



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-01693
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

October 24, 2008

Decision

CURRY, Marc E., Administrative Judge:

On, April 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. 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 on May 24, 2008, admitted all of the allegations except 1.r and 1.s, and requested an administrative determination. On June 13, 2008, department counsel prepared a File of Relevant Material (FORM), and mailed it to Applicant. She prepared a reply on September 5, 2008. On September 24, 2008, the case was assigned to me. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 31-year-old married woman with a five-year-old child. She has a high school diploma and has earned some college credits (Item 5 at 10).

Applicant enlisted in the U.S. Army in 1995. In 2000, a physician diagnosed her with chronic fatigue syndrome (Reply at 6). Based on the physician's recommendation, her command restricted her employment activities to light duty. A physician evaluated her again in 2002 and concluded her symptoms had not improved. Shortly thereafter, she was medically retired from the military and placed on the temporary disability retirement list (Reply at 13).

Approximately two years later, a military physician re-evaluated Applicant (Reply at 9 through 12). Her condition had not improved. Consequently, the physician recommended that the Army change her retirement status from temporary disability to permanent disability (Reply at 12). From February 2004 through December 2006, Applicant received \$776 per month in retirement and disability benefits (Reply at 2). This was approximately one third of her previous salary (Reply at 1). Consequently, she had trouble making ends meet. By early 2007, she had accrued approximately \$18,000 of delinquent debt.

After years of tests and treatment, Applicant's health began to improve. In October 2006, she obtained a part-time job as a substitute teacher in a local school district. In February 2007, she began working as a data entry clerk, her first full-time job since leaving the Army. Within a year of obtaining this full-time job, she earned a promotion (Reply at 5). As of March 2008, she was earning approximately \$38,000 per year (Item 6 at 8).

As Applicant's health and employment situation stabilized, she began to focus on reducing her delinquencies. After consulting with a credit counselor, she began contacting collection agencies, and negotiating settlements (Reply at 3). By June 2008, she had satisfied the debts listed in SOR subparagraphs 1.b through 1.d, 1.g, 1.h, and 1.q¹ (Reply, Attachment 12 at 5, Attachment 13, Attachment 15). In July 2008, Applicant satisfied the delinquency listed in SOR subparagraph 1.e (Reply, Attachment 12 at 4). Recently, she settled the debt listed in SOR subparagraph 1.f, and is awaiting the creditor's confirmation (Reply at 3). In total, she has satisfied approximately \$3,250 of delinquent debt.

Applicant did not recognize the creditor listed in SOR subparagraph 1.s. Her efforts at identifying it have been unsuccessful.

Approximately \$14,200 of delinquent debt, as listed in the SOR, remains outstanding. Four of Applicant's debts in the approximate amount of \$9,950, have been delinquent for more than five years (SOR subparagraphs 1.k, 1.l, 1.n, and 1.o). In April

¹SOR subparagraphs 1.q and 1.r are duplicates (Reply, Attachment 14 at 3).

2008, Applicant prepared a budget (Item 6 at 4). She continues to receive disability benefits. Her net monthly disposable income after expenses to pay debt is \$2,064 (*Id.*).

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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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). Moreover, "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds" (*Id.*).

Applicant's accrual of approximately \$18,000 of delinquent debt triggers the application of AG ¶ 19(a), "an inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." In 2000, while serving in the Army, Applicant suffered a disabling illness that precipitated her early discharge, and rendered her unable to work for nearly five years. During this period, she was unable to satisfy her debts with her disability retirement income.

Applicant's health gradually improved. Shortly after obtaining a full-time job in February 2007, she contacted creditors and began satisfying delinquencies. She has satisfied approximately \$3,250 of the delinquent SOR debt.

Applicant presented no evidence that she is satisfying her debts through a formal payment plan. The counseling she received consisted of one phone session. Nevertheless, she presented solid, documentary evidence demonstrating that she is researching her delinquencies, organizing payment plans after she locates their respective creditors, and steadily resolving them. 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," 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," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," apply.

Applicant was unable to identify the creditor listed in SOR subparagraph 1.s. Because the delinquency is less than \$500 and she has more than \$2,000 of monthly disposable income, her inability to locate this creditor has minimal security significance.

Given Applicant's focused, organized efforts at debt reduction since returning to work in February 2007, I am confident she will continue to satisfy her remaining delinquencies. She has mitigated the financial considerations security concern.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility to occupy a sensitive position 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 must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Although Applicant has been steadily satisfying her delinquencies, approximately \$15,000 remains outstanding. The delinquencies were not caused by extravagant spending or financial irresponsibility. Instead, they were caused by a disabling medical illness that forced Applicant to retire early from the Army, and live on a drastically reduced income for the next five years as she struggled to overcome the illness. Since

returning to work full-time, she has created a budget, satisfied approximately \$3,250 of her delinquencies, and has approximately \$2,000 of monthly disposable income to satisfy the remainder. The presence of rehabilitation demonstrated by her efforts at debt repayment outweighs the potential for pressure, coercion, or duress generated by the amount of debt that remains outstanding.

In reaching this conclusion, I considered the fact that nearly \$10,000 of Applicant's delinquencies are legally unenforceable because they have been delinquent for more than five years. In Applicant's state, creditors are barred from initiating collection actions for debts that are greater than five years old.² Although when considered alone, this does not negate the security concern, it reduces the potential for coercion. Upon considering this case in the context of the whole person concept, I conclude she has carried the burden. Clearance is granted.

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.s:	For Applicant

Conclusion

In light of all of the circumstances presented by 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.

MARC E. CURRY
Administrative Judge

²Va. Code Ann. § 8.01 246.2 (2008).