



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-10259
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro Se*

July 31, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SF-86) dated July 8, 2008. On February 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 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, which are effective for SORs issued after September 1, 2006.

In an undated response, Applicant admitted six of the eight allegations set forth in the SOR and constructively denied two of the allegations. She also requested a hearing. The case was assigned to me on June 1, 2009. Department Counsel and Applicant agreed to a hearing date of June 23, 2009. A notice of hearing was issued to that effect on June 4, 2009. I convened the hearing as scheduled. Applicant gave testimony, offered no documents, and was given through the close of business on July

17, 2009, to submit any evidence for consideration. Department Counsel offered four documents admitted as exhibits (Exs.) 1-4 without objection. The transcript (Tr.) of the proceeding was received on July 1, 2009. On July 15, 2009, Applicant transmitted 11 documents by facsimile transmission to Department Counsel. They were forwarded to me on July 20, 2009, and accepted into the record as Exs. A-K without objection. The record was then closed. Based upon a review of the testimony, submissions, and exhibits, I find Applicant met her burden regarding the security concerns raised. Security clearance is granted.

Findings of Fact

Applicant is a 47-year-old customer service representative who has worked for the same defense contractor for 11 years. Applicant earned a high school diploma and completed one year of college. Married, Applicant has two minor children.

In 1998, Applicant divorced her first husband. The couple had two credit cards, Card A and Card Ba MasterCard and a Discover Card. They informally divided the cards between themselves: Applicant assumed control over the MasterCard and her ex-husband took possession of the Discover Card. Applicant stayed current on her MasterCard until it went into default in 2007.¹ Applicant was financially burdened at the time. Her ex-husband had not paid court-ordered child support since early 2006 and her adjustable rate mortgage payments ballooned from \$900 to \$1,500 a month.² The credit card company took the matter to court, resulting in a judgment of approximately \$5,000 against Applicant.³ She ultimately negotiated a settlement and the account was later satisfied and closed in July 2009 for \$4,500. She paid the settlement with the proceeds from a \$7,500 promissory note from her employer. Her repayment of that sum is secured under an arrangement with her employer through which the loan will be paid back over two years by withholding Applicant's annual bonuses.⁴

In 2008, Applicant's current husband and her elder daughter both had emergency surgeries. Related costs amounted to about \$1,200 to \$1,500 for each of the two surgeries. These obligations further impacted their ability to pay other bills.⁵ That summer, Applicant was contacted by Discover Card.⁶ She was told that the

¹ SOR allegation ¶ 1.a.

² To date, Applicant's ex-husband has not paid child support for the past three years. Tr. 14.

³ Tr. 21.

⁴ Ex. B (Credit union letter, dated July 15, 2009); Tr. 24-26. Applicant's company has knowingly worked with her in addressing security concerns.

⁵ Applicant is still making monthly payments on these medical bills. Tr. 20.

⁶ SOR allegation ¶ 1.b.

account was “seriously delinquent and past due.”⁷ Unable to locate her ex-husband or unsuccessful in pursuing the matter with him, the company tried to engage Applicant into making payments on the account. Applicant was not able to pay off the entire Discover Card balance, but she agreed to pay \$50 a month toward the balance and offered to investigate why her ex-husband was not making timely payments. When she contacted her ex-husband, she discovered he had used the card to transport their teenage daughter across the country during her visits to him. Applicant has had the card cancelled so no future charges can be made by her ex-husband.⁸ A settlement was negotiated for a payment of \$2,500. That amount also was paid with funds from the promissory note in July 2009.⁹

The SOR noted eight delinquent accounts of concern. Aside from the MasterCard and Discover Card, the following are at issue:

Department Store (SOR allegation ¶ 1.c) (\$135) and Creditor (SOR allegation ¶ 1.e) (\$228) – *In repayment*. Applicant worked with a credit counseling organization and an account payment consolidation plan was executed in January 2009.¹⁰ Applicant pays a fluctuating amount each month to the organization which, in turn, makes payments on these accounts.¹¹

Department Store (SOR allegation ¶ 1.d) (\$274) – *Paid*.¹²

Mortgage (SOR allegation ¶ 1.f) (past due \$986) – *Current on payments*.¹³

Creditor (SOR allegation ¶ 1.g) (\$169) – *In dispute*.¹⁴

Medical Collection (SOR allegation ¶ 1.h) (\$73) – *In dispute*.¹⁵

⁷ Tr. 13.

⁸ Tr. 31.

⁹ Ex. D (Statement regarding account starting –6011). *Compare* same account number on Ex. 4 (Credit report) at 1.

¹⁰ Ex. 2 (Interrogatory).

¹¹ Ex. H (Payment history).

¹² Ex. C (Statement regarding account starting –9723). *Compare* same account number on Ex. 4 (Credit report) at 2.

¹³ Ex. E (Loan and payment history).

¹⁴ Ex. A (Applicant’s cover letter, section 4). Applicant states she spoke with a representative of this company. He told Applicant the car loan at issue was paid in full and that he would contact the credit reporting bureau to have the entry deleted.

¹⁵ Ex. A, *supra*, note 14. Applicant states she spoke with a representative from this medical collection agent and was told the derogatory entry would be removed from her credit report.

Today, Applicant is living within her means. Her net annual salary yields about \$2,700 a month and her husband earns a net of \$1,600 a month. After all expenses and monthly obligations, she has a net remainder of about \$300 for savings or emergencies. She and her husband own two cars, both of which are about 12 years old. They rarely eat out and the children receive modest allowances.¹⁶ For a vacation last year, Applicant stayed home while her husband took their daughter to visit her grandmother. She is current on her state and local taxes. She is in timely repayment through payroll deduction on a modest loan of about \$4,000 she withdrew from her 401(k) plan.¹⁷ Her ex-husband has not paid his monthly child support for the past few years because he is an alcoholic and cannot maintain a job. Applicant has declined to take him to court over the matter.¹⁸ At work, she is a valued employee who has gained the trust and support of her superiors, both of whom are aware of Applicant's past financial difficulties.¹⁹

At the hearing, Applicant arrived without relevant paperwork and relied on previously submitted documents. Without objection, she was given approximately three weeks to submit any documentation. She did, however, detail how she was prepared to pay off her two largest credit card debts. Department Counsel noted that "[a]ll we're dealing with her[e] is \$12,000. You know, we're not dealing with a tremendous amount of debt as far as creating a security – you know, a huge security concern."²⁰ He concluded by stating, "if [Applicant] was able to resolve the [MasterCard and Discover Card] debts, the Government would submit that that would go a long way in resolving all of the security concerns in this case.... If documents are presented to show that those two credit card debts have been resolved, then I think that the – that evidence would weigh favorably in her camp."²¹ As noted above, those accounts have been paid.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. 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 commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a

¹⁶ Tr. 68-69.

¹⁷ Tr. 63.

¹⁸ Because of his alcohol abuse, their daughter no longer visits the ex-husband. Tr. 66.

¹⁹ Exs. I-J (Recommendations).

²⁰ Tr. 71.

²¹ *Id.*

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.

The government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”²² The burden of proof is something less than a preponderance of evidence.²³ The ultimate burden of persuasion is on the applicant.²⁴

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 an 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁷ It is merely an indication that the

²² See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Executive Order 10865 § 7.

applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to this case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F – Financial Considerations

Under Guideline F, failure or an inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.²⁸ The Directive sets out several potentially disqualifying conditions under this guideline.

Between 2007 and 2008, Applicant faced financially difficult times owing to a significant rise in her monthly mortgage payment, family surgeries, and a failure by her ex-husband to pay child support. As a result, some debts became delinquent. These facts are sufficient to raise financial considerations disqualifying condition (FC DC) AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and FC DC AG ¶ 9(c) ("a history of not meeting financial obligations"). With such conditions raised, the burden shifts to Applicant to overcome the case against her and mitigate security concerns.

Although an increase in an adjustable rate mortgage can be financially vexing, it is not necessarily unforeseeable. Emergency surgeries and a refusal or inability of an ex-husband to pay court ordered child support, however, cannot be wholly anticipated. Financial considerations mitigating condition (FC MC) AG ¶ 20(b) ("the conditions that resulted in the behavior 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") applies.

One of Applicant's first efforts toward resolving the debts noted in the SOR was to seek the aid of a financial counseling service, where she also worked out a debt consolidation plan that includes two of the accounts at issue. Since that time, she demonstrated that she knows how to successfully negotiate and satisfy a settlement on a delinquent account. Today, all of the debts at issue have been satisfied except for two nominal debts which were disputed and are now in the process of being deleted from her credit report. Consequently, FC MC ¶ 20(c) ("the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control") applies.

²⁸ Revised Adjudicative Guideline (AG) ¶ 18.

Applicant has paid off both her MasterCard and the Discover Card for which her ex-husband had agreed to be responsible. This eliminates about \$10,650 of the approximately \$12,000 at issue. As noted at the hearing, this goes “a long way in resolving all of the security concerns in this case.” In addition, she satisfied all but two of the remaining delinquent debts at issue. The only accounts still at issue amount only to about \$240. These two accounts are nominal, were disputed, and Applicant states she is presently waiting for them to be deleted from her credit reports. FC MC ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) applies. No other mitigating conditions apply.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an 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 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, as well as the “whole person” factors. Speaking in Applicant’s favor, she is a credible and mature professional. She has demonstrated remarkable patience with her ex-husband, who not only reneged on his promise to manage the Discover Card account, but whose alcohol abuse is adversely affecting his relationship with his daughter and her financial well-being. Moreover, although much of her success was reached shortly before the record was closed, Applicant successfully addressed all of the accounts at issue and demonstrated her finances are under control.

Speaking against Applicant is the fact that, although she should not have been responsible for the Discover Card and although she was unaware of some of the smaller debts, her MasterCard account was knowingly neglected for almost two years. Also, most of her success in addressing all of the debts at issue occurred recently. To her defense, however, Applicant credibly explained why the 2007-2008 period was a particularly difficult time for her family financially. She has recently stabilized her

finances and come to accept the fact her ex-husband cannot be relied upon to meet his financial obligations for their child.

In satisfying her MasterCard and Discover Card debts in the manner described at the hearing, Applicant went a “long way in resolving the security concerns” presented in this matter. She presented evidence of her success with these two delinquent accounts, as well as with the others at issue, that weighs heavily in her favor. While her depiction of her personal and family finances does not portray affluence, it does reflect a family living simply and within their means during these difficult economic times. With security concerns regarding her finances mitigated, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge