



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



In the matter of:)	
)	
)	ISCR Case No. 08-07058
)	
)	
Applicant for Security Clearance)	

Appearances

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

February 12, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Position (SF 86) to update her security clearance on March 12, 2008¹. On October 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for financial considerations under Guideline F. 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. Applicant acknowledged receipt of the SOR on July 28, 2008.

Applicant answered the SOR in writing on October 28, 2008. She admitted four and denied one of the allegations under Guideline F. Her denial was based only on the amount of the debt and not the debt itself (Transcript 22-23). She requested a hearing

¹ Applicant recently married and her married last name is now Wright. However since the Statement of Reasons lists her last name as Harris, that name will be used in this decision.

before an administrative judge. Department Counsel was prepared to proceed on November 14, 2008, and the case was assigned to me on November 19, 2008. DOHA issued a notice of hearing on January 13, 2009, for a hearing on February 3, 2009. I convened the hearing as scheduled. The government offered three exhibits, marked government exhibits (Gov. Ex.) 1 through 3, which were received without objection. Applicant submitted 22 documents, marked Applicant Exhibits (App. Ex.) A-V, which were received without objection. Applicant also testified. DOHA received the transcript of the hearing (Tr.) on February 11, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Issues

The Notice of Hearing was mailed to Applicant on January 13, 2009. Applicant signed for the Notice of Hearing on January 26, 2009. She spoke to Department Counsel about a date for the hearing prior to January 13, 2009. Applicant is entitled to 15 days notice of a hearing (Directive E3.1.8). Even though Applicant discussed a hearing date with Department Counsel at least 15 days prior to the hearing, Applicant was asked if she had sufficient notice and time to prepare for the hearing. She stated she was prepared and waived the 15 day notice requirement (Tr. 7).

Findings of Fact

Applicant is 44 years old and is an administrative assistant for a defense contractor providing support to a Reserve officer Training Corps (ROTC) unit at a university. Applicant served over twenty years on active duty with the Army retiring in 2005 as a sergeant first class (E-7). She served in mainly administrative positions around the world. She held a security clearance while on active duty. She received numerous awards to include the Army Commendation Medal, the Army Achievement Medal (App. Ex. H, Certificate, dated August 26, 1986), and the Meritorious Service Medal (App. Ex. I, Certificate, dated February 28, 2005). At the time of her retirement, she was assigned to the ROTC unit at the university. She took a civilian position at the same unit upon her retirement. She was married but divorced while on active duty and has one child from that marriage. She has remarried and also has two step-children (Tr. 14-22; Gov. Ex. 1, SF 86, dated March 12, 2008; App. Ex. F, DD 214, dated April 30, 2005; App. Ex. G, Enlisted Record Brief, dated January 10, 2005).

Credit reports (Gov. Ex. 2, Credit Report, dated December 21, 2007; *See also*, Gov. Ex. 3, Answers to Interrogatory, Credit Report, dated August 15, 2008, 113-141) show that Applicant had the following five delinquent debts from credit cards and other store charges; a charged off credit card account with a bank for \$13, 701 (SOR 1.a); another credit card account with the same bank placed for collection for \$11,803 (SOR 1.b); a collection account for furniture with a financial company for \$4,995 (SOR 1.c); a credit card account charged-off for \$2,049 (SOR 1.d); and a judgment on a personal loan for \$5,835 (SOR 1.e).

When Applicant left active duty and started to work for the defense contractor, she experienced financial difficulties. Her net pay was reduced by about \$600 per month even though she was drawing a salary and retired pay. Her military pay had been about \$38,000 a year, but now her combined pay was approximately \$32,000 a year. She purchased a home, was now paying a mortgage, purchased furniture for the house, and had to buy a used car since her old car ceased to run. She was a single parent with child care expenses. Also at the request of her family, her nephew came to live with her and she had to provide for his support until he found a job. She worked a part time job as a cashier at a home improvement store to gain extra funds. She was able to make the minimum payments on her debts until about late 2006 to early 2007 (Tr. 23-26, 30-34). She now has no credit cards. Her present net pay from retirement and salary has risen and is now approximately \$3,700, with monthly expenses of approximately \$3,500 which includes payments to a debt consolidation company. She has discretionary funds of approximately \$200 each month (Tr. 42-43, 47-49, 58-62).

Prior to receipt of the SOR, Applicant tried to work with two debt consolidation companies in 2007 to assist her in paying her delinquent debts. However, both companies charged large fees, and Applicant was not seeing her payments to them reducing her debts (Tr. 39-42). She also tried to get a loan to consolidate her debts from her credit union, but was rejected (Gov. Ex. 2, Answers to Interrogatories, Letter, dated August 5, 2008, at 110). She also worked part time for some months to earn extra income. Applicant is now working with a different credit counseling and debt payment assistance company and pays them \$451.49 per month. They are assisting her in negotiating settlements and resolving her debts. The five debts listed on the SOR are included on this debt consolidation payment plan. The company thinks her debts can be resolved in three to five years (Tr. 55-57; App. Ex. S, Letter, dated October 10, 2008; App. Ex. T, Monthly Statement, dated January 5, 2009; App. Ex. V, Monthly Statement, dated November 3, 2008; App. Ex. V, Bank funds transfer, dated January 20, 2009).

Delinquent debt SOR 1.a, is a charged off credit card account with a bank. The original debt was for \$6,000 but with fees and interests added as the account was sold. It is now listed at \$13,701. The bank sent the debt to a law firm for collection and Applicant made at least four or five payments of \$180 as part of an old payment plan (Tr. 36-37, 45-48; App. Ex J, Check, dated June 30, 2008; App. Ex. K, Letter, dated March 27, 2008; See also, Gov. Ex. 2, Answer to Interrogatories, Check, dated May 19, 2008, at 111-112). The debt is now being paid as part of her debt consolidation payment plan.

Delinquent debt SOR 1.b is for a second credit card account with the same bank in collection for \$11,083. The original amount of the debt was \$6,000 and the present amount is for fees and interest, as the account has been sold to different collection companies. Applicant made payments on the account and the debt is listed with the collection agency at \$7,873.60. The account is now in collection by another collection agency but is still listed for \$11,083 by her debt consolidation company (Tr. 46-54; App.

Ex. N, letter, dated October 9, 2006; App. Ex. O, letter, date January 8, 2007; App. Ex. P, Letter, dated October 25, 2006; app. Ex. Q, Letter, dated August 8, 2006; App. Ex. R, letter, dated February 8, 2006). This debt is included in her payment plan with the debt consolidation company (App. Ex. S, Letter, dated October 10, 2008).

Delinquent debt SOR 1.c is a furniture account in collection for \$4,995. Applicant purchased dining and living room furniture for her new house for approximately \$1,800. She made some payments on the account. It has been sold to various collection agencies bringing the new debt to the \$4,995 amount. This debt is also included in the debt consolidation payment plan (Tr. 53-53).

Delinquent debt SOR 1.d is for a computer Applicant's purchased for her nephew that has been charged off for \$2,049. Applicant purchased the computer for approximately \$1,400 to \$1,500 and made payments on this account of \$45 monthly for about three years until some time in 2007. She believes the debt had been down to less than \$1,000. The debt has been sold to collection agencies and is now at the \$2,049 amount. It is part of her debt consolidation payment plan (Tr. 55-56).

Delinquent debt SOR 1.e is a judgment on the purchase of bedroom furniture for her home in the amount of \$5,835. The actual purchase price of the furniture was approximately \$3,000. She paid from \$90 to \$100 monthly on the debt for about two years until late 2006 or early 2007. The amount of the debt was less than \$2,000. It is also part of her debt consolidation payment plan (Tr. 56-57).

Applicant's supervisor for the last 19 months, an Army lieutenant colonel, notes that she is an outstanding worker who ensures mission success. She is caring, willing, and loyal to the organization. She is responsible for her actions and trustworthy. It is his opinion she would not compromise her integrity. Her character and integrity are beyond reproach (App. Ex. A, Letter, dated January 27, 2009). Applicant's regimental executive officer, an Army major, noted that Applicant's performance is outstanding and she is an asset to the organization. Her efforts directly contributed to the organization's success (App. Ex. B, Letter, dated July 28, 2008). Applicant's performance evaluations since her employment by the defense contractor have been rated at the highest rating, outstanding. She is a great performer and a valued employee (App. Ex. C, Evaluation, dated December 20, 2007; App. Ex. D, Evaluation, dated October 26, 2005). Applicant also received a certificate for outstanding service in 2007 (App. Ex. E, Certificate, dated April 5, 2007).

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. 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.

Analysis

Financial Consideration:

Under financial considerations, 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 (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect 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 terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An Applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. The delinquent debts that Applicant admits and are listed on credit reports are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) "inability or unwillingness to satisfy debts", and FC DC ¶ 19(c) "a history of not meeting financial obligations."

Applicant raised mitigating circumstances for her debts by her testimony. I considered Financial Considerations Mitigating Conditions (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" and determine it has some application. Applicant frequently encountered delinquent debts since there are debts from a number of credit cards. The delinquent debts arose when Applicant retired from the military entered the civilian work force and received less cash each month. In addition, she was a single mother who purchased a house when she retired, had to furnish it, and take financial responsibility for a nephew. While Applicant still has delinquent debts that have not been resolved, they occurred under the circumstances of her change from military to civilian life, and the problems she encountered with family. These are unusual circumstances and not likely to recur. Applicant is now solidly employed in the civilian workforce and her debts are under control. Her financial problems should not recur.

FC MC ¶ 20(b) "the conditions that resulted in the financial problems 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" also has some application. Applicant encountered financial problems when first entering the civilian workforce. She paid her debts as best she could until the financial situation overcame her efforts. She took positive steps to resolve those issues. She tried to work with two credit counseling services, but found they were not taking positive steps for her but incurring administrative costs. She worked a part time job to earn extra money. She finally found a credit counseling firm to help her, and she is making payments to the firm and they are helping to reduce her debts. The original debt is not as large as listed in the SOR since most of the listed debt is for fees and interests as the debts were sold to collection agencies. She acted responsibly under the circumstances to control and manage her debts.

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 under control" applies. Applicant has repeatedly tried credit counseling to assist her. Her first efforts were not successful since the firms did not help her reduce her debts. She now

has a credit counseling firm that is working with her to reduce her debts. Her financial problems are being resolved and are under control.

FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts" applies. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good-faith effort to pay them. Applicant paid her debts as best she could until her financial problems overwhelmed her efforts. She now has a payment plan with a credit counseling agency and is paying under that plan on all six of her debts. Applicant has not incurred additional delinquent debts since she started her efforts to pay the delinquent debts. Applicant acted responsibly towards her debts, and established a good-faith effort to resolve her debts. She mitigated security concerns for her financial situation

"Whole Person" Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 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 Applicant's 20 years of active duty in the Army and her honorable discharge. I considered that she has successfully held a security clearance while on active duty. I considered the views of her military superiors as to her reliability and trustworthiness. I considered her performance and that the fact she is regarded as a good employee who can be trusted. Applicant encountered financial problems when she left active duty and entered the civilian work force. She was a single mother with a new home, a nephew she was responsible for, and less funds each month. She tried to keep up with her finances but she could not. Before she received the SOR, she was making efforts to pay her

delinquent debts, checking with credit counseling firms and working a second job. She has a payment plan in place with a credit counseling agency and is paying on the plan. Applicant lives within her means and meets her personal financial obligations. Her actions do not indicate poor self control, lack of judgment or unwillingness to abide by rules and regulations. Overall, on balance the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from 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
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b:	For Applicant
Subparagraphs 1.c:	For Applicant
Subparagraphs 1.d:	For Applicant
Subparagraphs 1.e:	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.

THOMAS M. CREAN
Administrative Judge