



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



In the matter of:)	
)	
)	ISCR Case No. 08-02022
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard B. Stevens, Esquire, Department Counsel
For Applicant: Pro Se

June 30, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on June 4, 2007. On December 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. 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.

On January 3, 2009, and on March 20, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 1, 2009. The case was assigned to me on May 15, 2009. On June 1, 2009, a Notice of Hearing was issued, scheduling the hearing for June 15, 2009. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant testified and offered four exhibits which were admitted without objection as Applicant Exhibits (AE) A - D. The record was

held open until June 30, 2009, to allow Applicant to submit additional documents. She timely submitted a three-page document that was admitted as AE E. The transcript was received on June 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, Applicant denied all of the SOR allegations.

Applicant is a 28-year-old employee of a Department of Defense contractor seeking a security clearance. She has been employed as an electronic technician with her company since April 2005. From 1998 to 2003, she served on active duty in the United States Marine Corps. She separated as an E-4 with an Honorable Discharge. She attends college part-time. She is married and has three children, ages 9, 8, and 5. (Tr at 5-7, 21, 35; Gov 1; AE E at 2)

On June 4, 2007, Applicant completed a Questionnaire for Sensitive Positions (SF 86) in order to apply for a security clearance. Applicant answered "No" in response to question 28(a) "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" She also answered "No" in response to question 28(b) "Are you currently over 90 days delinquent on any debt(s)?" (Gov 1)

A subsequent background investigation revealed that Applicant has the following delinquent accounts: a \$1,149 debt owed to an apartment that was placed for collection in July 2005 (SOR ¶ 1.a: Gov 4 at 13; Gov 5 at 1); a \$445 medical bill placed for collection in October 2006, date of last activity on the account was January 2002 (SOR ¶ 1.b: Gov 4 at 11; Gov 5 at 1); a \$3,095 credit card that was charged off in May 2007, date of last activity on the account was November 2004 (SOR ¶ 1.c: Gov 4 at 16; Gov 5 at 2); a \$3,747 credit card account that was charged off in May 2007, date of last activity on the account was September 2004 (SOR ¶ 1.d: Gov 4 at 4); a \$5,900 credit card account that was charged off in April 2007, date of last activity on the account was February 2005 (SOR ¶ 1.e: Gov 4 at 6); a \$960 credit card account that was charged off in December 2006, date of last activity on the account was January 2005 (SOR ¶ 1.f: Gov 4 at 7); and a \$367 account placed for collection in January 2008, date of last activity on the account was October 2004 (SOR ¶ 1.g: Gov 5 at 3).

Additional delinquent debts include: a \$580 department store account placed for collection in May 2007, date of last activity on the account was January 2005 (SOR ¶ 1.h: Gov 4 at 4; Gov 5 at 3); a \$5,935 credit card account placed for collection in May 2007, date of last activity on the account was February 2006 (SOR ¶ 1.i: Gov 4 at 10, 16; Gov 5 at 3); a \$5,543 credit card account placed for collection in May 2007, date of last activity on the account is October 2004 (SOR ¶ 1.j: Gov 4 at 10, 16; Gov 5 at 3); a \$4,709 department store credit card account placed for collection in May 2007, date of last activity on the account was January 2005 (SOR ¶ 1.k: Gov 4 at 9-10, 16; Gov 5 at 3); a \$1,916 credit card account placed for collection in May 2007, date of last activity on the account was July 2004 (SOR ¶ 1.l: Gov 4 at 9-10; Gov 5 at 3) a \$10,946

electronics account placed for collection in June 2007, date of last activity on the account is February 2005 (SOR ¶ 1.m: Gov 4 at 14; Gov 5 at 3); a \$1,510 credit card account placed for collection in May 2007, date of last activity on the account is November 2001 (SOR ¶ 1.n: Gov 4 at 7); and a \$9,299 account placed for collection in May 2007 (SOR ¶ 1.o: Gov 4 at 14: this a duplicate of SOR ¶1.m).

Applicant denied all of the debts alleged in the SOR. She denies the debt owed to the apartment alleged in SOR ¶ 1.a because she disputes the amount of the debt owed. She signed a lease in 2003. After a year, Applicant claims, she paid extra to go on a month to month lease. The apartment company claims that she vacated the lease early. They kept her security deposit which is the equivalent of one month's rent. She did not leave a forwarding address when she moved. (Tr at 28-30)

Applicant claims all of the remaining debts are debts her mother obtained using her identity. Her mother used Applicant's identity because she had poor credit. Applicant discovered that her mother used her identity to obtain credit in the fall 2002. Applicant was on active duty in the Marine Corps and a creditor called her inquiring about a debt. She obtained a copy of her credit report in 2002 or 2003. Applicant's credit report lists her mother's maiden name. Applicant claims she never used her mother's maiden name to obtain credit. She also never used her hometown address to obtain credit. Her mother's maiden name and her hometown address appear on Applicant's credit report. Her mother initially denied that she used Applicant's identity to obtain credit, but later admitted it and said that she would pay the accounts. She has not paid off any of the accounts. Mother and daughter rarely communicate. (Tr at 22-26, 31)

Applicant did not notify the credit bureaus that she was a victim of identity theft. She never reported her mother to the police. Her mother asked her not to file a report because she was afraid of getting sued. She last spoke with her mother briefly in December 2008, but does not speak with her on a regular basis. (Tr at 27-28)

Applicant provided a copy of her husband's credit report, dated June 10, 2009. (AE D) She claims that she and her husband use his credit. They have no recent delinquent debts. They own their home, two cars, and do not have very many debts. All of their accounts are current. Her husband works two full-time jobs. After expenses, they have approximately \$3,000 left over each month. They are current on federal income taxes. They have always lived within their means. (Tr at 34-37; Gov 3 at 4) Applicant has approximately \$40,000 in investments. She has approximately \$6,700 in her savings account. (AE A; AE C)

In her response to the SOR, Applicant denies that she intentionally failed to list her financial delinquencies in response to questions 28(a) and 28(b) of the security questionnaire that she completed on June 23, 2007. (Tr at 35-37.)

Applicant's manager wrote a letter on her behalf. He indicates Applicant performs technical test operations on classified hardware and handles classified data. She has

demonstrated that she is intelligent, trustworthy and reliable. She quickly learned test procedures, equipment, and criteria. He notes Applicant is “people oriented and easygoing.” Applicant always acts in a professional and ethical manner. (AE E at 3) Applicant also does well in school. (AE A; AE B.)

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 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.

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 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 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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant’s credit reports lists 15 delinquent accounts, an approximate total balance of \$56,101.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions are relevant to Applicant’s case:

Financial Considerations Mitigating Condition (FC MC) ¶ 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) applies. Applicant has significant amount of debt that is several years old. With the exception of the debt alleged in SOR ¶ 1.a, the debts were incurred by her mother using Applicant’s personal information. Applicant and her husband use his credit rating. His credit report indicates no delinquent accounts. Applicant’s credit was ruined by her mother. She currently has \$40,000 in investments.

Her manager vouches for her integrity and reliability. Applicant's poor credit history does not cast doubt on her current trustworthiness, reliability, or good judgment.

FC MC ¶ 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) applies, in part. Applicant's mother used her identity to open numerous financial accounts. Applicant discovered that her mother was using her identity in 2002. However, she has taken no steps to protect herself against her mother using her identity to obtain more credit. She has taken no action to correct her credit reports. She has not reported her mother's use of her identity to the credit reporting agencies. Applicant admits that she rented an apartment from the creditor in SOR ¶ 1.a. She disputes the debt but has not formally disputed the account on her credit report. While I acknowledge the delicate position Applicant is placed and her reluctance to report her mother to the police, her lack of action towards protecting her credit from further abuse is irresponsible. For this reason, this mitigating condition is given less weight.

FC MC ¶20(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) partially applies. Applicant's mother used her identity to obtain all of the financial accounts that are listed in the SOR. She did not provide documented proof that her mother actually used her credit to steal her identity. Her mother's maiden name and her childhood address are listed on the credit report. However, this is not conclusive that her mother opened accounts using Applicant's identity without her knowledge. Credit reports occasionally list the individual's past addresses. Applicant has been aware of her mother's identity theft since 2002, but has not taken steps to resolve the issue or protect her identity from further abuse.

Weighing all of the factors under the specific facts of Applicant's case, to include her mother's identity theft, the work ethic of Applicant and her husband and their financial stability, I conclude Applicant mitigated the concerns raised under Guideline F.

Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Personal conduct concerns are raised because Applicant failed to list her financial delinquencies in response to sections 28(a) and 28(b) on her security clearance questionnaire, dated June 4, 2007.

Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) potentially applies in Applicant's case. For PC DC ¶ 16(a) to apply, Applicant's omission of her delinquent accounts must be done with a deliberate intent to deceive. In her answer to the SOR, Applicant denies that she intentionally falsified her security clearance questionnaire. I find her explanation credible.

The personal conduct concern is found for Applicant.

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. I considered the favorable comments of Applicant's manager. I considered her honorable service in the United States Marine Corps. I considered that most of Applicant's delinquent debts were the result of her mother using her identity without Applicant's knowledge. Applicant provided substantial evidence that she and her husband are financially stable. She works full-time, raises three children and attends college part-time. Her husband works two full-time jobs. While Applicant could have been more proactive in protecting her identity from future abuse, considering the particular facts of this case and based solely on the whole person factors, Applicant mitigated the security concerns raised. However,

Applicant is warned that she must take steps to protect her identity from further abuse and to formally dispute the items on her credit report with the credit agencies in order to prevent her poor credit history from being raised as a security concern in future security clearance investigations. Personal conduct concerns are mitigated because Applicant did not intend to falsify her security clearance application. Under the particular facts of this case and in consideration of the whole person factors, I conclude that Applicant's financial issues do not create a security risk.

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
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge