



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



In the matter of:)
)
) ISCR Case No. 08-08692
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., and Tovah Minster, Esq.
Department Counsel
For Applicant: *Pro Se*

June 11, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On March 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns 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 answered the SOR in writing on March 13, 2009, and requested a hearing before an administrative judge. The case was assigned to me on May 7, 2008. DOHA issued a notice of hearing on May 11, 2009. I convened the hearing as

scheduled on March 27, 2009. The Government offered Exhibits (GE) 1 through 4. Applicant did not object and they were admitted. The Government also offered a demonstrative exhibit that was marked Hearing Exhibit (HE) I. Applicant testified and offered Exhibits (AE) A through G. The record was held open to allow Applicant an opportunity to provide an additional exhibit which she did and it was marked as AE H. Department Counsel provided a written response (HE II) and did not object. The exhibit was admitted. DOHA received the transcript of the hearing (Tr.) on June 3, 2009.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 30-year-old program manager for a federal contractor. She has an associate degree, a bachelors of arts degree and a masters of business degree. She is a single mother with one daughter. She does not receive child support.¹

Prior to 2000, Applicant was in a relationship and her boyfriend's car broke down. She cosigned a car loan for him. They broke up and in 2000 he stopped making payments on the loan and defaulted on the loan. He then filed for bankruptcy and had the debt discharged. He did not tell Applicant he had defaulted on the loan or had it discharged in bankruptcy. Applicant also had a car loan on her vehicle and was unable to make two car payments at that time. She filed for bankruptcy and the two car loan debts were discharged. There were other debts included in the bankruptcy, but Applicant chose to pay them. Applicant was a recent college graduate at the time, working as a receptionist in a low paying job.²

Applicant was financially solvent and bought a home in December 2004. In June 2005, she had an accident and injured her knee. She was unable to work and was on disability for six months receiving only 60% of her salary. She started to get behind in paying her bills. She was able to use her 2005 tax return check to catch up on some of her bills. She usually was no more than two months behind. She was on disability from September 2005 to February 2006, when she went back to work.³

In September 2006, Applicant learned she was pregnant. In November 2006 she had complications with her pregnancy and was put on bed rest for the duration of her pregnancy. Applicant was required to go back on disability. She got behind with her mortgage payments and attempted to sell her home, but could not and it was eventually

¹ Tr. 54-57.

² Tr. 22-24.

³ Tr. 24-28.

foreclosed. She did not owe anything on the home after the foreclosure. In July 2007 she returned to work. Again she had difficulty with her finances.⁴

Applicant hired a credit repair service in August 2007 to help her dispute some debts she disagreed with and to help her set up payment plans for others. The service was able to clear up some of the disputed debts. Specifically they resolved the debt in SOR ¶ 1.i (\$1,014). Applicant had returned defective phones to the company and had the receipt as proof. However, the phone company refused to remove the debt until the credit repair service communicated with them. It has been removed from her credit report.⁵

The debt in SOR ¶ 1.h is for a car loan (\$4,663). In 2004, Applicant was engaged to a man and she took a loan to purchase a car for him. He was then laid off and she was later placed on disability. She would fall behind in her payments and then get caught up. In October 2007, she contacted the creditor and discussed her situation. She was told that she could return the car and the debt would be satisfied. She did not understand that the return would be considered a repossession. When she found out the debt was on the SOR in March 2009 and delinquent she attempted to contact the original creditor and could only reach an answer machine. She repeatedly attempted to contact the original creditor. She then sent an email to the creditor. She also tried to contact the collection company and sent them an email and a fax. Her credit repair service also tried contacting both the original creditor and the collection agency. Applicant then received a call from a second collection agency who stated they had been hired by the first collection agency and they wanted her to provide her bank account information over the phone. Applicant refused to do so without written verification. This company refused to provide any details about the debt unless she acquiesced to providing her account information by phone. She was threatened by this agency. She then was told if she faxed a request for documented information they could provide her details. She faxed them a letter and they have never responded. Applicant took copious chronological notes and provided copies of her emails and fax transmissions.⁶

In May 2009, Applicant again contacted the original creditor for the debt in SOR ¶ 1.h in an effort to resolve the debt. They were responsive this time and she was provided with a detailed break down of the debt and she worked out a payment plan. The original creditor acknowledged they still owned the debt, but then changed their answer a few days later stating the debt was actually owned by a collection agency. Applicant has agreed to a settlement offer to pay \$2,623. She will make \$326 payments every two weeks for four months. The payments were supposed to start on May 22, 2009, through an automatic withdrawal from her account. Applicant had provided the creditor all of the accounting data to set up the withdrawal. She has repeatedly

⁴ Tr. 28-29, 53-54.

⁵ Tr. 30.

⁶ Tr. 31-43; AE E and F.

contacted the creditor and left messages that the amount has yet to be taken from her account. The creditor has not responded to her messages. She will continue to pursue resolving the debt and has willingly set up a payment plan, but the creditor is not cooperating.⁷

The debt in SOR ¶ 1.b is a tax lien (\$830) Applicant was unaware about until she received the SOR. She contacted the comptroller of the state that held the lien. She learned that a tax consequence occurred when she took money out of her 401k account. She paid the debt.⁸

The debt in SOR ¶¶ 1.c and 1.d are for medical services (\$57 and \$37). Applicant was unaware of these debts until receiving the SOR. Her medical insurance was to pay these debts, but the debts were listed incorrectly by the creditor at the time and the insurance company refused to pay them. Applicant paid the debts and provided supporting documents.⁹

The debt in SOR ¶ 1.e is a credit card debt (\$439) that went delinquent when Applicant was on disability. She contacted the creditor and paid the debt and provided supporting documents.¹⁰

The debt in SOR ¶ 1.f (\$2,441) is a credit card debt. Applicant used her tax refund to pay the debt in 2007, but did not realize there were additional charges to her account. She had her credit repair service attempt to resolve the debt. The account had been referred to a law firm. Applicant settled the debt for \$1,718 in March 2009 and provided supporting documents.¹¹

The debt in SOR ¶1.g is a medical debt (\$2,000) incurred when Applicant gave birth to her daughter. Apparently there were two anesthesiologists in the operating room and the insurance company only authorized payment for one. Applicant had not requested the additional doctor. The account went to a collection company. Applicant contacted a representative in March 2009 and set up a payment plan. Applicant pays \$200 a month and has made two payments. The debt will be completely paid off in October 2009. Although she disputes the validity of this debt, she decided to pay it so it would not affect her job.¹²

⁷ *Id.*

⁸ Tr. 43-44; Answer to SOR with supporting documentation showing the debt is paid.

⁹ Tr. 44-45; AE A.

¹⁰ Tr. 45-47; AE B and G.

¹¹ Tr. 47-49; AE C and D.

¹² Tr. 49-52; AE H.

Applicant credibly testified that once she was resumed work and was off disability she was able to get her finances in order, save some money, and pay her debts.

Applicant's salary increased by 5% this year and she also was recently promoted. She does not have any other outstanding debts and lives within her means. She is paying her monthly obligations on time. She has not received any financial counseling. She testified she had a couple of years of bad luck that negatively affected her finances, but has done everything she could to pay her debts.¹³

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

¹³ Tr. 61-67.

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

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had her debts discharged in bankruptcy in 2000. She then accumulated numerous delinquent debts that were unpaid for a period of time. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (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 individual 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 behavior is recent because she had many delinquent debts that only recently were paid and others that she is paying through payment plans. I find mitigating condition (a) does not apply.

Applicant made some poor financial choices and then had medical problems and was unable to work. Her income was decreased because she was placed on disability during two long periods of time. She incurred significant debt by cosigning on a loan that was then defaulted on, leaving her with the financial obligation. This condition was somewhat beyond her control, but not entirely, as she made a conscious decision to be responsible for the debt. Once she resumed her job full time and was receiving her full pay she worked towards paying her outstanding debts. I find that some of the conditions that resulted in Applicant's financial problems were beyond her control and others were not. I also find that once she was able she acted responsibly in resolving her delinquent debts. Therefore, mitigating condition (b) partially applies.

Applicant has contacted her creditors and paid most of her debts or has negotiated payment plans and is paying. She has done all that she can do to resolve the debt in SOR ¶ 1.h. She set up the payment plan and the automatic withdrawal, but the creditor has repeatedly been uncooperative and unresponsive. She has made a good-faith effort to resolve this debt. Applicant is living within her means and has paid her delinquent debts. I find mitigating conditions (c) and (d) apply.

Applicant disputed one of her debts because she had returned the equipment and the creditor failed to cooperate with her until her credit repair service communicated with them. I find mitigating condition (e) applies.

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 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. Applicant is a young woman who made some financial mistakes and had some medical problems that affected her income. She had two significant periods of time where she was on disability and her income was reduced. This affected her ability to pay her bills and she got behind. Once she resumed work full-time she paid many of her delinquent debts and has set up payment plans for the remaining debts. Although Applicant may have made some poor financial decisions that caused her to incur some debts she has not avoided their repayment. Applicant has addressed all of her delinquent debts. Overall, 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 mitigated the security concerns arising under the guideline for 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-1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly with in the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge