



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-11302
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro Se*

December 31, 2009

Decision

HOWE, Philip S., Administrative Judge:

On January 3, 2008, Applicant submitted her Security Clearance Application (SF 86)(e-QIP). On June 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 acknowledged receipt of the SOR on June 17, 2009. She answered the SOR in writing on June 22, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 26, 2009, and I received the case assignment on August 28, 2009. DOHA issued a Notice of Hearing on September 1, 2009, and I convened the hearing as scheduled on September 15,

2009. The Government offered Exhibits 1 through 6, which were received into evidence without objection. Applicant testified and submitted Exhibits A through N into evidence, without objection. DOHA received the transcript of the hearing (Tr.) on September 24, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, dated June 22, 2009, Applicant admitted the factual allegations in ¶ 1.a, 1.b, and 1.c of the SOR, with explanations. She denied the factual allegations in ¶ 1.d of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 27 years old, has one child, and worked for a defense contractor until she was laid off in June 2009 because she did not have a security clearance. She now lives with her father to save money while she collects unemployment. She pays her father \$300 monthly for expenses. She will be reemployed by the same company if she obtains a security clearance. Applicant worked for 18 months at that company, which paid her \$20,000 more than her previous employment in a bank. (Tr. 24, 25, 30, 47, 48; Exhibit 1)

Applicant has four delinquent debts listed on the SOR. These debts total \$19,979. These debts remain after Applicant's efforts to repay other debts. At the present time, Applicant has three credit cards with balances on them that are not listed in the SOR. She is paying the minimum monthly payments on them to keep them current. Before she was laid off from her defense contractor employer, she was making payments of twice the monthly minimum amounts on these debts. She does not use these cards currently, keeping them in a locked box at home and not in her purse for her use. (Tr. 32, 52-69, 76)

Applicant reduced her expenses after her June 2009 layoff, and lives on the unemployment compensation she receives. She used her savings account of \$2,500 to pay some debts, and has \$1,500 remaining in the account. When employed, she saved \$200 a month. Her car is paid and she watches her expenditures carefully. (Tr. 47-65)

Applicant owes \$10,360 (SOR Para. 1.a.) on a credit card she obtained while attending college. She graduated from college in 2005. She used it for purchases of food, books, and other necessities for which her scholarship did not pay. The creditor told Applicant recently that with the 29% interest rate on the card the amount owed is now \$21,642.75. Applicant pays the creditor \$100 monthly on the account. She has made two payments, in August and September 2009. She will make a third payment in October 2009. After establishing a regular payment pattern, the creditor will negotiate with her on a settlement amount. This debt is currently being resolved by an installment payment plan. (Tr. 31-36; Exhibits 2-6, A, E-K)

Applicant also owes \$3,951 on another credit card (SOR Para. 1.b). She pays \$50 monthly on that account. She has made three payments on this debt, in June, July, and August 2009. She continues to pay on this account. This debt is being resolved by an installment payment plan. (Tr. 36-38; Exhibits 2-6, B, E-K)

Applicant owes \$5,430 on another store credit card (SOR Para. 1.c). She pays this creditor \$100 monthly on this debt. Applicant made three payments on this account, in June, July, and August 2009. This debt is being resolved by an installment payment plan. (Tr. 40-42; Exhibits 2-6, C, E-K)

The delinquent debt in SOR ¶ 1.d is for \$238 owed to a creditor on a judgment. Applicant denied that this debt was owed by her. She submitted a letter from the creditor dated June 19, 2009, stating that the judgment debtor was Applicant's father, not Applicant. Applicant has never owed this debt. SOR ¶ 1.d. is found for the Applicant. (Tr. 44; Exhibits 2-6, D-K)

Applicant paid four debts in 2009. Those debts were owed to a clothing store, a physician, a cell telephone service provider, and on her 1998 automobile. (Tr. 39, 70, 76; Exhibits F-K)

Applicant submitted two character letters. One letter came from her supervisor, who described Applicant as "dependable, honest, courteous, hard working and very intelligent." Her supervisor also regarded Applicant as an "excellent employee." The director of a cultural center where Applicant formerly worked also praised her dependability and excellent work ethic. Applicant's employee evaluation for the period of January 28, 2008, through June 30, 2008, showed that she met or exceeded expectations. (Exhibits L to N)

Applicant made a well-organized presentation of documents showing the current status of her repayment plan for her remaining three delinquent debts. She is a credible person.

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 useful 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, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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

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 lists nine conditions that could raise security concerns. From these nine conditions, two are applicable in this case.

Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated delinquent debt when using credit cards while attending college. Her spending exceeded her financial ability to repay the debts in a regular process. These debts started accruing at least four years ago and she did not begin resolving them until January 2009. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes six examples of conditions that could mitigate security concerns arising from financial difficulties. After evaluating all of the evidence, I conclude two mitigating conditions are applicable.

Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial difficulties arose about 2005. She accumulated delinquent debt due to her spending habits while a college student with no regular source of income. Since 2008, Applicant has concentrated her efforts at repaying these debts listed in the SOR, while at the same time resolving other delinquent debts, which are not listed. She has the three debts in SOR Para. 1.a to 1.c remaining on her credit record to resolve by the installment payment agreements. She has also reduced her expenses, and has controlled her expenditures, while collecting unemployment. The college circumstances are no longer extant. I find the behavior occurred under unusual circumstances, that it is unlikely to recur, and it does not raise concerns about her current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant is resolving the three remaining delinquent debts by installment payment plans that she negotiated. She is making payments even though her income is reduced and she collects unemployment insurance payments.

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.

AG ¶ 2(c) requires each case be judged on its own merits. 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. Applicant was a college student when she incurred these debts, succumbing to the lure of easy credit extended to students by various companies. Then, she compounded her financial errors by not controlling her spending and not making regular payments to resolve the debts. She has only these three SOR-listed delinquent debts remaining to pay, in addition to three credit cards that she no longer uses. Her expense-reduction program, coupled with her installment repayment plan, demonstrate that Applicant is acting responsibly to resolve her debts, even in her reduced income situation. These are permanent behavioral changes motivated by her innate sense of responsibility.

Applicant's character letters describe a thoughtful person of integrity. She impressed her supervisors at two places of employment, who made the effort to write these character letters. These letters and Applicant's presentation at the hearing show that, under the "whole-person" concept, she is not a security risk.

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. I conclude the "whole-person" concept for Applicant.

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
Subparagraphs 1.a to 1.d:	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.

PHILIP S. HOWE
Administrative Judge