlord and most of her other delinquent debts. She acted responsibly under the circumstances by paying her landlord. AG ¶ 20(b) is applicable to SOR ¶ 1.a and 1.b. She also had medical debts including those incurred by her pregnant daughter. Applicant does not merit application of AG ¶ 20(b) for the medical debts in the SOR because there is insufficient evidence to tie them to her daughter.

There is no evidence that Applicant received counseling for her financial problems, but she has paid most of her delinquent debts. There are clear indications that her financial problems are being resolved and are under control. AG ¶¶ 20(c) and 20(d) are applicable. Applicant denied owing several debts that no longer appear on her credit report, as discussed in the Findings of Fact. AG ¶ 20(e) is applicable to those debts.

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 fled an abusive relationship which created some financial difficulties. She has been working at resolving her delinquent debts now that she is on her feet. She provided documentation that most of her debts have been paid. Her assertions that other debts have been paid or will be

paid merit some weight because previous similar assertions have, for the most part, been proven to be true. She still has some delinquent debts but is clearly on the right path. The Appeal Board has noted that an applicant is not required to establish that she has paid every debt listed in the SOR. All that is required is that an applicant must demonstrate that she has “established a plan to resolve [her] financial problems and taken significant actions to implement that plan.”¹⁴ Applicant has met those requirements.

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 Financial Considerations security concerns.

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.q: For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge

¹⁴ ADP Case No. 06-18900 at 4 (App. Bd. Jun. 6, 2008).