



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-06521
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

February 6, 2009

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA) on February 6, 2008. On July 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her notarized answer to the SOR on August 13, 2008. DOHA issued a notice of hearing on October 7, 2008, and the hearing was held on October 28, 2008. At the hearing, four exhibits (GE 1 through 4) were admitted in evidence without objection to support the Government's case. Applicant testified and submitted exhibits (AE A through AE V). In the time allowed for Applicant to furnish additional documentation, she submitted AE W through AE Y, which were received in evidence

without objection. These exhibits contain a processed check, Applicant's pay stub, and a personal financial statement dated November 10, 2008. DOHA received a copy of the transcript (Tr.) of the proceedings on November 6, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The SOR alleges 11 delinquent debts totaling \$27,865.00 under the financial considerations guideline. **SOR 1.d.** is the only account Applicant denied because she had her own account, and her former husband added her name as secondary user. In view of the progress Applicant has made in satisfying the other accounts, I am confident Applicant will have the credit agencies remove the **SOR 1.d.** account from her credit profile. **SOR 1.d.** is resolved in her favor.

The period of time in which the listed SOR debts fell delinquent is between 2003 and April 2005. Applicant blamed her financial indebtedness on her former husband and his inability to maintain employment because of his unexplained difficulty in handling supervision (Tr. 65). She married him in May 1996. During three months of her pregnancy and recovery from having her baby in July 1999, he was unemployed (Tr. 41). They could not make ends meet on her long-term disability,¹ amounting to 60% of her income, so they had to live off credit cards for a while (*Id.*) Because of her husband's employment issues, their financial problems persisted. Applicant's life improved economically when her husband moved out of the house in December 2006.² She has not had to pay his car insurance, and the household expenses and utilities have dropped, making more funds available for other debts (Tr. 67). The only wish that Applicant has is for her former husband to spend more time with his son. In addition to child support, the divorce decree (AE A1) requires him to pay for the cost of 50% of his son's extra-curricular activities. As AE M indicates, the former husband has had trouble complying with the requirement.

Regarding Applicant's future intentions of becoming debt free, she stated:

So as I will continue to show through my exhibits and things that I presented you, that even though I - - we've gone through the divorce, I'm still making it. I pray everyday, and I work, and I pay all my debts as fast as I can. Before the clearance thing came up, I had already started making payments in December of 2007 to a couple of the other creditors that show up on my statement of reasons. And matter of fact, one of them will clear on December of this year. (*Id.*)

¹ Applicant encountered health problems related to her birth.

² Applicant testified the date was December 2007; however, she divorced her husband in February 2007 (GE 1). Based on the intense conflict she had with him in the period leading up to the divorce, it would be highly unlikely for him to still be in her house in December 2007.

Applicant noticed two overdue debts on her credit report that were not listed in the SOR. She testified:

So with all this being said, I think once we go through each one and see what we've paid, I've paid a lot of things off and am currently making payments on everything else, and including, but not limited to but including in the last set of exhibits I showed you, there were two items that I offered into exhibits that was not on my statement of reasons, but I noticed them on my credit report that were not satisfied, so I ensured that they were satisfied before I came today (Tr.42).

SOR 1.a. \$364.00. This account fell delinquent in April 2004. In her response to the SOR, Applicant promised to pay the debt. She settled the account for \$291.00 on October 26, 2008 (AE A).

SOR 1.b. \$435.00. The account became delinquent in April 2005. Applicant agreed to settle the account in three payments; Applicant provided proof she made two of three scheduled payments on September 26 and October 10, and is scheduled to make the final payment on October 29, 2008 (AE B). The entire settlement is \$390.00.

SOR 1.c. \$390.00. The delinquency date for this account was in April 2005. Applicant settled the account in two payments, September 12, 2008 and September 26, 2008 (AE C).

SOR 1.d. \$517.00. As noted in her response to the SOR, and at the hearing, Applicant denies this account is her responsibility. She was advised to contact the credit agencies but has not done so (Tr. 49; AE D).

SOR 1.e. \$497.00. Applicant settled this account for \$326.00 on September 26, 2008, and was notified by the collection firm on October 21, 2008 that there was a zero balance on this account (AE E).

SOR 1.f. \$7,828.00. In February 2005, the creditor reported this account delinquent. On December 17, 2007, Applicant entered in a consent order to pay \$150.00 a month until debt is satisfied; she has made nine payments (AE F). She still owes about \$6,280.00.

SOR 1.g. \$9,867.00. In her response to the SOR, Applicant indicated she had not addressed this debt due to the efforts to identify and pay the other creditors. On September 11, 2008, Applicant reached a settlement requiring her to pay this collection firm \$250.00 for the first six months, then \$500.00 a month until account is paid in full. Applicant made the first \$250.00 payment in September 2008 (AE G).

SOR 1.h. \$2,069.00. Applicant settled this account in full on June 17, 2008 (AE H).

SOR 1.i. \$439.00. On September 26, 2008, Applicant settled this account for approximately \$272.00 (AE I).

SOR 1.j. \$1,648.00. Applicant has been paying \$203.00 on this debt since January 2008, and anticipates the debt will be paid in December 2008 (AE J; Tr. 53-54).

SOR 1.k. \$3,811.00. To help her nephew get to work faster so he would not have to rely on other people, Applicant provided a secondary signature of responsibility and liability if he were to default on the car payments. After he stopped paying, the creditor sought payment directly from her (Tr. 56). On September 8, 2008, Applicant agreed to pay \$100.00 in September and October, and then \$197.00 a month in November 2008 until the debt is paid. Accruing interest has increased the debt to approximately \$7,000.00.

Applicant is paying two debts not listed in the SOR. AT S demonstrates Applicant has been making monthly payments of \$300.00 to this unlisted creditor since 2005. She has made 44 payments. AE T reflects her settlement of a telecommunications debt for \$268.00 (AE T). This debt is not listed in the SOR. E

Having considered the evidence as a whole, including Applicant's demeanor at the hearing, I find Applicant's testimony credible. Her personal financial statement (PFS) reflects her net income monthly is about \$4047.00, and her net monthly remainder is \$950.00, sufficient to accommodate the extra \$250.00 she will have to pay beginning in March 2009 to the **SOR 1.g.** creditor.

Character Evidence

Applicant submitted six character statements. For seven weeks, Applicant's former husband fell behind on after-school tuition for Applicant's son. He promised to pay the arrearage, but failed to do so. Applicant paid the delinquent amount in full to avoid extra penalties for non-payment.

One of Applicant's supervisors praised her for consistently providing essential services to the equipment specialist team since October 2005.

The information project manager has known Applicant since November 2007. He has received e-mails from customers desiring her to be included in the new contract that is under negotiation. He recommends her for a position of trust.

Applicant's friend of seven years considers Applicant very active in her community, and keenly interested in her child's interests.

Another friend who has known Applicant for 15 years, and also wrote a character statement (AE Q), commends her for lending a sympathetic ear when the friend's son was deployed to the Middle East. The friend can verify that Applicant is an active church member. Applicant's sister, who also wrote a character statement, testified they are very

close, and are members of the same church. Applicant supports her sister returning to college to attain her degree.

Applicant's job performance evaluation for the period June 2007 to June 2008 shows that Applicant meets expectations. She currently has about \$50,000.00 in her retirement account although she took some money out in 2005 to pay bills (Tr. 62).

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Analysis

Financial Considerations (FC)

18. *The Concern.* “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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

Applicant’s financial turmoil surfaced in July 1999 when she took leave from work to have her baby. Her husband was also unemployed during her pregnancy and childbirth. Though she received disability income after the child was born because of birthing complications, the disability amounted to only 60% of her salary, and was inadequate to keep current on the bills with her husband unemployed too. Applicant turned to credit cards to meet some of the expenses, and the financial difficulties increased. By the time the SOR was published, Applicant owed 11 creditors more than \$27,800.00. Applicant’s failure to pay the listed debts, some more than five years old, falls within the parameters of FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and 19.c. (*a history not meeting financial obligations*).

There are four mitigating conditions (MC) that have potential application to this case. FC mitigating condition (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 reliability, trustworthiness, and good judgment*) applies. Though Applicant accrued no new delinquent after April 2005, there are at least 11 debts. The record shows that Applicant’s indebtedness occurred as a result of her husband’s failure to handle his share of the familial, financial responsibilities. Fortunately, the circumstances have changed since the divorce decree was finalized in February 2007. The divorce demonstrated Applicant’s good judgment which has continued with Applicant’s steady progress in satisfying the listed and unlisted creditors. Her divorce decree in February 2007 was the event that caused her financial problems to improve. Though her former husband has yet to pay court-ordered child support, she has used his indifference to the child’s needs as fortification for her resolve to regain control over her financial responsibilities while fostering a wholesome environment for her child. Even though she still owes more than \$10,000.00 in debt, Applicant’s trustworthiness on and away from the job entitles her to substantial mitigation under FC MC 20.a.

Applicant receives benefit from FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person’s control and individual acted responsibly under the circumstances*) based on her divorce in February 2007. While the

divorce probably was not really unanticipated due to the constant marital strife, the record demonstrates repeated instances of Applicant acting responsibly under challenging circumstances. She has contacted every creditor in the last year to work out a pay off or some kind of repayment plan. In each case except for **SOR 1.d.**, Applicant has agreed to a payment plan and has completed several plans involving smaller debts, while recording at least one payment in other plans involving the larger debts. Applicant receives substantial mitigation under FC MC 20.a. and FC MC 20.b.

Applicant has not been involved in financial counseling. However, over the past three years, she has demonstrated exceptional discipline in managing her finances so she can comply with the payment schedules. She will have to maintain this discipline for the foreseeable future. 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 even though she has a large amount to debt to repay.

The evidence under FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) provides mitigation for Applicant based on her pay off or settlement of eight of 10 creditors, and enrollment in payment plans with the two remaining creditors. The favorable evidence Applicant has furnished regarding her efforts to repay her debts result in finding for Applicant under **SOR 1.d.** and the FC guideline.

Whole Person Concept (WPC)

The adjudicative process is an examination of a sufficient period of a person's life, and a careful consideration of nine variables that comprise whole person model:

(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 was 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 and recurrence. ¶ 2, p.18 of the Directive.

I have considered the disqualifying and mitigating factors in light of all the facts and circumstances surrounding this case. Applicant was 36 years old when her debts started to fall delinquent in 2003. AE S reflects that Applicant began repaying her overdue debt in 2005. AE T indicates she paid off a debt not even listed in the SOR. Applicant still has more than \$10,000.00 to pay on the past due accounts in **SOR 1.f.** and **SOR 1.g.** Her sustained record of regular monthly payments to three of the other larger creditors and her favorable character evidence justify complete confidence she will continue to pay the remaining debt until it is eliminated. Accordingly, Applicant has mitigated the security concerns raised under the FC guideline.

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, 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

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.

Paul J. Mason
Administrative Judge