



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



In the matter of:)	
)	
)	ISCR Case No. 08-06505
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq. Department Counsel
For Applicant: *Pro Se*

March 19, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant had a bankruptcy, an unpaid judgment and 11 accounts that were charged off or placed for collection, which totaled approximately \$16,500. Applicant has rebutted or mitigated the government’s security concerns under financial considerations. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for Statement of Reasons (SORs) issued after September 1, 2006.

Statement of Reasons (SOR) on May 26, 2009, detailing security concerns under financial considerations.

On June 26, 2009, Applicant answered the SOR, and requested a hearing. On August 5, 2009, I was assigned the case. On August 17, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on September 23, 2009.

The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through R, which were admitted into evidence. The record was held open to allow additional information from Applicant. On October 2, 2009, the transcript (Tr.) was received. On October 5, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. S through U.

Findings of Fact

In Applicant's Answer to the SOR, she admitted the SOR factual allegations, with explanations. 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 34-year-old administrative assistant who has worked for a defense contractor since February 2008, and is seeking to obtain a security clearance. Her company has twice recognized Applicant's exceptional performance. (Ex. T) At work, she is vice president of the Hispanic employees network. (Ex. U, Tr. 37, 38)

Applicant's husband incurred medical debts when his jaw was broken. Pursuant to a victim's panel, the other individual was determined to be at fault and was required to pay the medical bills, but failed to do so. (Tr. 39) In October 2002, Applicant and her husband filed for Chapter 7 bankruptcy protection and the debts were discharged in February 2003.

From July 2003 through February 2004, Applicant was unemployed. While unemployed, Applicant incurred three medical debts without medical insurance. Those debts were: \$382 (SOR ¶ 1.b); \$8,704 (SOR ¶ 1.c); and, \$407 (SOR ¶ 1.d). Applicant had to undergo emergency surgery and remained in the hospital for three days. (Tr. 39)

In March 2005, Applicant lost all her possessions in a house fire. (Tr. 29) They were renters and did not have insurance to cover their loss. (Tr. 43) Following the fire, Applicant obtained loans to pay for necessities. All of their income went to rebuilding their lives, purchasing clothing, and necessary goods. (Tr. 46) These events resulted in financially difficult times for Applicant. Two month's later, her husband's grandmother suffered a stroke and died, and her bother-in-law was killed in a car accident. From September 2005 through May 2007, Applicant was unemployed.

Following the fire, the Red Cross paid for three days in a hotel. Thereafter, Applicant's family was on its own. (Tr. 42) In order to pay for their month-to-month apartment, Applicant obtained three loans: \$512 (SOR ¶ 1.f, initially \$693), \$654 (SOR ¶ 1.j, initially \$729), and \$450 (SOR ¶ 1.l, initially \$700) to help them with living expenses and to pay for their rent. (Ex. 2, 4) In November 2008, all three creditors agreed to accept \$25 monthly payments on their debts. (Ex. J, K, L) She was able to make a few payments in accord with the agreements until her husband's unemployment prevented further payments. (Tr. 44) Her husband was a car salesman until he became unemployed when the economy faltered, and he did not sell as many cars. (Tr. 32) He left the state to stay with his mother and remains unemployed. The \$512 debt (SOR ¶ 1.f) was originally \$693. (Tr. 45)

Applicant attempted to continue working following the fire, but with no place to live and a young family to take care of, Applicant chose to stay home with her children. (Tr. 29, 31) Until February 2008, Applicant was a stay-at-home mother. (Tr. 31) At that time, the children were two, four, eight, ten, and eleven.

Applicant's husband also obtained other loans; however, because he was the only one working, his debts were paid by payroll deduction or by court order. (Tr. 48) Twenty per cent of his salary went to pay the loans. This coupled with the house payment and utility bills; they were no longer able to pay their car note. (Tr. 49) Attempting to the home from foreclosure, Applicant and her husband stopped making the car payments. In 2006, Applicant's 2001 Toyota was repossessed. At the time of repossession, Applicant owed \$7,500 on the note. The car sold for \$4,800. After costs, fees, and expenses were added on, Applicant owed \$3,500 on the vehicle. (Ex. 3, N, Tr. 26)

After the fire, Applicant and her husband decided to stop renting and purchase a home. They had difficulty closing on a new home. (Tr. 30) The loan had to be redone and Applicant had to pay additional closing costs, which caused additional financial difficulties. (Tr. 30) In August 2007 Applicant and her husband owed approximately \$61,000 on their home when it was sold by sheriff's sale for \$70,000. (Ex. 3)

In July 2005, Applicant and her husband purchased a 2003 GMC Envoy with monthly payments of \$533. (Ex. R, Tr. 29) The last payment was made in September 2007. The vehicle was repossessed and sold leaving a balance owed of \$11,731. The creditor charged off the debt. Two months prior to or before the hearing, Applicant's husband moved to another state to live with his mother. (Tr. 33)

A week before the hearing, after Applicant had filed for divorce, her husband returned to their home and refused to leave. (Tr. 15) While Applicant and her children were out of the house, Applicant's husband destroyed property and removed property from the home. (Tr. 15) Applicant had to obtain a protective order and order for his removal from the home. (Ex. A, Tr. 34) Applicant and her four children moved to a hotel. Her husband is father to two of the children, ages six and eight. (Tr.34) Two children, ages 12 and 14, are Applicant's from a prior marriage. Applicant's step-son, age 15, did

live with them, but now lives with his mother (Tr. 34) Applicant receives \$121 weekly child support for these two children. (Tr. 35) Applicant is owed \$17,000 in past due child support. (Ex. 0, Tr. 35) In May 2009, Applicant sought assistance in receiving her past due child support. (Tr. 54) She was told she would be receiving \$3,500 in November 2009. (Tr. 54)

In the future, her ex-husband's tax refund will be intercepted to pay past due child support. (Tr. 54) When they married, Applicant's husband also owed \$17,000 in past due child support. During the course of their marriage, his delinquent support obligation was paid by interception of their income tax refunds. (Tr. 36)

In December 2008, Applicant responded to interrogatories. Her response included a Personal Financial Statement (PFS) which listed her monthly income at approximately \$2,500, her monthly expenses at \$2,375, and monthly debt payment of \$95. (Ex. 3) Applicant's monthly net remainder (income less expenses and debt payment) was \$5.88. Applicant's car, a 1999 Mercury, is now paid for, which saves her \$200 per month. (Tr. 51) She does not pay child support for her husband's son and her day care expenses have been reduced to \$90. In December 2008, these two expenses were \$350 and are now \$90. Her salary has increased \$10 per week. She has been unable to use this additional income to pay the SOR debts because she had a \$500 electrical bill. (Tr. 52)

In August 2009, Applicant reduced her monthly contribution to the company's voluntary savings plan from four percent to two percent. (Ex. P) Each month, \$25 is sent to her credit union account and \$50 goes to savings. (Ex. Q) Applicant has had some financial counseling. (Tr. 53)

A summary of Applicant's judgment, accounts charged off, accounts placed for collection and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	Chapter 7 bankruptcy.	\$	Debts were discharged in February 2003.
b	Medical account placed for collection.	\$382	Unpaid. Medical debt incurred while Applicant was unemployed. Applicant had emergency surgery that required a three-day hospital stay. (Tr. 40) Debts b, c, and d relate to the same medical emergency.
c	Medical account placed for collection.	\$8,704	Unpaid. Medical debt incurred while Applicant was unemployed.
d	Medical account placed for collection.	\$407	Unpaid. Medical debt incurred while Applicant was unemployed.

e	Judgement by veterinarian. (Tr. 41)	\$69	Paid. (Ex. S)
f	Loan account was charged off.	\$512	Repayment agreement. In November 2008, the creditor agreed to accept monthly payments of \$25 on this debt. (Ex. 3, J)
g	Telephone account placed for collection.	\$283	Unpaid. As of November 2008, the debt was \$279. (Ex. H)
h	Collection service collecting a charged-off credit card account.	\$1,441	Unpaid. Payments on the account stopped following the house fire. In November 2008, the creditor reduced the interest rate from 28.24% to 19%. (Ex. 3)
i	Loan account was charged off.		This debt is a duplication of the debt listed in j.
j	Loan account was charged off.	\$654	Repayment agreement. In November 2008, the creditor agreed to accept monthly payments of \$25 on this debt. (Ex. 3, L)
k	Medical account placed for collection.	\$50	Applicant had overlooked this debt and will pay it.
l	Loan account was charged off.	\$450	Repayment agreement. In November 2008, the creditor agreed to accept monthly payments of \$25 on this debt. (Ex. 3, I)
m	Vehicle loan account that has been charged off. (Ex. N)	\$3,536	Unpaid. Applicant's auto loan became delinquent when Applicant attempted to prevent foreclosure of her home.
	Total debt listed in SOR	\$16,488	

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 must be considered 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 commonsense 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 to obtain 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 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 Guideline (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 a conclusion Applicant has a history of financial problems. In 2003, Applicant had to resort to bankruptcy protection. The SOR lists approximately \$16,500 owed on 12 past due obligations. 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; and

(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's delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence because she had 12 delinquent debts totaling approximately \$16,500. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). The 12 debts remain unpaid, which makes them recent and frequent. However, some of the debts, the loans taken out after the fire, were incurred under unusual circumstances. Additionally, Applicant's financial problems were contributed to by her husband's actions.

The DOHA Appeal Board has previously noted that an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given her circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

The Appeal Board's discussion of AG ¶ 20(b) in ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) clarifies the applicability of this mitigating condition when an Applicant is unable to make substantial progress on delinquent debts after circumstances outside an applicant's control cause delinquent debt. The Appeal Board at 3 determined that administrative judge erred when he failed to explain,

. . . what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not "responsible" in light of his limited circumstances.

What constitutes the responsible behavior depends on the facts of a given case. In the circumstances at issue here, Applicant was unemployed from July 2003 through February 2004. While unemployed and without medical insurance, Applicant underwent emergency surgery and remained in the hospital for three days. Three of the twelve SOR debts, which total approximately \$9,500, were incurred. In March 2005, Applicant and her family lost all of their possessions in a house fire. Applicant and her husband obtained loans to rebuild their lives. Following the fire, Applicant was unemployed from September 2005 through May 2007. Due to her children's young age, the traumatic nature the fire had on the children, and the cost of day care, it made sense for her to remain home with the children. Her husband lost his job and left the state. Applicant experienced both separation and has filed for divorce along with the financial burden associated with each. These unexpected events were beyond her control. AG ¶ 20(b) applies.

Applicant has acted responsibly given her limited resources in that she has developed a repayment plan for three of the debts. There is little else Applicant can currently do to rectify her poor financial condition. Applicant's approach is "responsible" in light of her limited circumstances. Now that her vehicle has been paid for, she will have \$200 more per month to address her debts.

The creditors of the three loans have recently agreed to accept monthly payments on these obligations. Applicant does not receive full mitigation under AG ¶ 20(d) because this arrangement was only recently made and there is no “meaningful track record” related to these three debts. AG ¶ 20(e) applies to the loan listed in SOR ¶ 1.i, which is a duplicate of the debt listed in SOR ¶ 1.j.

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 whole person factors against granting Applicant a clearance are significant; however, they do not warrant revocation of her security clearance. Applicant's failure to pay or resolve her just debts in accordance with contracts she signed was not prudent or responsible. She has a history of financial problems. However, 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. The debts set forth in the SOR were not incurred on luxuries, but were for medical treatment, loans taken out following the loss of their household goods in a fire, and two vehicles repossessed when Applicant was attempting to save her house from foreclosure.

The rationale for granting Applicant's clearance is more substantial. She was forthright and candid in her security clearance application, her responses to DOHA interrogatories, her responses to an OPM investigator, her SOR response, and at her hearing about her financial problems. Several problems beyond her control adversely affected her financial status. Her debts resulted from unemployment, (three debts were due to medical problems, and she did not have medical insurance). She has arranged to start payment plans on three of the debts. I am confident she will keep her promise to pay her delinquent debts.

Applicant is 34 years old. She has demonstrated her self-discipline, responsibility and dedication. Her financial problems were caused by the fire, her unemployment, and family problems, rather than by her misconduct or irresponsible spending. Applicant is an intelligent person, and she understands she needs to maintain her financial responsibility.

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 his 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

Subparagraph 1.a—1.n: 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