



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



In the matter of:)
)
) ISCR Case No. 08-03491
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

July 13, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 18 past due or placed for collection accounts totaling approximately \$21,000. The accounts have been paid or are part of a repayment plan started in 2007. Applicant has mitigated the government’s security concerns under financial considerations and personal conduct. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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)

Statement of Reasons (SOR) on August 8, 2008, detailing security concerns under financial considerations and personal conduct.

In Applicant's undated answer to the SOR, she requested a hearing. On March 10, 2009, I was assigned the case. On March 26, 2009, DOHA issued a notice of hearing scheduling the hearing held on April 23, 2009. At the hearing, the government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through K, which were admitted into evidence.

I kept the record open to allow Applicant additional time to submit matters on her behalf. On April 24, 2009, additional documents were received and admitted into evidence as Ex. L, without objections. On May 1, 2009, the transcript (Tr.) was received.

Findings of Fact

In her Answer to the SOR, Applicant denied the \$95 debt listed in SOR ¶ 1.p. She admitted the remaining 17 debts with explanations. She also provided additional information to support her request for eligibility for a security clearance. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 37-year-old security officer who has worked for a defense contractor since December 2002.

In 2000, Applicant was divorced. Prior to that, she and her husband met their financial obligations. She had a job as a prison guard for six years and her husband had a job selling tires before working for a supermarket chain. In March 2006, she remarried. Her current husband recently started a job as a contractor following five months of unemployment. (Tr. 28) Applicant makes \$10.56 per hour and her husband makes \$15 per hour. Applicant drives a 1983 Chevrolet pickup and her husband drives a 1997 Chevrolet pickup. (Tr. 42, 48)

In the past, Applicant's contact with her creditors to address past due accounts met with little success. Her creditors refused to accept the small payments she was able to pay and routinely wanted her to pay half the balanced owed. In 2007, Applicant sought financial counseling. She initially considered filing bankruptcy, but established a repayment plan. (Ex. G) The plan requires her to make \$216 payments twice a month. (Tr. 25) The funds come directly from her checking accounts. Since starting the program, she has never been late on a payment. The original balance due on the accounts listed in the repayment agreement was \$13,718. As of April 2009, she had made payments of \$6,338.

promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

In October 2007, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). In response to question 28, which asked about her financial delinquencies, she listed a loan and taxes as being delinquent. Her taxes have since been brought current and are not of concern in the SOR. She answered “no” when asked if she had ever been more than 180 days delinquent on any debt or was currently 90 days delinquent on any obligation. At the time Applicant completed her questionnaire, she knew she had debts, but did not know how many days she was delinquent. (Tr. 46) It was not until she obtained her credit report that she became aware of exactly how delinquent she was. She was current on all her obligations until her divorce in 2000 and had been making payments on her accounts since the fall of 2007 pursuant to her repayment agreement.

A summary of the SOR debts follows:

	Creditor	Amount	Current Status
a	Collection agency collecting on a credit card account.	\$3,137	This is part of the repayment agreement. (Tr. 29, Ex. G)
b	Collection agency collecting for a jewelry store.	\$716	This is part of the repayment agreement. (Tr. 30, Ex. G)
c	Collection agency collecting on a credit card account.	\$3,562	This is part of the repayment agreement. (Tr. 30, Ex. G)
d	Collection agency collecting on a bank credit card account.	\$926	This is part of the repayment agreement. (Tr. 31, Ex. G)
e	Cell phone account.	\$153	Paid. (Ex B)
f	Collection agency collecting on a car loan.	\$3,375	Applicant's November 2007 credit bureau report (CBR) lists this debt as paid as agreed. (Tr.32, Ex. 2) The car was paid off in 2004. (Ex. M)
g	Law office collecting a debt.	\$758	Debt is being paid. Original obligation was \$1,328. Current balance is \$408. (Tr. 35, Ex. H) Applicant started payment on this debt in 2007.
h	Payday advance loan.	\$540	Debt is being paid. Current balance is \$360. (Ex. K)
i	Loan.	\$608	Debt is being paid. Current balance is \$193. (Ex. A)
j	Medical bill.	\$283	Debt is being paid. Applicant began paying on this debt in October 2007. (Tr. 37, Ex. F-1)

k	Collection agency collecting on a department store account.	\$474	This is part of the repayment agreement. (Tr. 37, Ex. G)
l	Collection agency collecting on a department store account.	\$711	This is part of the repayment agreement. (Tr. 38, Ex. G)
m	The original loan company suffered a fire and moved to a new city. (Tr. 39)	\$103	Applicant has been unable to locate the creditor. The location given on one of her CBRs was a storage shed. (Tr. 38)
n	This is the same credit card debt listed in SOR ¶ 1.a.	\$2,066	
o	Gasoline credit card.	\$553	This is part of the repayment agreement. (Tr. 39, Ex. G)
p	Cable TV debt.	\$95	Paid. (Tr. 39, Ex. C)
q	Credit card for tires.	\$647	This is part of the repayment agreement. (Tr. 40, Ex. G)
r	This is the same debt listed in SOR ¶ 1.c	\$2,396	
	Total debt	\$21,103	

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 overarching 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 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

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports the conclusion that Applicant has a history of financial problems. Applicant had 18 accounts placed for collection, charged-off, or were delinquent, totaling approximately \$21,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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.

Applicant has paid three of the debts, two additional debts are duplicates, and she has been repaying 12 debts in a structured repayment agreement since the fall of 2007. Applicant is unable to locate the one remaining creditor (SOR ¶ 1.m, \$103). She entered into the repayment agreement in 2007 months before receiving the 2008 SOR. She has never missed, or been late on, any of her payments to the repayment plan.

AG ¶¶ 20(a), 20(b), 20(c) and 20(d) apply. AG ¶ 20(a) only partially applies because the accounts are numerous and the majority still being repaid. However, Applicant has paid a number of the debts and been making payments in accord with the repayment agreement since the fall of 2007. Her action to repay her debts makes it unlikely additional delinquent debts would occur.

Applicant had no financial problems until her divorce in 2000, which is an event beyond her control. Her actions to repay the accounts show she acted responsibly under the circumstances. Applicant has paid three of the 18 debts (two of which are duplicate debts) and has an agreement paying the \$216 twice a month on 12 additional debts. She has reduced her debt from almost \$14,000 to approximately \$7,700. She is living within her means and paying her debts.

The sole remaining \$103 debt, for which she has been unsuccessful in locating the creditor, does not raise concerns about her current reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The Government has shown Applicant's answers to questions 28.a and 28.b on her e-QIP were incorrect, but this does not prove Applicant deliberately failed to disclose information about her finances. Applicant did list some adverse financial information in response to the questions. The Applicant denied any intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government, when applying for a security clearance, is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

When Applicant completed her e-QIP, she was aware she had debts; however, she was unaware of the number and extent of her delinquent debts. It was not until she obtained a copy of her credit report that she learned the extent of her delinquent accounts. Having observed Applicant's demeanor and listened to her testimony, I find her answers were not deliberate omissions, concealments, or falsifications.

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 commonsense 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. The debts in the SOR were not incurred on luxuries. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. Applicant drives a 1983 pickup and her husband drives a 1997 pickup. She is not living beyond her financial means.

Since 2007, she has actively addressed her debts. All but one of the debts have been paid or are being paid. The sole remaining debt (\$103) is so small that it is not of security significance. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her 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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.r: For Applicant

Paragraph 2, Personal Conduct: FOR APPLICANT

Subparagraphs 2.a and 2.b: 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.

CLAUDE R. HEINY II
Administrative Judge