



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



In the matter of:)	
)	
)	ISCR Case No. 08-10504
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro Se*

September 8, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed eight debts, which were past due, placed-for-collection, or charged off. These delinquent debts totaled approximately \$37,500, of which \$24,500 consisted of past due mortgage payments. Applicant paid or is paying all of the debts except for her mortgage. She is working closely with the mortgage company's home retention team. Applicant has rebutted or mitigated the government's security concerns under financial considerations. Clearance is granted.

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*

Statement of Reasons (SOR) on March 27, 2009, detailing security concerns under the financial considerations adjudicative guideline.

On May 1, 2009, Applicant answered the SOR and requested a hearing. On June 17, 2009, I was assigned the case. On July 1, 2009, DOHA issued a notice of hearing scheduling the hearing for July 30, 2009. The hearing was held as scheduled.

The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through G, which were admitted into evidence. The record was held open to allow additional information from Applicant. On August 14, 2009, and August 24, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. H through Ex. M . On August 6, 2009, the transcript (Tr.) was received.

Findings of Fact

In Applicant's Answer to the SOR, she denied the factual allegations in SOR ¶¶ 1 and 1.h. She admitted the remaining factual allegations. Applicant's admissions to the SOR allegations are accepted as fact. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 37-year-old project manager who has worked for a government agency since July 2008. (Tr. 39) She is seeking to obtain a security clearance. Her yearly salary is \$78,000. (Tr. 42, 87)

From September 2002 to January 2005, Applicant was employed as a security officer and paid \$43,000 a year. (Tr. 91) During 2002 and 2003, and again from 2005 to 2007, Applicant obtained student loans of \$5,114 and \$3,381 (SOR ¶ 1.e and 1.f) to attend college. Applicant is five credits short of her Bachelor of Arts degree. (Tr. 54) The loans were in forbearance until March 2009. (Tr. 51) In March 2009, the creditor offered Applicant various plans to repay her loans. Applicant chose a graduated 15-year repayment plan whereby her monthly payments start at \$25 on one loan and at \$16 on the other. (Tr. 76, 81, Ex. E) Applicant owed the state \$856 (SOR ¶ 1.g) for unpaid tuition, which was paid in October 2008. (Tr. 77, Ex. F) Applicant paid a \$50 insurance debt (SOR ¶ 1.h). (Ex. G)

In January 2007, Applicant left her job to stay at home with her five children, aged 12, 10, 8, 7, and 3. (Tr. 53) She took a job as a mortgage loan officer, which paid \$13,000 a year. (Tr. 23, 90) In August 2007, her husband, a hypnotherapist, ended his business, which paid approximately \$24,000 a year. (Tr.91) He is now a stay-at-home father taking classes to become a dog trainer. (Tr. 49)

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 opened a home-based slumber parties business, which was funded by sales and loans. Her net monthly income from the business was \$2,000. (Tr. 89) She ended the business in 2009. (Tr. 88) The business generated enough income to pay the home utilities and provide food. (Tr. 23, 115) Applicant cashed out her \$60,000 401(k) retirement fund and sold her jewelry worth \$3,000 to make mortgage and utilities payments. (Ex. D) During this period, Applicant maintained communication with her creditors. (Tr. 24, Ex. D) In December 2007, she began sending out her resumes. (Tr. 23) In May 2008, when she was notified she would be obtaining her present job, she increased her communication with her creditors. (Tr. 24)

Applicant used two credit cards to pay living expenses, including food and utilities. (Tr. 47, 63) She made sporadic payments on these accounts (SOR ¶ 1.a, \$5,296 and SOR ¶ 1.b, \$5,799). In February 2009, the creditor offered to settle the first debt for \$3,443. Applicant accepted the offer and has been making \$573 monthly payments since March 2009. (Tr. 48, Ex. A) On August 14, 2009, there was a release of debt. (Not further explained, Ex. M) Applicant has been making \$122 monthly payments on the other credit card account, which now has a balance of \$1,823. (Tr. 48, Ex. B, Ex. J)

Applicant purchased her home for \$352,000, and borrowed \$44,000 on a home equity line of credit (HELOC). (Ex. 3) As to the HELOC, a loan re-modification under the National Homeownership Retention Program (NHRP) was approved on her note, but the monthly payment has yet to be determined. (Tr. 44, 45, Ex. D) The monthly payment amount will fluctuate between \$248 and \$278. (Ex. L) Applicant has been making her \$248 monthly payments on the HELOC. (Tr. 66, Ex. C) Applicant's mortgage company cashed her July 2009 payment when received. (Tr. 46)

In obtaining her mortgage, it was Applicant's plan to obtain a mortgage with monthly payments equal to her rent of \$1,500. The mortgage was an adjustable rate mortgage, an option ARM. (Tr. 42) Her mortgage required \$1,345 principle and interest payments to which were added monthly escrow amounts for insurance and property taxes. (Ex. 3) Her monthly mortgage was approximately \$3,000. In September 2007, Applicant stopped making her mortgage payments. (Tr. 42, 74) As of March 2009, she was \$24,503 delinquent on her mortgage. (Tr. 3)

Applicant has been in close contact with her mortgage company about this delinquency. She has been working with the mortgage company's home retention team. (Ex. D) Various plans have been explored and some attempted. In December 2008, a loan re-modification was approved and then the paperwork fell through, meaning the loan was not received. (Tr. 44) In February or March 2009, the program was reinstated and Applicant's loan modification package was again submitted. (Tr. 44) Applicant's mortgage company told her not to make any mortgage payments while negotiations were being conducted. (Tr. 73) Applicant has weekly communication with her mortgage

company. (Tr. 25) In July 2009, Applicant was told she did not qualify for the Making Home Affordable Program, but other loan modifications were under review. (Ex. D)

In May 2008 and October 2008, Applicant's father was hospitalized. (Tr. 25) He died in June 2009. Applicant lives within four miles of her mother and has been helping her with her finances and the arrangements concerning her father's death. (Tr. 26) Applicant and her husband own a 2001 automobile and a Dodge automobile on which they owe approximately \$6,000 and \$8,000. (Tr. 110) She is current on the \$205 and \$300 monthly payments. (Tr. 111, 112)

A summary of the eight SOR debts and their current status follows:

	Creditor	Amount	Current Status
a	Credit card account charged off.	\$5,296	Paying. Applicant is making \$573 monthly payments on this debt. (Ex. A)
b	Credit card account was past due. Amount past due.	\$805	Paying, Applicant is making \$122 monthly payments on this debt. (Ex. B) Total amount owed \$6,260.
c	Home equity line of credit. Amount past due.	\$5,862	Paying. (Ex. C) Total amount owed \$43,769.
d	Home mortgage is past due.	\$24,503	Applicant is working with her mortgage company. (Tr. 44)
e	Student loans were 90 days past due on \$3,382.	\$77	Paying. (Ex. F)
f	Student loans were 90 days past due on \$5,015.	\$114	Paying. (Ex. F)
g	State account placed-for-collection.	\$856	Paid in October 2008. (Tr. 52, Ex. F)
h	Insurance account placed-for-collection.	\$50	Paid in full. (Ex. G)
	Total debt listed in SOR as past due, charged off, or placed-for-collection.	\$37,563	

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 as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

Revised 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 under agreed upon terms. Absent evidence of strong 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 so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. At one time, Applicant owed approximately \$37,500 on eight past due, charged off, or placed-for-collection obligations. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

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.

The mitigating factors in AG ¶ 20(a) only partially apply because the debts were recent and numerous. However, Applicant has paid or is paying all of her obligations, except for her mortgage. She is working closely with her mortgage company's home retention team. Applicant's financial problems are being addressed.

The mitigating factors in AG ¶ 20(b) have limited applicability. Applicant changed jobs and her husband ended his business to return to school. These events may not have been anticipated, but are not conditions largely beyond Applicant's control.

The mitigating factors in AG ¶ 20(c) apply. Applicant not received financial counseling, but she has addressed her financial problems. She is not receiving calls or mail from creditors demanding payment, and she is paying her debts as agreed. Her mortgage company has told her not to make any payments while various loan modification plans are attempted. Applicant maintains weekly contact with her mortgage company. She has not simply forgotten about her past due mortgage, but is working to find a solution.

Except for her past due mortgage, Applicant has paid or is making payments on all of the debts listed in the SOR, including her student loans. This shows a good-faith effort to repay debts. AG ¶ 20(d) 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 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. The debts incurred were not the types that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. She does not appear to be living beyond her means. Both she and her husband drive 2001 vehicles. The debts set forth in the SOR were not incurred for luxuries, but were for student loans and living expenses.

The issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) In January 2007, Applicant left her job to stay at home with her five children. She obtained a job as a mortgage loan officer, and she opened a home business bringing in \$2,000 per month. At this time, her husband was also working.

When Applicant's income failed to meet expenses, she sold her jewelry and cashed out her 401(k) retirement plan to pay the mortgage and meet daily living expenses. When she was unable to continue with her mortgage payments, she kept in close contact with the mortgage company and the home retention team. She continues to explore various loan modification plans. Cashing out her retirement plan and selling her jewelry shows a desire to satisfy her debts and meet her financial obligations.

Since obtaining her current job, with an annual salary is \$78,000, she paid or has brought current all of her debts except for her past due mortgage. Her constant communication with her mortgage company's home retention team indicates she will address her past due mortgage. While Applicant has not paid off all of her debts, she is certainly making progress in addressing those obligations.

Overall, the record evidence leaves me without 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 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:

Guideline F, Financial Considerations: FOR APPLICANT

Subparagraph 1.a—1.h: For Applicant

Conclusion

In light of all of the circumstances presented by 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.

CLAUDE R. HEINY II
Administrative Judge