



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



In the matter of:)
)
) ISCR Case No. 08-09107
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

March 31, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 19 accounts placed for collection. She has paid seven of the accounts. However, nine of the accounts, which total more than \$32,000, remain unpaid. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations. Clearance is denied.

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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Statement of Reasons (SOR) on May 13, 2009, detailing security concerns under financial considerations.

On May 29, 2009, Applicant answered the SOR, and requested a hearing. On August 15, 2009, I was assigned the case. On August 17, 2009, DOHA issued a notice of hearing for the hearing held on September 10, 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 D, which were admitted into evidence. On September 25, 2009, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she denied the factual allegations in SOR ¶¶ 1.b, 1.d, 1.e, 1.g, 1.h, 1.i, 1.k, 1.l, 1.m, and 1.o—1.t. She admitted the factual allegations, with explanations, in SOR ¶¶ 1.a, 1.c, and 1.j. The SOR contains no SOR ¶ 1.n. She also provided additional information to support her request for eligibility for a security clearance. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 37-year-old field engineer who has worked for a defense contractor since Spring 2008, and she is seeking to obtain a security clearance. Her husband works for a telephone company. (Tr. 30) Applicant and her husband have been married ten years. Applicant has three children under the age of 14. (Tr. 27, 31) The oldest child currently lives in a behavioral facility run by the state. (Tr. 32)

In 1995 or 1996, Applicant obtained a \$1,859 loan for the down payment on a Ford Escort. That car was repossessed. (Ex. 2) Neither the loan nor this vehicle repossession is listed as a debt of concern in the SOR.

In 1999, before her marriage, Applicant purchased a 1998 Pontiac Grand Am on which she traded in a vehicle and paid an additional \$11,000. (Tr. 54) She made her \$229 monthly payments for two years before the car was repossessed in 2002, when she defaulted on the loan. (Ex. 2) In August 2008, the creditor first contacted Applicant about the remaining \$19,335 debt (SOR ¶ 1.o). (Ex. 3, page 14, Tr. 54) Applicant paid \$250 per month for three months in 2008. The creditor then demanded the monthly payment increase to \$450. (Tr. 56) Applicant requested the creditor provide proof of the balance following the sale of the vehicle. When she received no reply, she stopped her payments. (Tr. 57) Applicant intends to make further payment when the creditor provides the requested documentation. Applicant asserts the creditor's claim is barred by the statute of limitations. (Answer to SOR) In March 2009, the creditor brought suit on this debt. (Tr. 57) Applicant's court date was a month after the hearing. (Tr. 56)

In May 2000, she married her spouse. As a network technician her annual salary was \$20,000 and her husband's salary as a service manager was \$35,000. Following

their marriage, they obtained and used several credit cards. In 2001, her husband was laid off from his job and they moved from Idaho to Nebraska with their children. (Tr. 25) Shortly after their arrival, her husband was again laid off. (Tr. 25) Applicant worked for a company for a month before being laid off and starting her own business building computers and doing networks. (Tr. 26) In 2001, they moved to Mississippi where her husband found similar work. They lived in Mississippi one year. (Tr. 34)

In 2002, they moved back to Nebraska. (Tr. 34) Applicant experienced marital problems and separated from her spouse. They reconciled. In 2003, he was laid off while they lived in Nebraska. In 2004, they returned to Idaho where her husband was unemployed for six months and she was unemployed for two and a half years. (Ex. 2, Tr. 35, 36, Answer to SOR, Tr. 35)

At a date not listed in the record, Applicant became the legal guardian of her 16-year-old brother when her mother died. In May 2008, Applicant moved to her current location and obtained a job as a field engineer. (Tr. 27, 35) From May 2008 through July 2008, Applicant and her husband were separated due to marital problems. (Tr. 37) In 2008, Applicant and her husband moved to their current location. As of June 2008, her annual salary was \$40,000. (Ex. 2) Applicant reconciled with her husband. His salary is \$51,000. (Tr. 65)

The moves and job losses strained their marriage and their finances. Applicant and her husband separated and filed for divorce four times. (Ex. 2) She provided dates for only two of the separations. In the fall of 2004, she incurred a \$1,265 debt (SOR ¶ 1.a) to her divorce attorney. The creditor has agreed to accept \$125 monthly payments on this debt. (Tr. 38) Applicant is waiting for a letter confirming the arrangement before she begins payment. (Tr. 38)

In October 2001, Applicant and her husband purchased a two-year-old Suburban. (Tr. 45) In 2002, the vehicle was involuntarily repossessed. (Ex. 2) The creditor informed her husband of the balance owed on the vehicle following possession. Applicant never knew the balance due (SOR ¶ 1.h, Tr. 46). The information was sent to her husband and he had already left the home due to a divorce filing. In June 2008, during a personal subject interview Applicant stated she intended to pay the debt. (Ex. 2) At the hearing, Applicant stated she was still responsible for the debt and would like to make a settlement or payment arrangement on this debt. (Tr. 46)

When Applicant moved to Mississippi in 2001, the cellular phone service provider did not have service in the area. Applicant was told she would still have to pay the debt (SOR ¶ 1.f). This cellular phone account (SOR ¶ 1.f) was settled in full. (Ex. A, Ex. B, Tr. 42) Applicant also paid another telephone account (SOR ¶ 1.g) of \$343. (Answer to SOR, Ex. B, Ex. 2, Ex. 1, Tr. 42)

Applicant had a \$312 gas utility bill (SOR ¶ 1.b) and a \$265 power bill (SOR ¶ 1.d) turned over for collection, which she has paid. (Answer to SOR, Ex. B, Ex. D, Tr.

41) Applicant paid a \$241 television service provider account (SOR ¶ 1.e). (Answer to SOR, Ex. E, Tr. 41) Applicant paid two medical debts: a \$298 medical debt (SOR ¶ 1.c) (Answer to SOR, Ex. C, Tr. 40) and a \$155 medical debt (SOR ¶ 1.j) (Answer to SOR, Ex. C, Tr. 48). The credit card debts listed in SOR ¶ 1.i (\$1,008) and SOR ¶ 1.k (\$1,000) are two different credit cards with the same creditor. The creditor had sent Applicant a settlement offer, which she intends to accept. (Tr. 47, 50) Applicant asserts the \$1,097 collection account (SOR ¶ 1.m) for a department store has been paid. (Tr. 53)

In 2001 or 2002, Applicant incurred a \$3,659 correspondence school debt (SOR ¶ 1.l) for a course in electronic engineering. She was paying \$100 monthly on the debt until it became delinquent in 2003. (Ex. 2) She was last contacted about this debt three years ago. (Tr. 51) She intends to pay the debt, but plans to pay those obligations appearing in her CBR first. (Tr. 52)

In 2006, Applicant obtained a \$676 educational loan (SOR ¶ 1.p) for an online criminal justice course. (Ex. 2) She dropped the course before it started, but the creditor would not refund the money. At the time of her personal interview, Applicant stated she did not intend to pay this debt. (Ex. 2) In her answer to the SOR, Applicant asserted this debt is barred by the statute of limitation, but she intended to pay this debt within a year of May 2009. (Answer to SOR) At the hearing, she reasserted she intends to pay this debt. Applicant owes \$716 on another student loan (SOR ¶ 1.q). She intends to pay this debt. (Tr. 60)

In 2001, Applicant incurred a \$1,167 credit card debt (SOR ¶ 1.s). In October 2008, the creditor offered a 50% settlement offer with three payments of \$194 each. (Ex. 2) In her response to the SOR, Applicant asserted this debt was barred by the statute of limitation, but she intended to pay this debt within a year of May 2009. (Answer to SOR) At the hearing, she reasserted her intent to pay this debt. (Tr. 61)

Applicant asserts the multiple moves, periods of unemployment and underemployment, and periods of separation when she and her husband maintained separate household added to their financial problems. Some of the SOR accounts do not appear on Applicant's credit bureau reports (CBR). (Ex. 2, Ex. C)

In March 2009, Applicant purchased a \$123,000 home with monthly mortgage payments of \$1,200. (Tr. 66) Applicant recently purchased a 2006 Honda with \$313 monthly car payments. (Tr. 67) She also has a \$425 monthly car payment on her 1995 Landrover. Applicant has five credit cards with a balance on each of under \$600. (Tr. 70) She is current on her credit cards, her mortgage, car payments, and utilities. (Ex. 2) Applicant's monthly net income (gross income less monthly expenses and payment on debts) is \$500 to \$600. (Tr. 71) Applicant is willing to pay her remaining unpaid obligations by making small payments on them or by paying off one and then paying off the next one. (Tr. 73) Applicant has attended no financial counseling. (Tr. 74)

A summary of Applicant's accounts charged off, accounts placed for collection, and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	Divorce attorney fees.	\$1,265	Unpaid. Applicant intends to pay this debt. Creditor offered to accept \$125 monthly payments on the debt. (Tr. 38)
b	Gas company utility account.	\$335	Paid. (Answer to SOR, Ex. B)
c	Medical account.	\$298	In May 2009, Applicant made a \$150 payment on this debt. (Answer to SOR, Ex. C)
d	Power Company utility account.	\$265	Paid. (Answer to SOR, Ex. D)
e	Television service provider account.	\$240	Paid. (Answer to SOR, Ex. E)
f	Cellular phone account.	\$442	Paid (Answer to SOR, Ex. A, Ex. B)
g	Telephone account.	\$343	Paid. (Answer to SOR, Ex. B, Ex. 2)
h	Bank note on a repossessed Suburban.	\$3,485	Unpaid. Although barred by the statute of limitations, Applicant acknowledges she is responsible for the debt and plans on paying it. (Answer to SOR, Tr. 46)
i	Credit card debt.	\$1,008	Unpaid. Creditor sent Applicant a settlement offer, which she intends to accept. (Tr. 47)
j	Medical debt.	\$155	Paid. Applicant paid \$155 in May 2009 and \$75 interest in June 2009. (Answer to SOR, Ex. E)
k	Credit card account.	\$1,000	Unpaid. Creditor sent Applicant a settlement offer, which she intends to accept. (Tr. 50)
l	Correspondence course.	\$3,659	Unpaid. Although barred by the statute of limitations, Applicant intends to pay this debt after she had paid those debts listed in her CBR. (Tr. 51)

	Creditor	Amount	Current Status
m	Department store collection account.	\$1,097	Applicant asserted she had paid this debt. (Tr. 53)
n	SOR does not list an n.		
o	Vehicle repossession.	\$19,335	Unpaid. Applicant paid \$150 per month for three months in 2008. The creditor is suing Applicant with a court date after the hearing. (Answer to SOR, Tr. 54)
p	Educational loan.	\$676	Unpaid. Applicant intends to pay this debt. (Answer to SOR, Tr. 59)
q	Educational loan.	\$716	Unpaid. Applicant intends to pay this debt. (Tr. 60)
r	Medical account.	\$202	This debt is a duplication of the debt listed in c.
s	Credit card account.	\$1,167	Unpaid. Applicant intends to pay this debt. Creditor has made a settlement offer.
t	Home furnishings account.	\$788	Applicant asserts she has paid this debt. (Tr. 62)
	Total debt listed in SOR	\$36,476.00	

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 must be considered 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 overarching adjudicative goal is a fair, impartial, and commonsense 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 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

Adjudicative Guideline (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 as agreed. Absent substantial evidence of 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 to meet her financial obligations.

Applicant has a history of financial problems. Applicant had 19 accounts placed for collection, which totaled approximately \$36,500. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Applicant paid seven debts totaling \$2,056. She asserted, but provided no supporting documentation, that she has paid two debts of \$1,097 (SOR ¶ 1.m) and \$788 (SOR ¶ 1.t). Nine of the SOR debts totaling approximately \$32,000 remain unpaid. She intends to pay some of these debts and has received settlement offers on some of them, but has yet to make payment on these debts. Applicant intends to pay her attorney fees (SOR ¶ 1.a), a credit card debt (SOR ¶ 1.s), and three student loans (SOR ¶¶ 1.l, 1.p and 1.q). A creditor was suing Applicant for a deficiency balance from a repossessed car (SOR ¶ 1.o). This debt (\$19,335) represents more than 50 percent of the SOR debt (\$36,476).

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.

Applicant's delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence because she has nine delinquent debts totaling more than \$32,000. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). The nine debts remain unpaid, which makes them recent and frequent. Therefore, AG ¶ 20(a) does not apply.

AG ¶ 20(b) partially applies because Applicant's financial problems were contributed to by her and her husband's traveling to different locations in search of work and their marital problems. Applicant and her husband experienced periods of unemployment and underemployment. However, she has been employed with her current employer more than a year and a half.

Applicant has attended no financial counseling. She is current on her five credit cards, mortgage, car payments, and utilities. Applicant still owes more than \$32,000. With so much owed, there is no clear indication the problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Applicant has paid 7 of the 19 debts and wants to pay more of her debts. Paying the seven debts shows a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) applies to these seven debts. Applicant asserted, but failed to document, that two additional debts were paid. Without documentation showing these debts have been paid, these debts are still of concern. If Applicant accepted the settlement offers presented by three of her creditors and made payment in accord with the settlement agreement, AG ¶ 20(d) would also apply to those debts. However, Applicant has only a desire to pay the remaining debts, without any payment.

Applicant asserted that a number of her debts are barred by the statute of limitations, but she acknowledges these debts and wants to pay them. Applicant was paying on one of the repossessions before a dispute resulted in her stopping additional payments. Applicant has not disputed the legitimacy of the past-due debt which is the cause of the problem. Nor has she provided documented proof to substantiate the basis of the dispute or provided evidence of actions to resolve the issue. AG ¶ 20(e) does not apply. The unpaid debts 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. Applicant's marital difficulties and travel searching for employment contributed to her financial problems. She has been employed in her current job for more than a year and a half and has started to address her past-due obligations. She has been able to pay more than \$2,000 on seven of her delinquent accounts. There is no accepted settlement agreement or repayment plan for the nine remaining debts. Applicant's one repossession (\$19,335, SOR ¶ 1.o) represents approximately 60 per cent of what remains unpaid. Applicant wants to pay her past-due obligations, but has yet to establish a repayment plan. The other eight debts total approximately \$13,000.

Three of the creditors have offered settlements, which Applicant has yet to accept and pay. Applicant needs to establish a good-faith effort to address or repay the nine remaining obligations. A systematic, concrete method of handling her debts is needed, which is not present here. With these unaddressed obligations her financial circumstances raise concerns about her fitness to hold a security clearance.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances, a clearance is not warranted. Should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, she may well demonstrate persuasive evidence of her security worthiness.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has not 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: AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b—1.g:	For Applicant
Subparagraph 1.h—1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k—1.m:	Against Applicant
Subparagraph 1.n:	The SOR contains no ¶ 1.n.
Subparagraph 1.o—1.t:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge