



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



In the matter of:)	
)	
)	ISCR Case No. 08-10526
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: *Pro Se*

November 17, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on July 13, 2008, as part of her employment with a defense contractor. On May 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on July 10, 2009. She admitted eight and denied six of the factual allegations under Guideline F, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 6, 2009, and the case was assigned to me on August 12, 2009. DOHA issued a Notice of Hearing on August 13, 2009, for a hearing on September 3, 2009. Applicant signed for the Notice of Hearing on August 18, 2009. I convened the hearing as scheduled. The

government offered five exhibits, marked Government Exhibits (Gov. Ex.) 1 thru 5, which were received without objection. Applicant testified on her behalf and offered 16 exhibits, marked Applicant Exhibits (App. Ex.) A thru P which were received without objection. The record was held open for Applicant to submit additional documents. Applicant timely submitted four documents marked App. Ex. Q thru T, which were received without objection (Gov. Ex. 6, Department Counsel memorandum, dated September 29, 2009). DOHA received the transcript of the hearing (Tr.) on September 14, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 28 years old and has been an administrative assistant for a defense contractor for approximately one year. She is a single mother raising a son. She is enrolled in college working towards a degree in accounting (Tr. 53; Gov. Ex. 1, e-QIP, dated July 15, 2008). Applicant's present net monthly salary is \$2,450.06, with total monthly expenses of \$2,295.44, leaving a monthly net remainder of \$154.62. Her monthly salary does not take into account overtime pay. She usually averages 15 hours of overtime per pay period (Tr. 67-69; App. Ex. N, Personal Financial Statement, dated August 28, 2009). Applicant provided an updated response to the SOR at the hearing detailing the actions she has taken to resolve and pay her debts (App. Ex. A, Updated response to statement of reasons, undated).

Credit reports reveal the following delinquent debts for Applicant; a medical collection account for \$100 (SOR 1.a); another medical collection account for \$100 (SOR 1.b); a collection account for a fitness center for \$220 (SOR 1.c); a charged off account to a finance company for \$220 (SOR 1.d); a charged off account to the same finance agency for \$186 (SOR 1.e); a credit card debt charged off for \$1,329 (SOR. 1.f); a collection account for a retail store chain for \$697 (SOR 1.g); a collection account for another department store for \$358 (SOR 1.h); a mortgage account 90 days past due for \$1,000 (SOR 1.i); a credit card account charged off for \$1,375 (SOR 1.j); an automobile loan charge off for \$10,465 (SOR 1.k); a medical account in collection for \$100 (SOR 1.l); a cash advance account in collection for \$420 (SOR 1.m); and an insurance account in collection for \$325 (SOR 1.n; Gov. Ex. 3, Credit report, dated July 29, 2008; Gov. Ex. 4, Credit report, dated January 23, 2009; Gov. Ex. 5, Credit report, dated May 14, 2009).

Delinquent debts SOR 1.a and 1.b are medical debts for the care of Applicant's son. Both debts have been paid in full (Tr. 17-18, 54; App. Ex. B, Account activity, dated August 5, 2009; App. Ex. C, Paid in full letter, dated August 31, 2009).

Delinquent debt 1.c is a debt to a ladies fitness center. Delinquent debt 1.d is the same debt listed with a collection agency. Delinquent debt 1.e is a different debt to the same collection agency for the same ladies fitness center for fees from 2002. Applicant contracted with the ladies fitness center to use their facilities for the fee of \$29 per month which she continuously paid. She has no record of the payments she made since

the payments were over six years ago. Applicant requested verification of the debts from the collection agency. She was advised that there is no record of a debt for her from 2002. Applicant used the center and paid her fees until the center went out of business. She does not believe she has a balance owed from 2002 until the center ceased business in 2006. She requested verification of the debt from the collection agency. She has not received a response from the collection agency (Tr. 27-32, 55-56; App. Ex. D, Credit reporting agency update, dated August 28, 2009).

Delinquent debt 1.f is an account in collection for a credit card. Applicant has an agreement with the collection agency for payment of \$50 per month on the debt. She made payments of \$100 and \$50. She is attempting to make a further payment by bank draft but the collection agency is having difficulty with the transaction. The funds are available for withdrawal (Tr. 32-34, 57-58; App. Ex. E, Letter, dated February 26, 2009; App. Ex. Q, Applicant's letter, dated September 17, 2009; App. Ex. T, Bank Statement, dated September 17, 2009).

Delinquent debt 1.g has been settled for \$361.84 and paid in full (Tr. 34, App. Ex. F, Letter and cancelled check, dated June 30, 2009). Delinquent debt SOR 1.h has been settled for \$216.24 and paid in full (Tr. 34, 59; App. Ex. G, letter and bank account statement, dated July 7, 2009). Delinquent debt 1.i is for Applicant's mortgage listed as 90 days past due. Applicant restructured her mortgage and it is now current (Tr. 34, 59-60; App. Ex. H, Letter, dated August 10, 2009).

Delinquent debt 1.j is for a charged off credit card account with a balance of \$1,598. Applicant has an agreement to pay \$75 month until the debt is satisfied. Applicant has made payments totaling \$475 (Tr. 34-35, 60; App. Ex. I, Letter, dated July 17, 2009).

Delinquent debt 1.k is the remainder on an automobile loan after the car was repossessed. The car was purchased by Applicant and a former boyfriend, the father of her child. The boyfriend did not make his share of the payments and the car was repossessed. The actual amount of the debt after Applicant received credit for charges that no longer are applicable is \$7,689.91. She received a settled offer of \$3,844.96, but she was unable to take advantage of the offer. Applicant reached an agreement with the collection agency to pay \$150 monthly until the debt is satisfied. Her first payment was made on August 28, 2009 (Tr. 36-43; App. Ex. J, Check, dated August 28, 2009; App. Ex. P, Letter, dated January 16, 2009).

Delinquent debt 1.l is for a medical account in collection. Applicant disputed the debt and attempted to research it with the collection agency. She had a medical insurance account that paid her co-pays. The debt may be a duplicate of the debts listed at SOR 1.a and 1.b since they are for the same amount on the same day of service. She paid these debts. The credit reporting agencies have removed the debt from her credit report. Applicant assumes it was removed because it was determined based on her dispute that the debt was listed in error. It is not listed on her present credit report (Tr. 43-49, 60-61; App. Ex. K, Credit report, dated August 28, 2009).

Applicant disputed the delinquent debt at SOR 1.m. She never had an account with the creditor listed and does not know about any debt owed. The debt has been removed from her credit report by the credit reporting agency because it is either no longer being reported by the creditor or the creditor has directed that it be removed (Tr. 49-51).

Delinquent debt 1.n is for fees owed to the insurance company on the car that was repossessed in SOR 1.k. Applicant's former boyfriend was to pay the insurance on the car. He provided Applicant with funds for half of the debt. Applicant used her funds for the other half of the debt and paid the debt in full (Tr. 51-52, 61-62, 64-65; App. Ex. S, receipt, dated September 11, 2009).

Applicant's performance rating from her employer shows that she is highly regarded and was recommended for a salary increase. (App. Ex. L, Employee Performance Review, dated June 25, 2009). A former supervisor for Applicant noted that she is efficient, competent, organized, and has excellent rapport with customers. She has a strong work ethic and is trustworthy and professional (App. Ex. O, letter, dated September 1, 2009).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are still required in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and 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.

Analysis

Financial Considerations:

Under financial considerations, 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 (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect 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 terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts as listed on credit reports and admitted by Applicant are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations).

I considered the Financial Considerations Mitigating Conditions (FC MC) raised by Applicant's testimony. FC MC 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), and FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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). Applicant is a single mother raising her

son. The father of her child is required to assist with payment of certain debt but he has only provided limited assistance. However, Applicant has paid some of her debts and actively worked with the creditors and credit reporting agencies to resolve her debts. She has demonstrated that she acted responsibly under the circumstances. Since she is actively working on her delinquent debts, they do not cause doubt concerning her current reliability, trustworthiness, or good judgment.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good-faith effort to pay them. Applicant paid six of the debts, either in full or by settlement. One debt, her mortgage, is now current. She is paying three debts under an agreed plan and is current with her payments. She disputed four debts with the creditors or the credit reporting agencies. Two have been removed from her credit reports and she is waiting action on the two remaining disputes. She took concrete action to address her delinquent debts. Applicant mitigated security concerns based on her finances.

“Whole Person” Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant’s security eligibility by considering the totality of the 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. I considered Appellant's excellent work evaluation and her reputation with her former supervisor. Appellant must show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. She is not required, as a matter of law, to establish that she paid off each and every debt listed in the SOR. All that is required is that she has a plan

