



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



In the matter of:)
)
) ISCR Case No. 08-06743
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert Coacher, Department Counsel
For Applicant: *Pro Se*

March 31, 2009

Decision

HEINY, Claude R., Administrative Judge:

The Statement of Reasons listed nine past due debts that totaled approximately \$28,000. Applicant has paid the largest debt, which totaled \$22,000, three other debts, and is not liable for the next largest debt of \$3,910. She has addressed the remaining debts. 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 SORs issued after September 1, 2006.

Statement of Reasons (SOR) on December 10, 2008, detailing security concerns under financial considerations.

On December 18, 2008, Applicant answered the SOR, and requested a hearing. On February 12, 2009, I was assigned the case. On February 19, 2009, DOHA issued a notice of hearing scheduling the hearing held on March 19, 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 Y, which were admitted into evidence. The record was kept open to allow Applicant to submit additional matters. On March 26, 2009, additional documents were received. There being no objection, the material was admitted into evidence as Ex. Z. On March 26, 2009, the transcript (Tr.) was received.

Findings of Fact

In her Answer to the SOR, Applicant denied the factual allegations in ¶¶ 1.c and 1.d of the SOR. She admitted the remaining allegations. Applicant is a 27-year-old systems administrator who has worked for a defense contractor since January 2008, and is seeking to obtain a security clearance.

Applicant married in June 1999, and divorced in August 2002. Applicant is a single mother raising two children ages 6 and 8. (Tr. 26) Applicant has never applied for food stamps, Medicaid, or filed for bankruptcy. Applicant receives no child support from her ex-husband. While married, Applicant co-signed on her husband's student loan (SOR ¶ 1.b, \$22,407). When her ex-husband defaulted on the loan, the loan became her responsibility. Sallie Mae offered (Ex. A) to settle the debt for \$9,850, an offer accepted by Applicant. (Ex. T, Z) Applicant's father paid the settlement offer and Applicant makes \$250 monthly payments to repay her father. (Ex. B, Z)

In September 2001, following the divorce, Applicant returned to her home town. (Tr. 39) In October 2002, Applicant's ex-husband and new girlfriend rented an apartment. The new girlfriend pretended to be Applicant and used Applicant's financial information and driver's license to secure the lease. Applicant's name was forged on the lease. (Tr. 40) Damage was done to the apartment during a drug raid, which resulted in Applicant's ex-husband's incarceration for five and one-half years. Applicant never lived in the apartment. The apartment complex is claiming \$3,910 in damages. (¶ 1.e) At the same time, her ex-husband secured phone service and incurred a \$107 debt (¶ 1.g). Applicant never authorized this debt and has disputed it. (Tr. 44)

The apartment complex debtor has never called or written Applicant. She has initiated all contact with the creditor. The creditor offered to settle the matter for \$2,800. Applicant believes it would be a waste of money to hire an attorney to sue her ex-husband in an attempt to have him pay this debt. (Tr. 40) The debt was incurred seven years ago in 2002. The state has a four-year statute of limitations on contracts which may bar collection of the apartment damage.²

² See Tex. Civ. Prac. & Rem. Code §§ 16.004(c) and 16.051 (statute of limitations for contracts); 16.004(a)(3) (statute of limitations for debts); *Cont'l Casualty Co. v. Dr. Pepper Bottling Co. of Tex.*, 416

In addition to the debts of concern listed in the SOR, Applicant has paid off or is making payment on ten medical bills and four other accounts. (Ex. D, E, F, G, H, I, K, L, M, N, O, P, R, and S) She has paid approximately \$25,000 in medical bills. (Tr. 50) She paid the expenses of both her children's birth and three additional surgeries. (Tr. 49) Over the years, Applicant has also paid various debts incurred by her ex-husband. (Tr. 52)

Applicant has paid the Sprint bill (\$80) listed in ¶ 1.a. (Answer to SOR) and the \$28 debt listed in ¶ 1.f. (Ex. J) She is making payments on her electric utility bill and currently owes \$251. (Ex. Q) The creditor's review of the \$132 debt listed in ¶ 1.f indicates there were no records and the debt was removed from her credit report. (Ex. C)

Applicant denies two debts \$66 (¶ 1.c) and \$1,411 (¶ 1.d) allegedly owed to the same company, a collection firm that provides service to the healthcare industry. Applicant's March 2008 credit bureau report (CBR) (Ex. 4) indicates the original debts were medical debts. The debts do not appear on Applicant's July 2008 CBR (Ex. X) nor on her March 2009 CBR (Ex. Y) In August 2008, Applicant called the number listed in the March 2008 CBR and provided the creditor with her name, date of birth, social security number, previous last name, and driver's license number. And no debt could be located in their system related to Applicant. (Tr. 37 – 38)

During 2008, Applicant's income was \$43,600 from her current employer and \$4,400 from her prior employer. (Ex. U) Applicant's monthly income is \$2,538 and her monthly discretionary income (gross income less expense) is \$353. (Ex. W) Applicant's credit score has improved from 328 to 591. (Tr. 27, 49) Currently, she is not being contacted by creditors. (Tr. 53) Applicant maintains two credit cards which she pays in a timely manner.

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

F.Supp. 2d 497, 505-507 (W.D. Tex. 2006); *Facility Ins. Corp. v. Employers Ins. of Wausau*, 357 F.3d 508, 513-514 (5th Cir. 2004) (discussing statute of limitations for open or revolving accounts). Debts barred by the Texas statute of limitations are legally uncollectible. However, Applicant's payments on his debts have reinstated them, ending the statute of limitations defense to collection. *See Stine v. Stewart*, 80 S.W.3d 586, 591, 45 Tex. Sup.J. 966 (Tex. 2002). The reduction in the magnitude and number of debts that creditors can legally enforce because of the application of the Texas statute of limitations reduces the potential vulnerability to improper financial inducements, and the degree that a debtor is "financially overextended," is also reduced.

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 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 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 a conclusion Applicant has a history of financial problems. Applicant admitted all but two of the nine debts listed in the SOR. 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.

The SOR listed nine debts totaling approximately \$28,600 of which Applicant's ex-husband was directly responsible for three debts totaling approximately \$26,400. The amount of debt in question unrelated to her ex-husband's actions was approximately \$2,000. Under AG ¶ 20(a), Applicant's financial problems were contributed to by her being a single mother raising two children and by the illegal

actions of her ex-husband. The \$3,910 apartment debt (SOR ¶ 1.e) and the \$107 telephone bill (SOR ¶ 1.g) were incurred by forging Applicant's name to these accounts. The largest debt was her ex-husband's student loan, which he failed to pay. It is unlikely her ex-husband's illegal actions will cause her financial problems in the future. Additionally, the apartment debt appears barred by the state statute of limitations and because Applicant's name was forged to the lease. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced both separation and divorce along with the financial burden associated with each. She has paid \$25,000 in medical bills for the birth of her two children and for three additional surgeries. Her medical bills and surgeries are conditions beyond a person's control. AG ¶ 20(b) applies.

Under AG ¶ 20(c) it appears Applicant's financial problems are under control. Under ¶ 20(d), Applicant's father has paid the \$22,407 student loan of Applicant's ex-husband. Applicant is repaying her father. She has paid the Sprint bill, the debt listed in SOR ¶ 1.f, and is repaying the electrical bill. Applicant has made a good-faith effort in paying these debts. AG ¶ 20(c) and ¶ 20(d) apply.

Applicant has challenged the three remaining debts. She contacted the creditor for the two debts listed in SOR ¶ 1.c and ¶ 1.d. The collection agency routinely collects for healthcare debts. Applicant contacted the creditor, provided identifying information about herself, and was told the creditor could not locate any debt owed by Applicant. Applicant contacted the creditor of the debt listed in SOR ¶ 1.f, the creditor indicated there were no records, and the debt was removed from her credit report. These three debts do not raise concerns about her current reliability, trustworthiness, or good judgment.

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 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. Those set forth in the SOR were not incurred on luxuries, but were for medical treatment and student loans.

The largest debt plus three others have been paid or are being paid. Three additional debts have been challenged and the creditors state there is no evidence of any obligation. The apartment debt was incurred by forging Applicant's name to the lease and is likely barred by the statute of limitations. This debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

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

Subparagraph 1.a – 1.h 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