



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-09367
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

November 27, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind on several consumer credit card accounts before 2006 when she had to maintain a household on her income as a bookkeeper. Since her divorce in June 2005, she has paid an unexpected \$10,000 federal tax debt and satisfied two of her delinquent consumer credit accounts. She has retained a law firm to investigate her responsibility for the remaining debt on her credit record, and she intends to resolve those debts that are verified. Clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 15, 2008. On February 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F that provided the basis for its preliminary decision to deny her a security clearance and to refer the matter to an administrative judge. 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) effective within the Department of Defense as of September 1, 2006.

On March 16, 2009, Applicant answered the SOR and indicated that she did not want a hearing. She subsequently elected a hearing and the case was assigned to me on May 15, 2009, to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 2, 2009, I scheduled a hearing for July 2, 2009.

I convened the hearing as scheduled. Four government exhibits (Ex. 1-4) and 13 Applicant exhibits (Ex. A-M) were admitted without any objections. Applicant also testified, as reflected in a transcript (Tr.) received on July 10, 2009.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owed 14 delinquent debts totaling \$42,649 (SOR 1.a-1.m and 1.o)¹ as of June 2008. In her Answer, Applicant admitted only the debt in SOR 1.i, which she had settled. She indicated she had retained a law firm to investigate the validity of the other alleged debts, and she would resolve those determined to be legally valid. After considering the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 45-year-old office manager who has worked for her present employer, a defense contractor, since late April 2008. She holds a security clearance for her duties, which includes estimating funds and employee work hours (Ex. 1, Tr. 91).

After fewer than four years of marriage, Applicant was granted a divorce from her first husband in May 1989 (Exs. 1, M). Applicant was adjudged responsible for the debts in her name, including a \$1,500 credit union debt and a \$900 MasterCard debt (Ex. M). Applicant remarried in May 1990. Following the death of her father in September 1998, Applicant took her mother into her home. Applicant's mother had significant health problems, including Parkinson's disease and cancer. Her mother incurred medical costs that were not covered by Medicare. At one point, Applicant paid about \$600 per month in prescription drug costs for her mother (Tr. 39) on her salary as a bookkeeper. From March 2000 to February 2002, Applicant worked as a bookkeeper full-time for one company and part-time for another (Ex. 1).

Around 2002, Applicant's spouse moved to a nearby state to start a business with his father (Ex. 1). Applicant could not join him because of her mother's illness. Applicant found it difficult to pay her and her mother's living expenses from her salary as a bookkeeper. She obtained consumer credit counseling in 2002/03 for assistance in paying off credit card debt through a debt consolidation plan (Tr. 126-27). She paid about \$500 a month to the debt resolution firm for three or four months (Tr. 127), which went mostly for fees (Tr. 128). She had to discontinue her debt repayment plan because she could not afford the monthly payments (Tr. 141). After her mother died in early

¹There was no ¶ 1.n alleged in the SOR.

October 2003 (Ex. A), Applicant assumed responsibility for repaying medical costs incurred by her mother that were not covered by Medicare (Ex. 1, Tr. 35, 116-17). Available Medicare summaries indicate Applicant's mother incurred about \$2,200 in non-covered institutional and professional provider medical costs in 2003 (Ex. A).

Applicant listed her home for sale on the death of her mother, and it eventually sold in the spring of 2004. In March 2004, Applicant relocated to be with her spouse. She found work as a bookkeeper. Her spouse's business started failing (Tr. 129), and in October 2004, Applicant took on a second job as a part-time cashier in the layaway department of a discount retail department store (Ex. 1). She worked about 70 hours per week in an effort to cover their expenses (Tr. 93), but debts continued to accumulate (Tr. 129).

Applicant's marriage failed, and in their June 2005 divorce, she and her ex-spouse were held solely responsible for the debts incurred in their respective names. Applicant retained a 1997 model-year vehicle that was free of any encumbrance. Her spouse retained several vehicles, including two with outstanding loan balances (SOR 1.d and 1.m) (Ex. L).

Just before her divorce was final, Applicant relocated to her present locale, where she moved in with her sister and sister's husband (Ex. 1, Tr. 36). Applicant worked full-time as a bookkeeper for a marine company for a few months at an annual salary of about \$40,000 while continuing part-time duties for her previous employer via VPN out of her new home (Tr. 95, 138). In July 2005, she began employment as a full-time office manager for a defense contractor at an annual salary of \$43,000 (Ex. 138). In September 2005, her part-time work for her former employer ended (Ex.1).

In July 2006, Applicant financed the purchase of a used vehicle, taking out a loan of \$14,638 (Ex. 2). She has made her loan payments on time (Ex. 2, Tr. 98). In about November 2006, Applicant was notified by the Internal Revenue Service that she and her former spouse owed about \$10,042.41 in federal tax debt for tax year 2004 (Exs. 1, B) due to a late report of income for her former spouse (Tr. 104). Applicant took sole responsibility for repaying the tax debt.² She made monthly payments from November 2006 until October 2007, when she made a lump sum payment of \$6,000. She borrowed the sum from her brother-in-law so that she could satisfy the IRS and avoid future interest and penalty charges. As of December 2007, she had paid her delinquent federal tax obligation in full. Between October 2007 and September 2008, Applicant paid her brother-in-law \$500 per month to satisfy her personal loan with him (Ex. B, Tr. 36, 104-06).

In late April 2008, Applicant started her current job at an annual salary of about \$58,000 (Tr. 138). She also stayed on with her previous employer part-time through June 2008, helping to close the office location where she had worked (Ex. 1, Tr. 91-92). Needing a security clearance for her new employer, Applicant executed an e-QIP on

²Applicant testified that she located her ex-husband about four to six months after they separated. After she told him about the debt, he had his phone disconnected (Tr. 106-07).

May 15, 2008. She responded affirmatively to question 28.a, “In the last 7 years, have you been over 180 days delinquent on any debt(s)?,” and listed the IRS debt and 15 other debts that were listed on a May 8, 2008, credit report. She denied any knowledge about the debts on her credit record with the exception of two vehicle loans (SOR 1.d and 1.m) that were to be paid by her ex-husband after their divorce. Applicant indicated that after she finished repaying her sister and brother-in-law for the money loaned to her to satisfy the IRS, she intended to begin paying off the outstanding debt that could be verified (Ex. 1).

A check of Applicant’s credit on June 3, 2008, revealed several delinquent accounts (Ex. 2). In July 2008, Applicant met with a government investigator about the debts. She made no payments at that time because she was repaying her sister and brother-in-law for the money loaned to her to pay the IRS debt (Tr. 114-15). In November 2008, Applicant paid \$750 to settle the debt in SOR 1.j (Ex. C). She subsequently obtained a credit report and was confused by multiple listings for several accounts. On March 10, 2009, Applicant retained the services of a law firm to verify her debts and dispute them where appropriate (Ex. K, Tr. 107). She paid an initial retainer fee of \$99 and then \$79 per month for its services (Tr. 102). Applicant was advised to make no payments on her debts pending verification. The financial histories of those debts in the SOR and a flooring debt not alleged are set forth in the following table.

Debt as alleged in SOR	Delinquency history	Status as of July 09
1.a. \$1,114 credit card debt	High credit \$1,023, past due as of Feb. 04, \$1,114 balance as of May 08, disputed Mar. 09 (Ex. I), debt verified with balance \$1,144 as of Mar. 09 (Exs. H, J), \$1,152 balance as of May 09 (Ex. 3).	Collection agency for assignee of original creditor offered to accept monthly payments as of Mar. 09 (Ex. J), no payments made. Offer forwarded to law firm negotiating on her behalf (Ex. J).
1.b. \$682 credit card debt	High credit \$644, last activity Apr. 04 (Ex. 2), \$711 balance May 09 (Ex. 3).	No payments, no evidence disproving validity.
1.c. \$5,315 credit card debt	High credit \$4,382, last activity Mar. 02, \$5,315 balance as of Jan. 07 (Ex. 2).	No payments, no evidence disproving validity.

1.d. \$8,141 auto loan debt in collection	Joint account opened Oct. 99, high credit \$17,417, \$6,168 charged off and for collection Jan. 05, \$8,141 for collection Nov. 07, \$8,447 balance as of Jun. 08 (Ex. 3).	Ex-spouse responsible per divorce decree (Exs. 1, M, Tr. 84-85). Applicant intends to satisfy if debt validated as spouse not likely to pay it (Tr. 142).
1.e. \$2,170 collection debt	Account opened Aug. 01, high credit \$1,596, for collection Jan. 05, balance \$2,332 as of May 09 (Exs. 2, 3).	Small claims judgment \$1,959 filed by assignee Jul. 10, 07 (Ex. 4), disputed Mar. 15, 09 (Ex. I), judgment deleted from credit report Apr. 09 (Ex. H). Debt with original creditor pending verification request (Ex. I).
1.f. \$100 medical debt in collection	Incurred in 02/03, for collection Jun. 03, disputed but verified (Exs. 2,3, G, H).	Paid Jun. 18, 09 (Ex. G).
1.g. \$522 medical debt in collection	\$522 medical debt from Jun. 04 in collection as of Mar. 06 (Ex. 2)	Paid \$497 toward medical debt in Sep. 05 (Ex. E), uncertain whether it was for SOR 1.g (Tr. 63).
1.h. \$259 medical debt in collection	Incurred Jan. 05, \$259 balance May 08 (Ex. 2), unpaid as of May 09 (Ex. 3).	No payments. No evidence disproving validity.
1.i. \$6,168 charge off debt	Same debt as SOR 1.d.	
1.j. \$2,396 charge off debt	Installment loan of \$4,239 opened May 00 for motorcycle, \$2,396 balance charged off as of Dec 04, last activity Feb 02, \$3,771 balance as of Nov. 08 (Exs. 2, 3, C).	Paid \$750 in settlement Nov. 17, 08 (Ex. C, Tr. 110), debt was her ex-spouse's responsibility after their divorce (Ex. L).
1.k. \$280 cable television debt in collection	\$280 for collection Aug 06 (Ex. 3).	Requested verification from creditor as of May 09 (Ex. K)

1.i. \$2,703 collection debt	Joint loan account opened Apr. 00, last payment Jan. 04, charged off Jul. 04, disputed, reported balance \$2,703.36 as of Mar. 09 (Exs. 2, J).	Does not recognize debt (Tr. 122). Collection being pursued by two different assignees as of Apr. 09 (Ex. J). ³
1.m. \$11,203 collection debt	Joint auto loan opened Mar. 01, \$17,045 high credit, last activity Jul. 04, for collection, balance \$11,203 charged off as of Sep. 07 (Ex. 2)	Ex-spouse responsible per divorce decree (Exs. 1, M, Tr. 85, 113). Reported as zero balance, account transferred on her Jun. 09 credit report (Ex. 3).
1.o. \$1,596 collection debt	Same debt as SOR 1.e.	
\$1,772.13 collection debt (not alleged)	Joint account opened Mar. 01 for flooring, high credit \$2,500, last activity Aug. 02, for collection Jun. 03 (Ex. 2), balance \$1,772.13 as of Apr. 09 (Ex. J, Tr. 120-21).	Law firm attempting to verify debt as of Jul. 09 (Tr. 120-21). Applicant intends to pay if verified (Tr. 121).

Applicant's current annual salary is \$60,000 before taxes (Tr. 96). Her monthly obligations include \$500 in rent to her sister, \$100 towards the cable television costs, \$282 for her car payment and \$100 to \$150 in cellular telephone services (Tr. 97-99). Her vehicle insurance is \$900 a year (Tr. 97-98). As of July 2009, she was current in her living expenses and had been "banking" about \$1,000 each month for the past four months in a money market account that she planned to put toward her old debts. She intends to continue to set aside at least \$1,000 each month, pending verification of her debts, and then to make lump sum payments of the verified debts (Tr. 100-02, 131). Applicant had an additional \$1,000 in checking account funds that she had planned on depositing into her money market account. She had to use the money for car repairs in late June 2009 (Tr. 145).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing "no one has a 'right' to a security clearance." *Department of the Navy v.*

³On March 19, 2009, a collection agency reportedly representing the assignee in SOR 1.i notified Applicant it was authorized to settle the \$2,703.36 debt for less than the total balance. On April 19, 2009, the assignee informed Applicant that it was the current creditor of the \$2,703.36 and that it was attempting to collect the debt. Applicant referred the matter to the law firm she had retained because she was not certain to whom to make any payments (Ex. J).

Egan, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to 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 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 that 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 about finances 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.

Applicant incurred in her name, and in some cases jointly with her then spouse, credit card and personal loan debt during her second marriage that she was not able to repay after he relocated to start a business with his father. Neither she nor her spouse made payments on two joint car loans that fell delinquent in the respective amounts of \$6,168 (SOR 1.d, duplicated in 1.i) and \$11,203 (SOR 1.m), or on a loan for a motorcycle that she bought in her name (SOR 1.j). Three of her medical debts totaling \$881 (SOR 1.f-1.h) and several non-vehicle consumer credit debts totaling about \$11,690 were charged off or referred for collection (SOR 1.a-1.c, 1.e, 1.k, and 1.l). AG ¶ 19(c), "a history of not meeting financial obligations," applies. AG ¶ 19(a), "inability or unwillingness to satisfy debts," is also implicated to the extent that she did not have the funds to make timely payments on those obligations.

Concerning potential factors in mitigation, there are no accounts that have recently fallen delinquent. Most of the debts became past due in or before 2005. Yet, with limited exception, they have not been resolved. Under the circumstances, 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.

However, the evidence supports application of AG ¶ 20(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 circumstance." Although most of the debts were incurred voluntarily,⁴ Applicant's ability to remain current in her obligations was negatively affected by the failure of her spouse's business, which was outside of her control. She fell further behind despite working a second job for the additional income to pay expenses. Applicant also had to cover some \$2,000 in medical expenses of her mother's after her mother died. Then, after she acquired defense contractor employment, she was notified by the IRS that she and her ex-spouse owed a joint tax debt of about \$10,000 for tax year 2004. She was forced to pay the obligation herself with no help from her ex-spouse. After several months of payments, she borrowed \$6,000 from her sister and brother-in-law so that she could satisfy the debt and avoid further fees in interest and penalties. I cannot find that Applicant was financially irresponsible in repaying that personal loan before her collection debts, in light of her dependence on her sister for her living quarters and her lack of full awareness of her debt situation. She obtained a credit report in May 2008 which contained multiple entries for some accounts. Of the several debts on her credit record, Applicant recognized only two automobile loans, and they were supposed to be paid by her ex-spouse following their divorce.

⁴Whether or not Applicant sought out the medical care covered in SOR 1.f, 1.g, and 1.h, such expenses are not considered discretionary.

AG ¶ 20(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,” is implicated in part. Available evidence indicates that SOR ¶ 1.e is an updated collection balance for the debt in SOR ¶ 1.o. Similarly, SOR ¶ 1.d is an updated balance of the \$6,168 charge off debt in SOR ¶ 1.i. So, SOR ¶¶ 1.i and 1.o are not additional debt balances. Furthermore, with respect to the automobile loans in SOR ¶ 1.d and 1.m, her ex-spouse agreed to take responsibility for the car loans that were outstanding as of their divorce. Irrespective of whether the creditors hold her liable for the balances, her failure to make payments on those debts after June 2005 is extenuated. Her ex-spouse took physical control of the vehicles, and she had no reason to know that he was not making his payments.

As for efforts to repay debts, Applicant attempted to resolve some debts with the assistance of a consumer credit counseling services firm in 2003/04, but she made only three or four months of \$500 payments that went toward fees. Within the past year, Applicant paid \$100 to satisfy in full the medical debt in SOR 1.f, and \$750 to settle the \$3,771 motorcycle installment loan in SOR 1.j. She otherwise made no payments toward her other delinquent debts, including SOR 1.a, which had been validated by Equifax as of April 16, 2009 (Ex. J). However, she retained the services of a law firm to investigate the debts and determine her liability, if any, for the balances. She saved about \$4,000 in an account that she planned to put toward those debts that are her legal responsibility. Apart from being advised to refrain from making payments on her debts pending their verification, there is no evidence of any financial advice or counseling. Since most of her debts have yet to be resolved, it is premature to apply AG ¶ 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 is under control.”

In her favor, Applicant has demonstrated a credible intent to resolve her debts by settling the motorcycle loan in November 2008 before the SOR was issued, and by obtaining professional assistance to rectify her financial situation within days of receiving the SOR. AG ¶ 20(d), “the individual initiate a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies. She has demonstrated recent financial responsibility as well in making timely payments on her living expenses and in not incurring any new delinquent debt.

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 conduct and all the circumstances in light of 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.

Applicant took on financial obligations during her second marriage that she could not repay when she was placed in a situation of having to provide for herself and her ailing mother on her salary as a bookkeeper. After her mother died and she joined her spouse, she worked two jobs, about 70 hours per week, but it was still not enough to satisfy both their daily living expenses and their overdue credit obligations. Since her divorce in 2005, her income has increased substantially to where she is now earning about \$60,000 annually. However, an unforeseen \$10,000 federal income tax obligation prevented her from taking timely efforts to address her old consumer credit debts. Available credit information reflects outstanding balances totaling from about \$15,000 (including the flooring debt in collection that was not alleged) to almost \$35,000 if she is held responsible for the two car loans. But nothing in the Directive requires that an applicant be debt free before she can be granted access.

The DOHA Appeal Board has addressed a key element in the whole-person analysis in financial cases stating, in part, “an applicant is not required, as a matter of law, to establish that [she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that [she] has ‘ . . . established a plan to resolve [her] financial problems and taken significant actions to implement that plan.” ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant intends to repay those debts that are verified, and she is currently setting aside about \$1,000 per month to pay off the debts. She has retained the services of a law firm for assistance in resolving her debts. Moreover, she has lived within her means since 2005, electing to reside with her sister at a lower cost so that she will have the financial assets to address her debts. Since most of the debts have not been paid, the risk of financial pressure must be considered. Applicant has worked two jobs in the past, when financially necessary. She is seen as unlikely to succumb to financial pressures to resolve her delinquent debts.

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

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For 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:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.o:	For Applicant

Conclusion

In light of 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.

ELIZABETH M. MATCHINSKI
Administrative Judge