



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



In the matter of:)
)
) ISCR Case No. 08-08490
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

July 24, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Investigation Processing (e-QIP) on August 28, 2007. On January 16, 2009, 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 March 10, 2009.

Applicant answered the SOR in writing on April 15, 2009. She denied seven and admitted twelve of the allegations under Guideline F with explanations. Some of the denials were for medical delinquent debts which Applicant claimed should have been paid by state medical coverage. Applicant also notes she did not know about most of the other debts. Some of these unknown debts she admitted and some she denied. There does not seem to be a pattern or consistency in deciding which were admitted

and which were denied. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 6, 2009, and the case was assigned to me on April 28, 2009. DOHA issued a Notice of Hearing on May 20, 2009, for a hearing on June 10, 2009. I convened the hearing as scheduled. The government offered five exhibits, marked Government Exhibits (Gov. Ex.) 1 through 5, which were received without objection. Applicant testified on her behalf. Applicant offered four exhibits, marked Applicant Exhibits (App. Ex.) A through D, which were received without objection. The record was held open at Applicant's request so she could submit additional documents. Applicant timely submitted four documents marked Applicant Exhibits E through H, which were received without objection (See, Gov. Ex 6, Memorandum, dated July 9, 2009). DOHA received the transcript of the hearing (Tr.) on June 25, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Issues

Applicant signed for the Notice of Hearing on June 1, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of June 10, 2009, prior to the mailing of a Notice of Hearing. Accordingly, actual notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only 10 days prior to the hearing. She waived the 15 days notice requirement (Tr. 6).

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 39 years old and has been a security monitor for a defense contractor since June 2007. Prior to obtaining that job, she worked at various occupations. She has an associate's degree in business. Applicant entered active duty in the Navy after completing high school, and served four years as a storekeeper and postal clerk. She was honorably discharged as a seaman (E-3) in September 1992. Applicant completed a Personal Financial Statement in response to interrogatories. She reported net monthly income of \$2,147, and total monthly expenses of \$2,061 which included a payment on student loans and payment on another loan. She has a monthly net remainder of less than \$100. Applicant confirmed her income and expenses at the hearing (Tr. 29-39, 43-44, 51-53; Gov. Ex. 1, E-QIP, dated August 28, 2007; Gov. Ex. 2, Answer to Interrogatories, dated October 20, 2008 at 4).

Applicant married her first husband in January 1989 and they divorced in March 1994. He was to pay child support for their two children but he only paid intermittently (See. App. Ex. A, Payment records, dated May 8, 2009). Applicant married again in May 2002 but separated in 2005. Her second husband provides no support for his son, her third child (Tr. 40-42).

Applicant was fortunate to have financial support from her parents after her divorce. Her mother sent her \$200 bi-weekly for her and the children. However, her mother became sick in 2000, had to stop working, and could no longer afford to assist Applicant financially. Applicant began having financial troubles after her parents could no longer assist her financially. Her mother passed away in 2005 (App. Ex. B, Obituary, dated September 2, 2005). Five months later, her father passed away (Tr. 15-17, 19-21).

Credit reports (Gov. Ex. 3, credit report, dated April 28, 2009; Gov. Ex. 4, credit report, dated September 29, 2008; and Gov. Ex. 5, credit report, dated September 22, 2007) list a Chapter 13 bankruptcy filed in July 1999. The credit reports also show that Applicant had the following delinquent debts; an account in collection for \$168 (SOR 1.b); an account in collection for \$28 (SOR 1.c); five medical debts in collection for \$69 (SOR 1.d), \$46 (SOR 1.e), \$41 (SOR 1.f), \$135 (SOR 1.g), and \$50 (SOR 1.h); a collection account for \$297 (SOR 1.i); a collection account for \$647 (SOR 1.j); another collection account for \$2,038 (SOR 1.k); a collection account for \$593 (SOR 1.l) a collection account to a store for \$209 (SOR 1.m); a collection account of \$17,016 for the remainder on a repossessed mobile home (SOR 1.n); a collection account for \$372 (SOR 1.o); and four collection accounts to the same creditor for \$89 (SOR 1.p), \$256 (SOR 1.q), \$78 (SOR 1.r), and \$215 (SOR 1.s). The total listed delinquent debt is \$22,317, the majority being for the repossessed mobile home. Approximately \$979 is for medical debt not the responsibility of Applicant.

Applicant filed for a Chapter 13 bankruptcy in 1999. Applicant asked that the case be dismissed because she could not make the required payments (Tr. 24-26; App. Ex. D, Bankruptcy Dismissal, dated March 30, 2000). She remembers making payments to her lawyer but not to the bankruptcy trustee.

Applicant's children's health costs are covered by the state Medicaid system since Applicant's income is sufficiently low to qualify for such benefits for a family of four. In her answer to interrogatories, Applicant presented documentation that her children's medical expenses were covered by state Medicaid (Gov. Ex. 2, Answer to Interrogatories, dated October 20, 2008 at 16-19). Applicant's personal medical care is provided by the Veteran's Administration at no cost to her. She had only one emergency procedure for kidney stones at a civilian health facility that may have been charged to her (Tr. 44-46, 57-58, 68-71).

Applicant had never seen her credit report and was unaware of most of the debts listed. She could not identify most of the debts, their origin, or the creditors. Before the hearing, she made no inquiries into the status of the debts. The credit report was discussed during the hearing. The only debt she could positively acknowledge was the largest debt in collection for Green Tree for \$17,016 (SOR 1.n). When Applicant was receiving financial assistance from her parents, she purchased a mobile home in May 1995. When she stopped receiving financial assistance and no longer had sufficient finances to pay the mortgage, she gave up the mobile home, and it was repossessed and sold in November 1999. The debt is for the remainder of the loan. She has not

made payments on the debt since she left the mobile home. She has not contacted the creditor to make payment arrangements (Tr. 48-49, 59-71).

At the hearing, each debt was discussed with Applicant, and she was advised how to read the report and determine contact information for creditors listed on the report. After the hearing, she provided information on her attempts to resolve some of her debts. She verified that some of the debts were medical debts. She was unable to resolve any other debts or make arrangements by phone. She drafted letters to send to the creditors but she did not state that the letters had been sent (App. Ex. E, F, G, H, Letters, dated July 9, 2009).

Applicant had a loan from a state credit union that was paid in full. That account is not listed as delinquent in the SOR. She also has kept current with some other debts. At one time, she could not afford a place to live with her children and was taken in by a friend (Tr. 23-24, 50-51; App. Ex. C, Account transaction, dated May 6, 2009).

Applicant's friend testified that she has known Applicant for over 20 years. Applicant and her children moved in with her when Applicant lost her home and she and her children were homeless. They split the cost of food and other necessities. She knew Applicant's mother and knew that the mother assisted Applicant financially. She did see a change in Applicant's lifestyle when her mother became sick and could no longer assist Applicant with funds. She knows Applicant is a good person and well meaning (Tr. 71-78).

Applicant's oldest son testified that he had a decent life growing up because of the support from his grandmother. He and his sister visited her almost every summer. His grandparents provided them with books and clothes. When his grandmother became sick, their financial problems started. The worst problem was losing their house and having to live in a hotel until taken in by his mother's friend. His mother is a good parent who does her best to provide for her children (Tr. 78-84).

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 Considerations:

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. Applicant's delinquent debts as admitted by Applicant and listed on the credit reports are a security concern raising financial consideration disqualifying conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). These delinquent debt problems started as early as 1999 and still have not been resolved. Applicant has taken no action to learn about or resolve the debts. This shows that Applicant has a history of an inability or unwillingness to meeting financial obligations. Since bankruptcy is a legal and permissible means of resolving debt and the bankruptcy action was dismissed over nine years ago, it does not have any security significance (SOR 1.a).

I considered the financial considerations mitigating conditions (FC MC) raised by Applicant's testimony. FC MC AG ¶ 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. Applicant has taken no action to pay the delinquent debts, so the debts are current. The debts are from various sources, credit cards, loans, phone bills, and mobile home repossession, so they are not infrequent. Since the debts are current and not paid, they cast doubt on Applicant's current reliability, trustworthiness, and good judgment. The mitigating condition does not apply.

I considered 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). Applicant started experiencing financial problems when her mother became sick and could no longer afford to supplement her income. She had two children at the time and no support from the children's father. Her mother's sickness and the father's failure to support are conditions that are beyond her control. However, Applicant presented no information to show she acted responsibly under the circumstances. Applicant was unaware of her debts and the status of her finances. She had never seen a copy of her credit report and did not know the extent of debt or the identity of creditors. There is no indication she sufficiently changed her lifestyle to reflect less support from her mother. She did have to move out of her house and it was repossessed but she received support from a friend.

While Applicant did have life circumstances that caused financial issues, they were not problems that could not be overcome with responsible action. The first would have been to know the status of her finances and adjust to her circumstances. Applicant presented no information that she took action to live within her means after losing the support of her mother. Since she did not even look at her credit report or learn the status of her finances, even after being questioned by security investigators, she did not make any attempts to pay her delinquent debts since she has been steadily employed in her present position. Most of the delinquent debts were small. Applicant could have taken some action to challenge the medical debts and pay other small debts if she had made inquiries about her debts. She was negligent and irresponsible

towards her finances. She has not established she acted responsibly in managing her finances and making payments on her obligations.

I considered FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts". 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 established that her children's medical expenses were covered by state Medicaid. She established her medical expenses were covered by the Veteran's Administration. The medical debts should not have been assigned or allocated to Applicant. Other than medical debts, Applicant has presented no evidence that the other debts in the SOR have been resolved. She did present some information concerning other debts that she resolved. She did not make any attempts to contact creditors and resolve debt until after the hearing. Since some of the debts are for small amounts, she may have been able to clear them if she had made an attempt to do so. She has not presented a concrete plan to pay her delinquent debts or established any attempt to pay them. A stated future intention to pay debts is not sufficient to establish a good-faith effort to pay debts. Applicant has not presented sufficient information to indicate a good-faith effort to pay creditors or resolve debts. Her finances are not under control and she has not acted responsibly. She has not presented sufficient information to mitigate security concerns for financial considerations.

"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 four years of honorable service on active duty in the Navy. I considered that Applicant did not receive support from the fathers of her children. Applicant is a good-intended, well-

meaning person who is trying to provide for her family. However, she has little if any knowledge about the status of her finances. She was questioned by security investigators about her finances and took no action thereafter to inquire about the debts and take action. By the time of the hearing, she had not even taken steps to seek financial counseling, learn the identity of creditors, how to contact them, and resolve her delinquent debts. Her lack of action towards her finances is irresponsible, careless, and unconcerned. This leads to a determination that she is untrustworthy, unreliable, and exercises bad judgment. Since she exhibits these traits toward her finances, it is reasonable that she will exhibit the same traits towards the safeguarding of classified information. Her lack of actions to resolve her debts indicates poor self control, lack of judgment, and an unwillingness to abide by rules and regulations. Overall, on balance the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against 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:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against 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 not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge