



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



In the matter of:)
)
-----) ISCR Case No. 08-02937
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro Se*

July 10, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 23, 2007. On March 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F that provided the basis for its action to deny her a security clearance and refer the matter to an administrative judge. 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 April 7, 2008, and requested a decision without a hearing. On April 30, 2008, the government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt.

Applicant filed a response that was received by DOHA on or about May 20, 2008, to which Department Counsel had no objections. On June 16, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On receipt, the following documents submitted in rebuttal to the FORM were marked and entered as exhibits: Applicant's March 2004 bankruptcy petition as Exhibit A, her June 13, 2008, credit report as Exhibit B, summary of bankruptcy plan as of March 2004 as Exhibit C, her payment record under the plan through June 2005 as Exhibit D, and her forwarding correspondence with explanations as Exhibit E. Based upon a review of the government's FORM and Applicant's response (Ex. A), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleges under Guideline F, financial considerations, that Applicant owes delinquent debt totaling \$37,386 (SOR ¶¶ 1.a through 1.aa), after a Chapter 7 bankruptcy discharge in October 2001 (SOR ¶ 1.bb), and that she filed for a Chapter 13 bankruptcy in March 2004 that was dismissed in March 2006 (SOR ¶ 1.cc) (Item 1). Applicant acknowledged the debts alleged but submitted that all but those in SOR ¶ 1.a (\$67 utility debt) and 1.g (federal student loan debt of \$22,000) had been included in her Chapter 13 bankruptcy. She provided documentation showing satisfaction of the debt in SOR ¶ 1.a on April 8, 2008, and indicated she had contacted her student loan lender to set up payments. Applicant averred she had assumed the debts listed in her bankruptcy had been paid, and she would work on getting them taken care of. Applicant contested there was any basis for concluding that she was a compulsive gambler or that she had received proceeds from financially profitable acts, presumably based on the alleged general financial considerations concern (Item 3). The government did not allege any specific concerns related to gambling or financially profitable criminal conduct. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 41-year-old warehouse specialist who has worked for a defense contractor since August 2007 (Item 4). The available record does not show that she has ever held a security clearance.

Applicant was married from March 1987 to September 1994. She has three children, a son born in December 1984, and daughters born in July 1987 and April 1990. She raised her children on her own until about 2003 when her youngest daughter went to live with her ex-husband.¹ Applicant began paying child support (Ex. E).² None of her children was living with her as of August 2007 (Item 4).

¹Applicant indicates that she raised her children on her own without the benefit of any welfare or child support (Ex. A), although she listed in a 2004 bankruptcy filing that she had income of \$219.27 per month in child support, likely for the elder of her two daughters who was then 16 and living with her.

²Her credit report of September 2007 (Item 5) indicates that she had been delinquent on a child support obligation as of August 2003, but brought the account current.

Applicant attended a community college from about August 1988 to August 1992 but did not earn a degree. She took out student loans to pay for college totaling about \$19,438 (SOR ¶ 1.g) that she did not repay (Items 4, 5). As of July 2007, her student loan debt was in collection with a balance of \$22,211 (Item 5).

From March 1996 to July 2005, Applicant was employed by a nationwide discount retailer as a department manager in one of its stores (Item 4). She struggled financially and cashed in her employee stocks and took out signature loans to pay for car repairs (Ex. E). In September 2001 she sought to relieve herself of her obligation to repay some debts by filing a Chapter 7 bankruptcy. She was granted a discharge of legally dischargeable debts in January 2002 (Items 5, 6).³ What little can be discerned from the available record about the extent or nature of the debt included in the bankruptcy is that some credit card debts and a secured loan were covered.

Applicant, who earned gross income of \$24,000 in 2002 and \$27,000 in 2003, incurred legal costs in fighting her ex-husband over custody of their daughter. She took out several installment loans to pay legal fees and her child support, and eventually had to take new loans to cover payments on the old ones (Ex. A). In August 2001, Applicant took out loans of \$914 and \$679 from the same lender at two different locations. In November 2003, Applicant took out two more loans of \$292 and \$619 from the company. All of the accounts were charged off: the \$914 (SOR ¶ 1.k) in June 2006, the \$679 in January 2002 (SOR ¶ 1.r), and the \$292 (SOR ¶ 1.j) and \$619 (SOR ¶ 1.i) in January 2004. Yet another installment loan, taken out for \$416 back in August 2001, was charged off with a balance owed of \$347 (SOR ¶ 1.aa). In October 2003, a \$764 delinquent installment loan balance with another finance company was sent for collection (SOR ¶ 1.n). In February 2004 three creditors obtained judgments against her in the amounts of \$603 (SOR ¶ 1.o), \$711 (SOR ¶ 1.s), and \$720 (SOR ¶ 1.h). Four installment loan accounts with yet another lender became delinquent. In March 2004, the company obtained two judgments against her in the amounts of \$459 (SOR ¶ 1.l) and \$321 (SOR ¶ 1.m). Two other debts owed the creditor of \$560 (SOR ¶ 1.p) and \$914 (SOR ¶ 1.q) were charged off. In November 2004, two more delinquent loans of \$228 and \$283 (SOR ¶¶ 1.y and 1.z) were charged off (Items 5, 6).

As of February 2004, Applicant owed a bank \$142 for a returned check (SOR ¶ 1.t). In June 2004, an unpaid medical debt of \$37 was placed for collection (SOR ¶ 1.f). In 2005, Applicant incurred dental charges of \$116, \$215, and \$231 (SOR ¶¶ 1.u, 1.v, and 1.w) that were referred for collection in about August 2007. Applicant also fell behind in her utility and phone services accounts. In April 2006, a natural gas debt of \$155 owed since December 2003 was referred for collection (SOR ¶ 1.e). A wireless telephone services debt of \$2,373 (SOR ¶ 1.c) was placed for collection in May 2006 after there had been no activity on the account since December 2003. In October 2006, a \$47 delinquent electric services debt was referred for collection (SOR ¶ 1.b). In March

³The government alleged in SOR ¶ 1.bb that Applicant's bankruptcy petition was discharged on or about October 23, 2001. It is not clear where the government obtained that information. The credit reports available for review indicate a disposition date of January 2002.

2007, a second wireless services debt of \$2,373 was placed for collection (SOR ¶ 1.d). As of August 2007, she owed another \$67 collection balance for services on a utility services account opened in May 2006 (SOR ¶ 1.a). In March 2007, a mail-order DVD supplier placed a \$120 debt balance for collection (SOR ¶ 1.x). (Items 5, 6).

In March 2004, Applicant filed for bankruptcy under Chapter 13. On her petition, she indicated that she had not filed a prior bankruptcy within the last six years, although she does not now deny, and the credit reports (Items 5, 6, Ex. B) confirm the Chapter 7 filing in September 2001. In her Chapter 13 petition, Applicant listed liabilities totaling \$52,253.91 of which \$40,613.87 was for unsecured claims. The \$11,640.04 in secured claims was for an automobile (not alleged). The debts in SOR ¶¶ 1.d–1.j, 1.m–1.n, and 1.t were listed on her petition. Also on the bankruptcy were several debts not alleged in the SOR, including loans totaling over \$2,500, \$8,600 for a repossessed car, \$849 in credit card debt, two collection debts totaling \$670, and \$1,500 in legal services for the custody battle. Applicant proposed to pay \$14,234.44 (the \$11,640 secured auto loan debt and \$1,300 in attorney fees) under the plan (Ex. C). Some of her creditors filed claims with the bankruptcy trustee. Her total wireless phone debt listed at \$3,321 went to \$4,145. The lender in SOR ¶ 1.m added a second claim of \$796.80.⁴ A settlement corporation claimed a \$4,081.19 debt (not alleged) that was not listed on her bankruptcy petition. The lender in SOR ¶ 1,n filed a claim for \$864.65 when Applicant had listed the amount of the claim as “unknown” on her Schedule F. These claims were allowed by the trustee in August 2004 for purposes of distribution under the plan unless Applicant or other interested party filed objections to the claims. There is no evidence Applicant objected to the filed claims totaling \$47,791.11 (Ex. A).

Applicant paid \$15,257 under the bankruptcy plan between April 27, 2004, and June 17, 2005. In addition to monthly payments of \$395.40 by money order, she turned over an \$8,110 check for her truck (Item 4, Ex. E) and a \$1,216 tax refund to the bankruptcy trustee (Ex. D). As of February 28, 2005, the trustee had paid her attorney’s fee of \$1,300, the trustee’s fee of \$643.64, and \$11,369.76 of the secured claims. No disbursements had been made as to the other claims allowed in the bankruptcy (Ex. D). Applicant provided no proof of any payments made under the plan after June 2005. In March 2006, her Chapter 13 bankruptcy was dismissed (Items 5, 6).

In August 2007, Applicant started working as a warehouse specialist for her current employer. Needing a clearance for her duties on a military installation, Applicant executed an e-QIP on August 23, 2007. She listed her March 2004 Chapter 13 bankruptcy filing in response to question 27.a “In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include chapter 13)?” and

⁴The government alleged that Applicant had four delinquent accounts with this creditor totaling \$2,657 (SOR ¶¶ 1.i, 1.m, 1.p, and 1.q). Applicant listed two loans with the creditor on her Schedule F with claims of \$322 and \$0. The \$322 is likely the debt in SOR ¶ 1.m as the company obtained a judgment amount against her in March 2004 in that approximate amount. That account had a high credit of \$292. Another branch of the loan company had obtained a judgment of \$459. It is likely the account alleged in SOR ¶ 1.i. Based on the credit reports, the government also alleged charged off debt balances of \$\$640 and \$994 (SOR ¶¶ 1.p and 1.q). Her credit report of March 5, 2008 (Item 6) includes all four debts.

explained, "I was to pay a certain amount each month. The amount was lessened [sic] due to a check I recieved [sic] from my truck for over \$8000 that I gave to the courts to pay off early." Applicant responded "Yes" as well to questions 28.a (over 180 days delinquent on any debts in last 7 years) and 28.b (currently over 90 days delinquent on any debts), and listed her student loan debt that she estimated at \$24,000, and added:

The amount is an estimate. I am not sure how much I owe. I have not recieved [sic] any information for me to restart payment of my student loan since the ending of my bankruptcy. I am also not sure at the moment who has my student loan since it goes through many different companies as they refigure it. (Item 4).

As of September 11, 2007, the credit bureaus were reporting the dismissal of her March 2004 Chapter 13 bankruptcy and several debts placed for collection thereafter, including the wireless phone services debts in SOR ¶¶ 1.c and 1.d, the medical debts in SOR ¶¶ 1.u–1.w, the utility accounts in SOR ¶¶ 1.a and 1.b, and the DVD debt in SOR ¶ 1.x (Item 5). A subsequent check of Applicant's credit on March 5, 2008, revealed no progress toward resolving those debts in active collection status as well as an outstanding child support balance of \$1,132. Some of the loan companies who had filed claims against her in the bankruptcy were reporting balances owed after charge off (SOR ¶¶ 1.h–1.n) and her student loan (SOR ¶ 1.g) was past due in the amount of \$22,842 (Item 6, Ex. B). As of April 2008, she was paying her child support under agreed upon terms but she owed a balance of \$1,166. Her medical debts (SOR ¶¶ 1.u–1.w) were past due in the aggregate \$728 and her student loan debt had risen to \$22,914 (Ex. B). Applicant satisfied the \$67 utility services debt in SOR ¶ 1.a on April 8, 2008 (Item 3).

Applicant denies that she knowingly incurred any delinquent debt since 2005. As for the medical bills, she indicated she thought insurance had paid them and it was not until she received the FORM that she realized the bills were for her tooth. When she responded to the FORM in May 2008, she also promised to pay the gas services debt in SOR ¶ 1.b by the end the month. She retains only one active credit card, issued by a department store, to rebuild her credit. The account was 60 days past due as of October 2005, but she brought it current. She has run a balance from a low of \$290 to a high of \$455 on the account since May 2006. As of April 2008, that account had a \$360 balance. Applicant claims to have no knowledge of the debt in SOR ¶ 1.x, and it does not appear on her latest credit report (Ex. B, Ex. E).

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. 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 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 that 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 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.

Afforded some relief after a Chapter 7 discharge in January 2002, Applicant remained legally responsible for about \$20,000 in delinquent student loan debt (SOR ¶ 1.g). In about 2003, she began taking on new installment loan debt to pay other obligations. By March 2004, she had incurred liabilities of more than \$52,000, including about \$4,145 in wireless phone services debt. Significant security concerns are raised by "inability or unwillingness to satisfy debts" (AG ¶ 19(a)) and by "a history of not meeting financial obligations" (AG ¶ 19(c)).

Applicant attributes her indebtedness to the struggles of caring for her three children without any child support. 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," applies in part. While she did not provide specific economic data, her income as a department store manager was likely insufficient to cover all the expenses of raising three children and it explains the first bankruptcy. Her more recent debt includes sizeable cellular phone costs that have not been shown to fall within AG ¶ 20(b), even if I excuse that portion of installment loan debt taken out to pay for costs associated with her custody battle over her daughter. Applicant also has not acted responsibly with regard to her student loan obligations.

Applicant's financial problems are too pervasive and too recent to satisfy mitigating condition AG ¶ 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"). Credit checks run since September 2007 confirm that several of the debts alleged in the SOR originally came due in or before 2004. While she made some effort to address this debt through a Chapter 13 bankruptcy, she continued to incur new debt. Three medical debts totaling \$562 incurred in August 2005 (SOR ¶¶ 1.u-1.w) were placed for collection in August 2007. Utility services debts of \$67 and \$47 (SOR ¶¶ 1.a-1.b) were sent for collection in 2006. A \$120 DVD debt (SOR ¶ 1.x) was referred for collection in March 2007. Even assuming Applicant has a good-faith basis to dispute the DVD debt,⁵ which does not appear on her May 2008 credit report (Ex. B), she had a responsibility to follow-up on the other debts that she claimed she thought had been paid or covered by insurance. Applicant has made no payments on her defaulted student loans, which total about \$22,914 as of April 2008. She satisfied the \$67 utility services debt, albeit not until April 2008, but has paid nothing toward her medical debts.

⁵Applicant claims to not recognize the debt, but it appears on her September 2007 credit report (Item 5) as a collection account. She has not provided any documentation to substantiate a dispute over its legitimacy.

Applicant's March 2004 Chapter 13 bankruptcy filing and subsequent payments totaling \$15,257 under the plan constitute a good-faith effort to resolve her debts under AG ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts"). However, there is no indication of any payment by her under the plan after June 2005, and the bankruptcy was dismissed in March 2006 leaving several debts unpaid, including cellular telephone debt of \$4,578 (SOR ¶¶ 1.c-1.d) and installment loan debt of \$4,340 (SOR ¶¶ 1.i-1.k, 1.n, 1.o) listed as past due on her May 2008 credit report. The failure of creditors to actively pursue collection (Ex. E) lessens her financial pressures, but it does not mitigate the judgment concerns raised by her financial mismanagement. It is unclear why Applicant stopped her payments under the Chapter 13. While the \$15,257 paid in the plan exceeded the \$14,234.44 (the secured debt and attorney fees) she proposed to pay under the plan, claims were subsequently filed against her, and allowed by the trustee, well in excess of what she paid.⁶

Applicant is no longer borrowing from one creditor to pay off another. This is a favorable change in her financial habits, but it is premature to conclude that "there are clear indications that the problem is being resolved or is under control" (see AG ¶ 20(c)). As of April 2008, her delinquent student loan balance was about \$22,914. She averred she had contacted the lender to set up payments (Item 3). Repayment terms had not been arranged as of mid-May 2008. Applicant has not provided evidence showing she will be able to satisfy that debt in the reasonably foreseeable future.

Whole Person Concept

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

⁶It is also unclear whether Applicant's failure to disclose her 2001 Chapter 7 bankruptcy on her Chapter 13 petition had a role in the dismissal of her March 2004 case.

I considered the disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The government must be assured that those persons with classified access can be counted on to exercise good judgment at all times. Applicant's student loans were not discharged in her Chapter 7 bankruptcy but she was relieved of her legal responsibility to pay other obligations. She continued to make poor financial decisions, and incurred more than \$20,000 in unsecured debt in addition to the student loans that were in default. Her efforts to resolve that debt through a Chapter 13 bankruptcy fall short of overcoming the concerns for her financial judgment in light of her failure to see the plan through to a discharge of her debts.

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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	For Applicant
Subparagraph 1.cc:	Against Applicant

Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge