



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



In the matter of:)	
)	
)	ISCR Case No. 08-03514
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

October 20, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on July 31, 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. 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 3, 2008, Applicant answered the SOR and requested a decision based on the administrative record. On July 9, 2008, Applicant requested a hearing before an administrative judge as opposed to an administrative determination. Department Counsel was ready to proceed on July 15, 2008. The case was assigned to me on August 1, 2008. On August 13, 2008, a Notice of Hearing was issued, scheduling the hearing for September 10, 2008. The case was heard on that date. The Government offered three exhibits which were admitted as Government Exhibits (Gov) 1 – 3 without

objection. The Applicant offered ten exhibits which were admitted as Applicant Exhibits (AE) A – J without objection. Applicant testified and called one witness. The record was held open until September 24, 2008, to allow Applicant to submit additional evidence. Applicant timely submitted a one-page document which was admitted as AE K without objection. Department Counsel's response to AE K is marked as Hearing Exhibit 1. The transcript was received on September 19, 2008. 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 admits all of the SOR allegations.

Applicant is a 27-year-old employee with a Department of Defense contractor seeking a security clearance. She has been employed with the defense contractor since May 2007. In August 2008, she was awarded a Masters Degree in Information Systems Management. She is single and has a four-year-old daughter. (Tr at 6-7, 24; Gov 1.)

On July 31, 2007, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). (Gov 1.) She disclosed several delinquent debts on her questionnaire. A subsequent background investigation confirmed that Applicant had the following delinquent accounts: a \$1,045 account that was placed for collection in 2003 which was related to the early termination of a lease (SOR ¶ 1.a: Gov 1 at 40; Gov 2 at 6; Gov 3 at 1); a \$1,538 pay day loan placed for collection in 2003 (SOR ¶ 1.b: Gov 1 at 42; Gov 2 at 21; Gov 3); a \$336 credit card account that was charged off in 2007 (SOR ¶ 1.c: Gov 3 at 2.); a \$503 credit card account that was charged off in 2007 (SOR ¶ 1.d: Gov 3 at 2); a \$571 credit card account that was charged off in April 2006 (SOR ¶ 1.e; Gov 3 at 2); a \$50 medical account that was placed for collection in 2004 (SOR ¶ 1.f: Gov 1 at 38-39; Gov 2 at 14); and a \$668 medical account placed for collection in 2004 (SOR ¶ 1.g: Gov 1 at 39-40; Gov 2 at 20-21; Gov 3 at 1).

Additional delinquent debts include: a \$599 phone account that was placed for collection in 2003 (SOR ¶ 1.h: Gov 1 at 40-41; Gov 2 at 6); a \$116 phone account that was placed for collection in 2003 (SOR ¶ 1.i: Gov 1 at 41; Gov 2 at 7); a \$50 medical account that was placed for collection in 2003 (SOR ¶ 1.j; Gov 1 at 41; Gov 2 at 15-16,21); a \$1,276 credit card account that was placed for collection in 2002 (SOR ¶ 1.k: Gov 1 at 42; Gov 2 at 4-5); a \$52 medical account that was placed for collection in 2002 (SOR ¶ 1.l: Gov 1 at 43; Gov 2 at 16; Gov 3 at 1); and a \$50 medical account that was placed for collection in 2001 (SOR ¶ 1.m: Gov 1 at 43; Gov 2 at 21).

Additional delinquent debts include; a \$1,500 computer account placed for collection in 2001 (SOR ¶ 1.n: Gov 1 at 44); a \$75 medical account that was placed for collection in 2004 (SOR ¶ 1.o: Gov 1 at 44; Gov 2 at 22; Gov 3 at 1); a \$3,115 delinquent line of credit opened in 2001 (SOR ¶ 1.p: Gov 1 at 45; Gov 2 at 21); a \$2,144 delinquent account opened in 2001 (SOR ¶ 1.q: Gov 1 at 45; Gov 2 at 21); a \$651

department store account placed for collection in 2001 (SOR ¶ 1.r: Gov 1 at 46; Gov 2 at 22); and a \$446 department store account that was placed for collection in 2001 (SOR ¶ 1.s: Gov 1 at 46; Gov 2 at 22.).

Applicant incurred most of her debts when she was in college. Although she worked several jobs while attending college, she relied on credit cards for living expenses. She became pregnant during her second year in college. After she had the baby, she continued to work and go to school full-time. In November 2004, she moved back into her father's house. Her father helped her get back on her feet. She continued to attend classes and work. She began to work on her financial obligations in September 2007. (Tr at 25-26.)

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

Applicant disputes the debt alleged in SOR ¶ 1.a. Applicant leased a townhome in 2003 while she was in college. The townhome had several problems including bug infestations, and a broken washer and dryer. The landlord did not take action to repair the property so Applicant moved out prior to the termination of her lease. The landlord kept her security deposit. She formally disputed the debt with the credit reporting agency. (Tr at 27-30; Gov 3 at 1.) I find for Applicant pertaining to this debt. She has taken sufficient steps to resolve this account and appears to have a legitimate dispute.

Applicant has paid the debts alleged in SOR ¶¶ 1.f (AE A); 1.g (AE B; AE C); 1.j, AE D); 1.l (AE E); 1.m (AE F); and 1.o (AE G). Each of these accounts were medical bills or medical insurance co-pays incurred when Applicant was away at college. The bills were sent to her father's home and she assumed that her father paid them. (Tr at 35-38, 60.)

In May 2008, Applicant consulted a credit counselor to establish a plan to resolve her debts and to learn how to establish a budget and manage her expenses. The credit counselor advised her to enter into repayment plans with five of her creditors at a time based on what she could afford to pay. They advised her which creditors to choose first. The debts alleged in SOR ¶¶ 1.c, 1.d, 1.h, 1.i, and 1.k are included in her repayment plan. The first payment was due on September 22, 2008. The monthly payment of \$171 comes directly out of her bank account. (Tr at 24, 34, 38, 41, 56-58; AE J.)

The \$1,538 debt alleged in SOR ¶ 1.b was a pay day loan. The original amount of the loan was \$500. Applicant attempted to set up a payment plan with the company but they would not agree to a payment plan. (Tr at 31-32.) The debts alleged in SOR ¶¶ 1.e, 1.n, 1.p, 1.q, 1.r and 1.s remain unresolved. Applicant intends to arrange payment plans with these creditors after she completes her payment plans with the first five debts in her payment plan. She claims she has never had an account with the creditor alleged in SOR ¶¶ 1.p and 1.q. (Tr at 34-35, 42-49.)

Applicant has a total of \$60,000 worth of student loans which are currently in deferment. She anticipates her monthly student loan payments will be approximately \$280 per month. (Tr at 52-53.) She has no open credit card accounts. (Tr at 56.)

Applicant's net monthly income is \$1,694. In addition to her full-time job, she works part-time as a customer service specialist at a department store. She receives \$472 in monthly child support. Her total monthly income is \$2,166. She lives with her father and pays no rent. Day care costs \$600 per month. Her car payment is \$334. Her car insurance is \$111. She pays \$200 per month in fuel and \$100 per month in tolls. Health insurance is \$336 per month. Food is approximately \$100 per month. Personal care costs about \$39 per month. Her monthly debt counseling payment is \$171. Her total monthly costs are \$1,981. After expenses, she has approximately \$185 left over each month. (AE K.)

Now that she has her Masters Degree, Applicant hopes to find a better paying job. In her spare time, she volunteers in the community and her church. She is also taking classes in pursuit of an MBA degree. (Tr at 60-61, 65.)

Applicant's father testified on her behalf. He states that she has always been headstrong and conscientious. When she went away to college, she was somewhat naïve and became overextended in credit cards. Even though she became pregnant during her sophomore year in college, she was determined to finish school. She would attend classes and work several jobs to make ends meet. He convinced her to move home so she could get a little help with her daughter. He is proud that his daughter was able to achieve her undergraduate and graduate degrees. He is not proud of her financial situation but supports her and stands behind her. She is a very conscientious outstanding member of the community. (Tr at 63-66.)

The Senior Staffing Supervisor of Applicant's company states Applicant is efficient, organized, and willing to complete necessary tasks. She receives great feedback in the quality and quantity of work that she provides. She recommends her for a security clearance. (AE H.) The Operations Manager states Applicant is administratively solid and dependable. She is comfortable both working on her own and in a team environment. She can handle any challenging career with an opportunity for advancement based on her personality, education, and professional attitude. (AE I)

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 has accumulated a significant amount of delinquent debt since 2001. The SOR alleges 19 debts, an approximate total balance of \$14,785.

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 Financial Considerations Mitigating Conditions (FC MC) potentially apply to Applicant's case: 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) does not apply. While most of the debts were incurred several years ago when Applicant was away at college, the majority of the delinquent accounts remain unresolved. While Applicant resolved the debts alleged in SOR ¶¶ 1.f, 1.g, 1.j, 1.l, 1.m, and 1.o, the total amount of the resolved debt is \$945. More than \$13,000 of unresolved debt remains. Applicant recently established a plan to resolve the remaining debt but it is too soon to conclude that her financial problems will not recur.

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. Applicant incurred most of her debt while a college student and as a single mother. While college students struggle to pay expenses while attending classes, it is even more difficult to juggle the responsibilities of attending class and supporting a child. Applicant worked several jobs in order to support her child and to attain her goal of completing her college education. She eventually decided to move home to save on expenses which allowed her to complete her undergraduate and Masters Degrees. Most of the debts appear to be related to living expenses as opposed to a lavish lifestyle. Currently, Applicant works a full-time job and a part-time job in order to meet expenses. While she remains in debt, she has 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) applies, in part. Applicant attended financial counseling in May 2008. She has established a budget and entered into a repayment plan with five of the creditors. This is what she can afford to pay based on her budget. She intends to resolve the remaining debts after the first five debts are resolved. Applicant is given credit for having a plan to resolve her debts. However, considering the extent of the debt it will take some time for the delinquent debts to be resolved.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant resolved six of the debts and has entered into a repayment agreement with five other creditors through her consumer credit counseling plan. While Applicant has six debts that have not been resolved, she has taken the maximum action within her means to resolve her delinquent accounts. In addition to her full-time job, she has a part-time job. She lives with her father in order to reduce expenses. Upon being awarded a Master's Degree in August 2008, it is likely that her income will increase if she finds a new job. Applicant initiated a good-faith effort to resolve her delinquent accounts.

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 favorable comments of Applicant's superiors and her father. I considered that Applicant's financial struggles as a single mother and full-time student. Applicant reduced her expenses by living at home. She works a full-time and a part-time job. Despite the obstacles facing her, she achieved her goal of graduating from college. As soon as she was capable, she established a plan to pay her delinquent accounts. She resolved six of the debts. She is in a repayment plan with five of the debts and intends to resolve the remaining debts in the future. While a promise to pay in the future is ordinarily not considered sufficient mitigation under financial considerations, the facts of this case are unique. Applicant has taken action to resolve the majority of her delinquent accounts. Her

budget indicates that she does not live a lavish lifestyle. She should be given credit for completing her Master's Degree which may have prevented her from resolving some of her delinquent accounts sooner but will likely improve her financial situation in the long term future.

All of these factors indicate Applicant does not have poor self control, lacks judgment, or is unable to abide by rules and regulations. Her actions do establish that she is reliable, trustworthy, and will protect classified information. There is no risk that she will have to engage in illegal acts to generate funds. She has mitigated the security concerns raised 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:	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
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	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