



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



In the matter of:)	
)	
)	ISCR Case No. 08-03221
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

October 29, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance application, Standard Form 86, on March 3, 2007. On May 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, for Applicant. 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 June 17, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 3, 2008. The case was assigned to me on August 1, 2008. On August 15, 2008, a Notice of Hearing was issued, scheduling the hearing for September 12, 2008. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4. Applicant testified, called two witnesses, and offered five exhibits which were admitted as Applicant Exhibits (AE) A - E. The transcript was

received on September 23, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, Applicant admits to the allegations in SOR ¶¶ 1.a, 1.b, 1.n, 1.o, and 1.p. She denies all remaining allegations.

Applicant is a 54-year-old Internet technology specialist with a Department of Defense contractor seeking a security clearance. She has been employed with her company since 2008. She previously worked for another defense contractor from May 2005 to February 2007. She has a master's degree in business administration. She is widowed and has no children. She held a security clearance for about 10 years from 1979 – 1989. (Tr at 4-6; Gov 1.)

On March 3, 2007, Applicant completed a security clearance application, Standard Form 86, in order to apply for a security clearance. (Gov 1.) A subsequent background investigation revealed that Applicant had 16 delinquent accounts, an approximate total balance of \$97,490. Of that amount, approximately \$87,306 was for delinquent student loans. The delinquent accounts include: a \$7,218 judgment for a delinquent student loan entered against Applicant in May 2000 (SOR ¶ 1.a: AE B; AE C at 22); a \$4,622 account for a deficiency judgment for an automobile repossession in March 2002 (SOR ¶ 1.b: Gov 3 at 8; AE C at 13, 15); a \$59 past due telephone account from December 2005 (SOR ¶ 1.c: Gov 3 at 14; Gov 4 at 2; AE A at 1; AE C at 19); a \$233 cell phone account placed for collection in July 2006 (SOR ¶ 1.d: Gov 3 at 5, 15); a \$528 delinquent account placed for collection in October 2002 (SOR ¶ 1.e: Gov 3 at 13, 15).

Additional delinquent accounts include: a \$164 telephone account that was placed for collection in February 2005 (SOR ¶ 1.f: Gov 3 at 5, 16); a \$496 cell phone account placed for collection in February 2005 (SOR ¶ 1.g: Gov 3 at 6, 16); a \$133 telephone account placed for collection in August 2003 (SOR ¶ 1.h: Gov 3 at 17); a \$2,254 medical account placed for collection in August 2003 (SOR ¶ 1.i: Gov 3 at 7, 16; Gov 4 at 2); a \$305 medical account placed for collection in February 2003 (SOR ¶ 1.j: Gov 3 at 17; Gov 4 at 2; AE C at 13); a \$147 medical account placed for collection in September 2002 (SOR ¶ 1.k: Gov 3 at 17; Gov 4 at 2); a \$357 medical account placed for collection in August 2002 (SOR ¶ 1.l: Gov 3 at 17; Gov 4 at 2; AE A at 2); a \$325 account placed for collection in September 2002 (SOR ¶ 1.m: Gov 3 at 7, 20; Gov 4 at 2; AE C at 22); a \$291 medical account placed for collection in May 2006 (SOR ¶ 1.n: Gov 4 at 2; AE C at 21); an \$18,391 student loan account reported past due in August 2005 (SOR ¶ 1.o: Gov 3 at 14; Gov 4 at 2; AE A at 2); and a \$61,967 student loan account reported past due in August 2005 (SOR ¶ 1.p: Gov 3 at 14; Gov 4 at 2; AE A at 2; AE C at 15, 17).

In 1995, Applicant's husband became ill. They had no health insurance. Applicant was a graduate school student and her husband was unemployed. In 1996,

she got a job that had health insurance. However, the health insurance would not cover her husband because of his pre-existing condition. Applicant's husband passed away in 1997. He had approximately \$500,000 in unpaid medical bills when he died. Most of the medical debts were written off due to the public health policy of the state where they were living. The state mandates that uninsured patients be treated and their medical debts are written off. (Tr at 25 – 26.)

From 2001 to 2005, Applicant had several periods of unemployment. She was unemployed from May 2000 to March 2001; from June 2001 to August 2001; from January 2002 to March 2002; and from May 2004 to February 2005. (Gov 1.) Applicant has been continuously employed since May 2005. (Tr at 30.)

Applicant states that she is paying off her debts to the best of her ability. She offered a credit report dated September 7, 2008 (AE C), which she claimed listed only three delinquent accounts which include the federal student loans and two medical bills. (Tr at 21-22.) Aside from her late husband's medical issues, Applicant has had several health problems. In 2003, she had gall bladder surgery. In December 2007, she had a heart catheterization. She is diabetic and had surgery on her neck to remove a tumor. (Tr at 45-47.)

The current status of the debts alleged in the SOR are:

SOR ¶ 1.a: \$7,218 judgment for state student loans has been paid through garnishment. (Tr at 31-32; AE B; AE C at 22.)

SOR ¶ 1.b: \$4,622 amount owed after automobile repossession. Applicant claims the debt is closed because the car was resold. (Tr at 36.) The September 7, 2008 credit report indicates the amount owed after resale was charged off but not paid. (AE C at 13.)

SOR ¶ 1.c: \$59 telephone account: Applicant initially denied this but paid it in order to get it resolved. (Tr at 37; AE A at 1; AE C at 19.)

SOR ¶ 1.d: \$233 cell phone account placed for collection. Applicant does not know what this account is. She claims the account is cancelled since it is not on her recent credit report. (Tr at 37; AE C.)

SOR ¶ 1.e: \$528 collection account: Applicant disputes this debt. She is not familiar with this debt. (Tr at 38.)

SOR ¶ 1.f: \$164 telephone bill: Applicant claims the bill was paid. No sufficient proof was presented to show the debt was resolved. (Tr at 39.)

SOR ¶ 1.g: \$496 cell phone account: Applicant claims that her sister's boyfriend used Applicant's name to open a cell phone account. (Tr at 39.) The September 7,

2008, credit report indicates that this account was paid after being charged off. (AE C at 11.)

SOR ¶ 1.h: \$133 telephone account: Applicant claims it is paid. She does not remember when it was paid. She does not have a receipt. She claims it is no longer on her credit report. (Tr at 40.)

SOR ¶ 1.i: \$2,254 medical account: Applicant claims she has made payment over the past six months and the balance is under \$2,000. (Tr at 41; AE C at 9)) In May 2008, she sent in a \$50 payment to Dr. Q. (AE A.) She sent in \$100 payments to Dr. Q. in July and August 2008. (AE D.)

SOR ¶ 1.j: \$305 medical account: Applicant claims this is a bill related to her late husband's medical issues. She claims the agency told her the debt had been cleared. She had no documentation to verify this. (Tr at 42.) The September 7, 2008, credit report lists this account as unpaid. (AE C at 13.)

SOR ¶ 1.k: \$147 medical account: This is a medical bill incurred by Applicant which she claims was covered by the state indigent services agency. (Tr at 42.) She paid off the bill in two payments to Dr. M. She paid \$50 in June 2008. (AE A.) She paid \$97 in July 2008. (AE D.) This debt is paid. (Tr at 22, 49-50.)

SOR ¶ 1.l: \$357 hospital bill: Applicant claims the debt was cancelled and paid by the state indigent services agency. (Tr at 43.) She paid \$50 to this account in June 2008. (AE A.) The September 7, 2008, credit report lists this account as an open unpaid collection account. (AE C at 9.)

SOR ¶ 1.m: \$325 collection account: Applicant does not recognize this account. She claims she challenged the account to the credit reporting agencies through the Internet but provided no documentation. (Tr at 43-44.)

SOR ¶ 1.n: \$291 medical account: Applicant is making payments. She believes the balance on the account is \$50 but provided no documents in support. (Tr at 44-45.) In June 2008, Applicant paid \$50 towards this account. (AE A.) She sent in a \$50 payment in July 2008, and a \$100 payment in August 2008. (AE D.)

SOR ¶ 1.o: \$18,391 defaulted federal student loan: Applicant completed her education in 1996. The loans were initially deferred six months. Additional deferments were granted for several years because of her husband's medical bills. Applicant makes payments on her student loans but not as much as the student loan company wants her too. They wanted approximately \$500 to \$600 a month. She claims she will increase her payment when other debts are paid. The student loan accounts remain in delinquent status. (Tr at 31-34; 44-45.) She made two \$50 payments in June 2008 which appear to apply to SOR ¶ 1.o and SOR ¶ 1.p. (AE A.) She made a \$50 payment in July 2008 and a \$100 payment in August 2008. (AE D.) She provided no information from the student loan agency as to her current loan balance and her past payment history.

SOR ¶ 1.p: \$61,967 defaulted federal student loan: See the information in the above paragraph.

In response to interrogatories, dated April 9, 2008, Applicant stated her monthly gross income was \$8,166. Her total monthly deductions are \$4,600, including a \$1,300 deduction to a 401(k) plan. Her net monthly income is \$3,566. Her rent is \$730. Other monthly bills include groceries: \$580, clothing: \$200, car expenses: \$630, medical expenses: \$350. After expenses, she had approximately \$726.40 left over each month. (Gov 2; see AE B: Applicant's wages were garnished approximately \$550 per month at her previous job for one of her student loan accounts. It is not clear as to whether her wages are being garnished in her current job although she testified that the garnishment continues. (See Tr at 49.)) At hearing, Applicant stated that her expenses were about the same but she had some additional medical bills. She pays \$200 a month (\$100 each) towards two new medical bills. Some medical bills are still coming in. She states that she has no new delinquent debts in addition to the delinquent debts mentioned in the SOR. She has not attended financial counseling. (Tr. at 45-48.)

Applicant's supervisor from 2005-2008 testified. He states that Applicant is trustworthy and has an exceptional work ethic. He would hire her back. He recommends that she be given a security clearance. (Tr at 52-55.)

Applicant's current supervisor testified. He knew her from her previous job. He was a web developer and she was a data base administrator. He finds her extremely trustworthy and dependable. They have worked many long nights together. He recommends she be given a security clearance. (Tr at 56-58.)

Applicant's personal friend has known her for 16 years. She describes her as honest and trustworthy and proud of being able to serve her country. She is aware that Applicant has had to deal with larger than normal debt due to her husband's catastrophic illness. She states there is nothing in her background that anyone could use to make Applicant betray her country. (AE 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.

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. From 2001 to 2007, Applicant has accumulated over \$97,490 in delinquent debt. A substantial amount of the debt relates to her defaulted federal student loan accounts.

The government produced substantial evidence by way of exhibits to raise security concerns under financial considerations. 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. 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) is not applicable. Applicant continues to have numerous delinquent accounts. Although she is making some payments towards her student loan accounts, the accounts remain in delinquent status.

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 husband's illness and her own health issues contributed to her financial situation. She also had several periods of unemployment from 2001 to 2005. There were circumstances beyond her control that adversely affected Applicant's finances. The next question to ask is whether Applicant acted responsibly under the circumstances. While Applicant has paid some of her bills, several accounts remain unresolved. Her largest debt, the federal student loans, remain in delinquent status. It has been over 12 years since Applicant completed her higher education. Since May 2005, Applicant has had a well-paying job. Her personal financial statement indicates that she had the money to pay sufficient payments on student loans to rehabilitate her delinquent accounts. After expenses, she had \$726 left over each month. She contributes \$1,300 to her 401(k). She had the discretion to reduce her 401(k) contribution to apply more towards her delinquent student loan accounts. Based on the record evidence, Applicant was capable of doing more to resolve her delinquent accounts. It cannot be concluded that she acted responsibly under the circumstances.

FC MC ¶ 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) does not apply. Applicant has not received any financial counseling. While she

has resolved or is paying on several accounts, she still has a significant amount of unresolved debt. It is unlikely that her financial situation will improve in the future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies in part. Applicant has submitted sufficient proof to show that the debts alleged in SOR ¶¶ 1.a, 1.c, 1.g, and 1.k are paid. She is paying on several accounts. However, significant financial issues remain. Although she is making some payments towards her federal student loans, the accounts remain in delinquent status because she is not making sufficient payments towards these accounts to enter into a formal rehabilitation plan to bring the accounts current. Applicant started to make payments on several accounts in June 2008. Not enough time has passed to conclude that she will follow through on her payments towards these creditors. Although Applicant claims several of the debts are no longer on her credit report, this does not mean that they have been resolved. FC MC ¶ 20(d) partially applies.

Applicant has not mitigated the concerns raised under Guideline F.

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) 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 medical bills incurred by Applicant and her late husband. I considered her past periods of unemployment. I considered the favorable testimony of Applicant's friends and co-workers. However, Applicant has not mitigated the financial considerations security concern. A lot of unresolved accounts remain. Although Applicant is making some payments towards her federal student loans, which is by far the largest debt that she has, the accounts remain in delinquent status. Her financial information indicates that she has the capability to pay more towards these accounts. Security concerns remain under financial considerations.

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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For 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

Conclusion

In light of all of the circumstances presented by 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.

ERIN C. HOGAN
Administrative Judge