



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



In the matter of:)	
)	
)	ISCR Case No. 08-11150
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Pro se

September 25, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on July 31, 2008. On May 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline J, Criminal Conduct. 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.

On July 6, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 21, 2009. The case was assigned to me on July 24, 2009. On August 3, 2009, a Notice of Hearing was issued, scheduling the hearing for August 25, 2009. The case was heard on that date. The government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and submitted no documents. The transcript was received on September 10, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, Applicant denied the allegations in SOR ¶¶ 1.a, 2.d, and 1.i. She admits the remaining SOR allegations.

Applicant is a 38-year-old dispatcher for a Department of Defense contractor who seeks a security clearance. She has been employed in her current position since June 2008. From 1989 to 1991, she served on active duty in the United States Marine Corps. She separated as an E-3 with an honorable discharge. She served in the United States Marine Corps Reserve from 1993 to 1997. She previously held a security clearance while in the Marine Corps and in previous employment with a defense contractor in 1999. She is a high school graduate and has one year of college credit. She has been married twice. She is married and has four children, three sons, ages 16, 18, and 2, and a 13-year-old daughter. Her two older sons live with their father, her ex-husband. She lives with her husband, a 16-year-old step-daughter and her youngest son. Her 13-year-old daughter lives with her grandparents during the school year. (Tr at 4-6, 22, 51; Gov 1; Gov 2 at 12)

Applicant's background investigation revealed that she has the following delinquent accounts: a \$156 medical account placed for collection in October 2005 (SOR ¶ 1.a: Gov 2 at 17; Gov 5 at 1; Gov 6 at 5); a \$137 medical account placed for collection in August 2004 (SOR ¶ 1.b: Gov 2 at 17; Gov 5 at 1; Gov 6 at 5); a \$539 medical account placed for collection in October 2006 (SOR ¶ 1.c: Gov 2 at 17; Gov 5 at 1; Gov 6 at 4); a \$67 insufficient funds check written to a discount department store placed for collection in May 2005 (SOR ¶ 1.d: Gov 2 at 17; Gov 5 at 1; Gov 6 at 4); a \$282 medical account placed for collection in June 2006 (SOR ¶ 1.e: Gov 2 at 17; Gov 5 at 1; Gov 6 at 7); an \$849 medical account placed for collection in July 2005 (SOR ¶ 1.f: Gov 2 at 17; Gov 5 at 1; Gov 6 at 7); a \$323 medical account placed for collection in August 2005 (SOR ¶ 1.g: Gov 2 at 17; Gov 5 at 1; Gov 6 at 7); a \$54 debt owed to a grocery store for an insufficient funds check placed for collection in May 2003 (SOR ¶ 1.h: Gov 2 at 18; Gov 5 at 1; Gov 6 at 6); and a \$12,034 debt owed after a voluntary automobile repossession. (SOR ¶ 1.i: Gov 6 at 6).

Applicant owes past-due child support for her two oldest sons. She did not make child support payments from 1999 – 2009. She claims she was unable to afford the child support payments in addition to supporting her immediate family. She testified that she knew her two sons were being well provided for by her ex-husband and his new wife. On June 23, 2008, she appeared at the courthouse in response to a contempt of court letter for unpaid child support. She was arrested and released several hours later after paying \$1,000, which was applied towards her unpaid child support. Her paycheck is garnished \$175.38 each pay period for child support. She is paid twice a month. The garnishment includes payments towards her past-due child support which totals \$32,635.80. (Tr at 19-22, 40-43, 45; Gov 1, section 27; Gov 2 at 7-8, 14-16; Gov 4)

Applicant has not made any payments towards the other alleged delinquent debts. The medical bills were the result of a medical treatment Applicant received in

2005 when she did not have medical insurance. She has not contacted any of the creditors who own the medical accounts. (Tr at 51) She contacted the creditors who own the debts alleged in SOR ¶¶ 1.d and 1.h on several occasions. Neither creditor had information about a debt owed by her. (Tr at 33, 39) With regard to the \$12,034 debt alleged in SOR ¶ 1.i, Applicant believes this is related to a vehicle she turned in for voluntary repossession in 1999. She has not been contacted by any agency pertaining to this debt. She has not attempted to contact the creditor who now owns the debt. (Tr at 33) In the past, Applicant had two periods of unemployment lasting approximately one – two months, when she was between jobs. From April 2006 to June 2008, she was unemployed after the birth of her son. (Tr at 19, 56-57)

Applicant intends to resolve all of her delinquent accounts. She is unable to make any payments towards her delinquent accounts at this time. Her net monthly income is approximately \$929. Her husband is a musician. His net monthly income is between \$300 and \$400. He does not have a full-time job. They also receive \$185 each month for food stamps. Their net monthly income is approximately \$1,414. Applicant's monthly expenses include: rent \$880, groceries \$200, utilities \$36, and car expenses \$80. The past-due child support is automatically deducted from her paycheck. Her total monthly expenses are \$1,196. After expenses, she and her family have approximately \$218 to \$318 left over each month. (Tr at 43-44, 52; Gov 2 at 11)

Applicant was arrested in January 2009 for grand theft auto, a felony. She testified that the automobile belonged to her best friend. Her best friend has mental health issues and has made several suicide attempts within the past year. In October 2008, Applicant recommended that her friend go visit her sister who lives in another state in order to get away from her problems for awhile. Her friend had two cars. She drove one car to her sister's house but one car remained in her driveway. Her friend left the car keys with a neighbor. During the last week in November, Applicant called her friend and asked her if she could use the car that was sitting in her friend's driveway. She and her husband only had one car and were having difficulty accommodating each other's work schedules. Applicant claims her friend told her that would be fine and to get the keys from the neighbor. Applicant got the keys from the neighbor and used the car for purposes of driving back and forth to work until January 15, 2009. Applicant claims she gave her friend \$200 to cover the costs of additional insurance coverage. (Tr at 23-25; Gov 2 at 4; Gov 3)

On January 8, 2009, Applicant's friend filed a criminal complaint against Applicant. She claimed when Applicant called to ask her if she could use her car, she told her "no." She alleges Applicant obtained the car keys from her neighbor under false pretenses. On January 15, 2009, a sheriff's deputy came to Applicant's house. He asked for the keys to her friend's car. Applicant gave him the keys but told him that she had permission to drive the car from the owner. Applicant was arrested and charged with grand theft auto. In April 2009, Applicant entered into a pretrial diversion program. Applicant did not want to plead guilty but did not want to put her friend through any added stress so she opted for the pretrial diversion program. When she discovered that the arrest may have an adverse effect on obtaining a security clearance, Applicant

voluntarily withdrew from the pretrial diversion program and requested a jury trial. Jury selection was scheduled for August 31, 2009. She is adamant that she did not steal her friend's car. When she got the keys from the neighbor, she told him that he could call her friend to confirm that she had permission. She claims that as the main breadwinner for her family, she would not do anything to jeopardize her livelihood. (Tr at 26-31; Gov 3) At the close of the record, Applicant had not gone to trial.

Applicant's manager testified on her behalf. She has worked for the company for the past 14 months. He works with her on a daily basis. He describes her performance as exceptional. He describes Applicant as reliable and dependable. Applicant's manager serves as the alternate security officer for the company. Applicant contacted him the day after she was arrested on the grand theft auto charges. He is impressed with her honesty and the fact that she followed reporting procedures. Applicant is one of his top selections for potential promotion to supervisor. She does not need a security clearance in her current position but requires a security clearance for upward mobility. (Tr at 58-65)

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 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.

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 J, Criminal Conduct

The security concern raised under the criminal conduct guideline is set forth in ¶ 30 of the Revised Adjudicative Guidelines:

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

There are two Criminal Conduct Disqualifying Conditions (CC DC) which apply to Applicant’s case. CC DC ¶ 31(a) (a single serious crime or multiple lesser offenses) and CC DC ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted) apply. In June 2008, Applicant was arrested and charged with contempt of court for failure to pay child support. As a result of the arrest, Applicant’s wages were garnished to pay child support. In January 2009, Applicant was arrested for Grand Theft Auto, a third degree felony.

The following Criminal Conduct Mitigating Conditions (CC MC) are potentially relevant to Applicant’s case:

CC MC ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment) and CC MC ¶ 32(c) (evidence that the person did not commit the offense) potentially apply. Applicant claims that her friend gave her permission to use her car. In order to prove her innocence, she withdrew from a pretrial diversion program and requested a trial. At the close of the record, the case had not gone to trial. It is premature to apply any of the above mitigating conditions with regards to the January 2009 arrest for grand theft auto. Contrary to Applicant’s assertions, her friend filed a theft report because she claimed

that she did not give Applicant permission to use the car. Her friend's assertions in the criminal complaint conflict with Applicant's story. Based on the facts in the record evidence, Applicant was arrested and the charges are still pending. For these reasons, concerns raised by Applicant's arrest in January 2009 for grand theft auto (SOR ¶ 1.a) are not mitigated.

The concerns raised by the contempt of court charges related to unpaid child support are mitigated. Applicant's child support obligation is now deducted from her paycheck. I also considered the fact that it is unlikely that she was able to meet her child support obligations prior to being hired in her current job in June 2008. She was unemployed for two years prior to her current job. Her previous jobs did not pay well. Her failure to pay child support was because of an inability to pay as opposed to a willful refusal to make child support payments. SOR ¶ 1.b is found for Applicant.

It is premature to conclude Applicant mitigated the security concerns raised as a result of her arrest in January 2009 for Grand Theft Auto. Applicant has not met her burden to mitigate the security concerns raised under criminal conduct.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶ 19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant owes approximately \$32,000 in delinquent child support. She failed to pay child support over a ten-year period. She owes \$12,034 as a result of voluntary automobile repossession. She has approximately \$2,286 in delinquent medical bills and owes \$121 for two insufficient funds checks. Her failure to pay her delinquent debts is the result of her inability to pay as opposed to a willful refusal to pay debts.

The government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden

of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept, 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. While Applicant is now paying her monthly child support obligation by means of a garnishment, she has not taken steps to resolve her remaining delinquent accounts. She did not attempt to contact the creditor who holds the \$12,034 debt related to the automobile repossession. She has not contacted any of the creditors who own the medical bills. She did attempt to contact the creditors of the debts alleged in SOR ¶¶ 1.d and 1.h but claims that neither company had records of an outstanding debt. Applicant's financial issues remain unsettled. Her failure to take action towards the majority of her delinquent accounts continues to raise questions about her reliability, trustworthiness, and judgment.

FC MC ¶ 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 circumstances) applies, in part. Applicant was unable to pay her child support obligations for a number of years because she did not have enough income. The medical expenses were incurred when Applicant had no medical insurance. Applicant did not work for two years after the birth of her youngest child, but the unemployment appears to have been voluntary. While certain factors beyond Applicant's control contributed to her financial problems, I cannot say that she acted responsibly under the circumstances because she failed to take action to resolve a majority of her delinquent accounts once she obtained full-time employment in June 2008. Aside from the debts alleged in SOR ¶¶ 1.d and 1.h, she made no attempt to contact her creditors to take action to resolve her accounts. She did not act responsibly under the circumstances.

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) does not apply. Applicant has not attended financial counseling. Aside from the child support obligation, all of her delinquent accounts remain unresolved. It is unlikely that her financial situation will be resolved in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply with regard to most of the debts. However, credit is given for Applicant's child support payments. She appeared to be sincere about making sure her financial obligations to her two older sons are eventually paid. She contacted the creditors alleged in SOR ¶¶ 1.d and 1.h, but neither creditor could locate her account. I find for Applicant with respect to these allegations because of her efforts to resolve these accounts. However, Applicant took no steps towards

resolving her remaining delinquent accounts. I cannot conclude that she made a good-faith effort regarding those debts.

Applicant has not mitigated the concerns raised under Guideline F.

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. Low wages, periods of voluntary unemployment, a spouse who does not work full-time, and a lack of health insurance contributed to her financial problems. I considered the favorable recommendation of her manager and his opinion of her outstanding duty performance. While Applicant is now paying child support, the majority of her delinquent accounts remain unresolved. Applicant needs more time to resolve her financial issues as well the unresolved issue pertaining to her January 2009 arrest for grand theft auto. While Applicant's explanation of events leading to her arrest appears to be plausible, an issue remains because of her friend's conflicting account that she did not give Applicant permission to use her car. At this time, Applicant has not mitigated the security concerns raised under the Criminal Conduct and 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, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	For Applicant
Subparagraph 2.i:	Against Applicant
Subparagraph 2.j:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge