



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-01642
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

April 20, 2010

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant has made progress in getting her delinquent debts under control, it is too soon to conclude they no longer pose a security concern considering their recurrent nature and the amount remaining to be satisfied. Clearance is denied.

Statement of the Case

On August 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 14, 2009, and requested a hearing. The case was assigned to me on November 9, 2009. On December 7, 2009, a notice of hearing was issued scheduling the case for January 6, 2010. That day, Applicant asserted she did not receive the government's proposed exhibits before the hearing, and moved for a continuance. Department Counsel did not object, and I granted the motion, rescheduling the case for January 21, 2010. The case was held as rescheduled. At the hearing, I received eight government exhibits, fourteen Applicant exhibits, and the testimony of Applicant. Also, at Department Counsel's request, I took administrative notice of the decision and the SOR in Applicant's previous ISCR case (Hearing Exhibits (HE) I and II).¹ The transcript was received on January 28, 2010.

Procedural Ruling

SOR subparagraph 1.v alleges that Applicant is "indebted to a Medical account that has been placed for collection in the approximate amount of \$2,737." Applicant denied it. This allegation is overbroad because it does not identify a specific creditor. Although an SOR does not have to satisfy the strict requirements of a criminal indictment, it must still place an applicant on adequate notice of the allegations so that she may have a reasonable opportunity to respond and prepare a defense.² Subparagraph 1.v does not meet this minimum threshold, therefore, I conclude that it is not justiciable, and resolve it in Applicant's favor.

Findings of Fact

Applicant is a 39-year-old widow with three children, ages 22, 19, and 11 (Tr. 23). She has a high school diploma and has earned approximately two and a half years of college credits (Tr. 24). She works for a defense contractor in the information technology field (Tr. 28). She has worked for the same employer for five years (Tr. 26).

Applicant first experienced financial difficulties after her husband's death in 1997. By 2002, she had accrued approximately \$11,000 of delinquent debt, prompting DOHA to issue an SOR later that year (HE II). Based in part on her promises to satisfy all of her debts by the end of 2003, the administrative judge granted her a clearance (HE 1 at 2 ¶ 2).

In April 2004, Applicant lost her job and was unemployed for the next seven months (GE 1 at 19). Her bills again became delinquent. In September 2004, Applicant filed for Chapter 13 bankruptcy protection (Answer). The petition listed approximately \$57,900 of debt, including two debts Applicant had promised to pay by the end of 2003, during the earlier security clearance investigation, (HE 1 at 2).

¹ISCR Case No. 01-17051 (December 6, 2002).

²ISCR Case No. 03-07826 (App. Bd. June 17, 2005 at 3).

Applicant did not consistently make the monthly payments to the bankruptcy trustee (Tr. 29). Consequently, the court dismissed the bankruptcy approximately two months later (Answer at 1).

By March 2009, Applicant had accrued approximately \$130,000 of delinquent debt. SOR subparagraphs 1.b and 1.e are utility bills totalling \$730. Applicant satisfied them (GE D and F, respectively). SOR subparagraph 1.r is a credit card with a \$317 balance. Applicant satisfied this debt, also (GE J).

The creditor listed in SOR subparagraph 1.s is a credit union loan for an automobile purchase in 1999 (GE 7 at 28). In 2006, the car was stolen, and a \$6,900 balance was owed (Tr. 37; GE K at 2). It is unclear from the record why Applicant still owed a balance after seven years. Nevertheless, her insurance company paid the creditor the remaining balance in March 2007 (AE K at 2).

Applicant did not recognize the debt listed in SOR subparagraph 1.w. She contacted the creditor and successfully disputed it (Tr. 40). Consequently, the credit reporting agencies removed it from her credit reports.

The remainder of the SOR debts, totalling approximately \$111,000, are student loans. The debts listed in SOR subparagraphs 1.c and 1.d, totalling approximately \$21,000, are owed to the same creditor. Applicant consolidated them and arranged a payment plan (Answer at 7). She contends she has been paying \$95 monthly under the plan, but only provided evidence supporting one payment in June 2009 and another in December 2009 (GE E, Answer at 7).

Applicant consolidated the debts listed in SOR subparagraphs 1.f through 1.n. The total amount due currently is approximately \$43,000 (Tr. 34; GE G). Applicant contends she arranged a payment plan under which she has been paying \$50 monthly since March 2009 (Tr. 34). Applicant only provided a one receipt, dated December 2, 2009, that demonstrates she has been making any payments (GE G).

SOR subparagraph 1.o totals approximately \$4,900. Applicant settled this account in February 2009 (AE H at 2).

SOR subparagraphs 1.p, 1.q, and 1.x total approximately \$10,500. Applicant initiated a payment plan in June 2009 with a \$245 payment (GE I). Under the plan, she is to pay \$70 each month (Tr. 35). She made a payment in December 2009 (GE I at 2). The evidence does not establish whether she made any payments between the June 2009 and December 2009.

The debt listed in SOR subparagraph 1.t is approximately \$9,258. On January 13, 2010, Applicant filed a "Request for Forbearance" with the creditor (AE L at 4). Her request is pending (AE A). Applicant's monthly payments in the amount of \$69 were scheduled to begin in February 2010 (*Id.* at 1).

SOR subparagraph 1.u is a student loan from a university Applicant attended in 2004 (Tr. 39, 82). The balance is approximately \$1,350. Applicant wrote the creditor on January 6, 2010 proposing to pay \$25 monthly through a payment plan (AE M).

SOR subparagraphs 1.y through 1.gg, totalling approximately \$39,000, are owed to the same creditor. Although the creditor's account information indicates the debt is satisfied, Applicant never made payments, and does not "know if [these debts were] bought by one of the other companies or if [they were] paid through some of the grants" she had applied for over the years (Tr. 91).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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" (AG ¶ 18). Applicant's history of financial delinquencies triggers the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant successfully disputed the debt listed in SOR subparagraph 1.w. Consequently, I resolve it in her favor.

Applicant's first episode of financial difficulties occurred after her husband's death in the late 1990s, and her second episode occurred after a lengthy period of unemployment in 2004. Since then, Applicant has contacted creditors, arranged payment plans, successfully disputed one account, as referenced above, and satisfied several others. Consequently, 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," and 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," apply.

Applicant deserves credit for either satisfying or successfully removing approximately \$50,000 of debt from the SOR. However, she has yet to begin resolving accounts totalling approximately \$10,500, and provided insufficient evidence that she has been making consistent, monthly payments toward the satisfaction of the consolidated student loan accounts totalling approximately \$74,500. Under these circumstances, 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," is inapplicable.

Whole-Person Concept

Under the whole-person concept, 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.

Applicant has made significant progress towards resolving her delinquent debts. However, approximately \$86,000 of delinquent debt remains outstanding. She has yet to begin making payments on two of these accounts totalling \$10,500, and she failed to establish that she has been making consistent payments toward the satisfaction of the remainder. Moreover, although Applicant's delinquencies accrued largely because of a lengthy unemployment beginning in 2004, two of them preceded the unemployment and were at issue during an earlier ISCR case. Applicant failed to fulfill a promise, made at that time, to pay those two delinquencies by the end of 2003. Under these circumstances, I am not persuaded Applicant will be able to adhere to the payment plans she has recently organized.

Applicant deserves credit for trying to earn a college degree while working and raising children. However, she has too much outstanding debt and offered too little proof that she is satisfying it for me to conclude it no longer constitutes a security concern, given the amount that remains outstanding. Upon considering Applicant's case in the context of the whole-person concept, I conclude that her application for a security clearance must be denied.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of financial rehabilitation necessary to mitigate the financial consideration security concern. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, she may well demonstrate persuasive evidence of security worthiness.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b:	For Applicant
Subparagraph 1.c - 1d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f - 1.q:	Against Applicant
Subparagraphs 1.r - 1.s:	For Applicant
Subparagraphs 1.t - 1.u:	Against Applicant
Subparagraphs 1.v - 1.w:	For Applicant
Subparagraph 1.x:	Against Applicant
Subparagraphs 1.y - 1.gg:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge