



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-11447
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

November 18, 2009

Decision

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

Applicant completed a security clearance application dated June 10, 2008. On July 7, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns 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, and effective within the Department of Defense for SORs issued after September 1, 2006.

On August 7, 2009, Applicant responded to the SOR. She admitted all 23 of the allegations raised in the SOR, representing an approximate sum of \$19,300 in delinquent debt, acknowledged a 2003 bankruptcy discharge, and confirmed that her monthly expenses exceed her monthly income. She also requested a hearing before a DOHA Administrative Judge. I was assigned the case on September 9, 2009. The

parties proposed an October 20, 2009, hearing. A Notice of Hearing was issued to that effect on October 7, 2009.

The hearing took place as scheduled. Applicant gave testimony and offered eight documents, which I accepted into the record without objection as Exhibits (Exs.) A-H. Those materials documented payment of one of the debts at issue and demonstrated that payments are being made on the balance owed on another account. Also accepted without objection were four documents from Department Counsel, marked as Exs. 1-4. Applicant was given through November 6, 2009, to submit any additional materials. Applicant timely submitted three additional documents, accepted without objection as Exs. I-K. The transcript (Tr.) was received on October 28, 2009, and the record was closed. Based upon a review of the case file, exhibits, and testimony, security clearance is denied.

Findings of Fact

Applicant is a 30-year-old advance administrative specialist who has worked for the same defense contractor since February 2008. She earned a bachelor's degree in December 2007. With the help of student loans, she is currently pursuing a master's degree.¹ Applicant is the mother of four young children and is currently single.

In 1996, when Applicant was 17 years old, she met a man with whom she had a baby. The couple lived together until 2000, when they had a second child. In about June 2000, the man left her. Initially, he did not provide any form of child support. He also left her with the bills from jointly-held accounts. Consequently, Applicant had started accumulating debts by the time she was 21 years old.

Since then, Applicant has balanced motherhood and college courses with a variety of temporary jobs. Most of her temporary jobs were as an administrative assistant or a receptionist. While being a "temp" gave her flexibility, it did not provide her with health insurance benefits. Lacking health insurance, she was unable to pay for her medical expenses. Today, she has a significant amount of delinquent medical debt.

Applicant was in another relationship in 2006 which resulted in a third child. This partner was abusive and ultimately abandoned her, leaving her with their joint debts. They briefly reconciled in 2008. In January 2009, Applicant was injured and could not work from January 2009 through about March 2009². Unable to generate an income, she relied on worker's compensation during her convalescence. Later, Applicant took an unpaid absence from work for maternity leave from approximately May 4, 2009, through about July 29, 2009. Her partner subsequently abandoned her, again leaving her responsible for their jointly-held debts. She is currently unable to locate the father of her youngest child. She has not pursued legal action against him to secure child support.

¹ Applicant currently has about \$30,000 in student loans. Tr. 24. They are currently deferred. Tr. 76.

² Tr. 70.

Over the years, she and her first partner developed an amicable relationship. He ultimately gave her some financial assistance. In 2009, this partner, now married to another woman, decided to “step up” and “do his fatherly duties.”³ Consequently, in late August 2009, he took over physical and financial responsibility for her two older children. Applicant retains visitation rights.

Applicant has worked for her current employer for close to two years. She earns \$16.32 per hour. Both Applicant’s aunt and grandfather provide her with nominal financial assistance. The SOR raises, and Applicant admits, allegations based on delinquent accounts cited in credit bureau reports from 2009:

Allegation ¶ 1.a – Judgment from about June 2006 for a medical obligation (\$1,149). UNPAID – Applicant contacted the provider regarding the bill, but never received a response. She has not pursued the matter.⁴

Allegation ¶ 1.b – Collection account for approximately \$680. UNPAID. Applicant stated that this balance is in repayment, but provided no evidence of payments being made.⁵

Allegation ¶ 1.c – Medical obligation for about \$102. PAID – Applicant paid this debt.⁶

Allegation ¶ 1.d – An unidentified debt owed to a creditor for approximately \$1,364. UNPAID. Applicant admitted this debt, but has no idea what it represents.⁷

Allegation ¶ 1.e – Telecommunications account balance for about \$572. UNPAID. Applicant has been unable to contact a representative from this company.⁸

Allegation ¶ 1.f – Medical obligation for about \$245. UNPAID. Applicant contacted the company and gave it her current health insurance information, but has yet to receive any documentation concerning the account.⁹

Allegation ¶ 1.g – Medical obligation for approximately \$149. UNPAID. Applicant contacted the company and gave it her current health insurance information, but has yet to receive any documentation concerning the account.¹⁰

³ Tr. 29.

⁴ Tr. 51.

⁵ Tr. 52-53.

⁶ Ex. H (Statement regarding account ending –7823); Tr. 50.

⁷ Tr. 53-54.

⁸ Tr. 55.

⁹ *Id.*

¹⁰ *Id.* at 56.

Allegation ¶ 1.h – Medical obligation for about \$525. UNPAID. Applicant presented no evidence that this account has been paid or is otherwise resolved.

Allegation ¶ 1.i – Medical obligation for approximately \$298. UNPAID. Applicant admitted this debt but does not know what it represents.¹¹

Allegation ¶ 1.j – Collection account for approximately \$283. UNPAID. Applicant only admitted to this account, which she cannot identify, because she wanted to be complete in her answers.¹²

Allegation ¶ 1.k – Collection account for about \$595. UNPAID. Applicant is unable to make payments on this account at this time.¹³

Allegation ¶ 1.l – Charged off account for approximately \$1,464. IN REPAYMENT – Applicant has been making monthly payments of \$50 toward this balance since at least August 2009.¹⁴

Allegation ¶ 1.m – Charged off account for about \$46. UNPAID. Applicant contacted the creditor and was told it had no record of a balance owed. She failed to submit evidence to that effect.¹⁵

Allegation ¶ 1.n – Charged off account for approximately \$341. UNPAID. Applicant stated her contact with this creditor did not culminate in a repayment schedule.¹⁶

Allegation ¶ 1.o – Charged off account for about \$3,404. UNPAID. This account is for a post-repossession balance on a car which Applicant purchased, but which was in such disrepair she could not use it.¹⁷ She admits liability and stated that she made contact with the creditor, but no progress has been made toward paying the balance.

Allegation ¶ 1.p – Collection account for approximately \$180. UNPAID. Applicant failed to submit evidence this balance was paid or otherwise resolved.¹⁸

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 57.

¹⁴ Ex. E (Payment agreement and schedule), Tr. 41; Ex. K (Renewed schedule); Exs. A-E (Evidence of payments).

¹⁵ Tr. 57.

¹⁶ *Id.*

¹⁷ Tr. 58.

¹⁸ *Id.* at 60.

Allegation ¶ 1.q – Collection account for about \$144. UNPAID. Applicant contacted this creditor, but has yet to receive a follow-up call. She has no recollection as to what this balance represents.¹⁹

Allegation ¶ 1.r – Medical obligation for approximately \$287. UNPAID. Applicant has no knowledge of this creditor.²⁰

Allegation ¶ 1.s – Telecommunications collection account for about \$1,062. RESOLVED. This account balance was included in Applicant 2003 bankruptcy.²¹

Allegation ¶ 1.t – Medical obligation for approximately \$2,359. PAID. Department Counsel conceded that this account may match evidence submitted as Ex. F, which shows a debt handled by the identified collection entity as paid in full. No direct evidence was presented linking the account at issue and the evidence presented.²² Following the hearing, however, Applicant submitted a newer credit report from October 2009, Ex. J. The account at issue, opened in 2007, is no longer noted. Inasmuch as the account is only about two years old, it is plausible that the account was paid.

Allegation ¶ 1.u – Collection account for a retail obligation of about \$4,037. UNPAID. Applicant believes this account was included in her bankruptcy, but provided no evidence of its inclusion.²³

The SOR also notes, and Applicant admits, that as of April 2009, her monthly expenses exceed her monthly income.²⁴ Applicant also admits that she filed for Chapter 7 bankruptcy protection in March 2003 and that her debts were discharged in June 2003.²⁵ Despite the discharge of her unsecured debts, Applicant again found herself in financial difficulty after purchasing a vehicle she could not afford later that year.²⁶ It has since been replaced by a car donated to her for her use by a local church. At present, however, the vehicle is unreliable and requires repairs.²⁷ Concerned for the safety of

¹⁹ Id. at 62.

²⁰ Id.

²¹ Tr. 63-64.

²² Tr. 43-44.

²³ Tr. 65-66.

²⁴ Allegation ¶ 1.v.

²⁵ Allegation ¶ 1.w. The filing of bankruptcy and discharge of one's debts is not, in and of itself, disqualifying.

²⁶ Tr. 67.

²⁷ Tr. 69.

her children, she is hoping to purchase a reliable replacement vehicle when she can qualify for credit.²⁸ Applicant currently lives in a property provided through public assistance.²⁹

Applicant recently received financial counseling.³⁰ There is no evidence that it resulted in any progress on the debts at issue.³¹ A budget was proposed and Applicant was advised to consider filing for bankruptcy again.³² She retained an attorney, but is currently unable to pursue this recommendation.³³ Her monthly expenses currently exceed her income by about \$500.³⁴ She has approximately \$5 in savings and does not maintain a 401k account. Regarding her current financial status, Applicant stated: "I'm looking to research further to see what debts [there] are and to see what arrangements can be made. I'm kind of at a standstill. . . ."³⁵

Finally, in addition to Applicant's three months of unpaid leave and reliance on worker's compensation in the beginning of 2009, as well as her three months of unpaid maternity leave in the middle of 2009, Applicant was also out of work for two weeks due to a case of meningitis.³⁶ Although her children now have health insurance coverage, Applicant does not.³⁷

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. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior,

²⁸ *Id.*

²⁹ *Id.* at 70.

³⁰ *Id.* at 67.

³¹ See, e.g., Tr. 68.

³² Tr. at 67.

³³ *Id.* at 68.

³⁴ *Id.* at 74.

³⁵ *Id.* at 76. In Ex. I (Cover letter to post-hearing submissions) Applicant urges that she "be granted the next year to show a pattern of consistency on payment arrangements and improved financial responsibility." Conditional clearances, however, are not available through the process available in industrial security cases.

³⁶ *Id.* at 71.

³⁷ *Id.* at 71-72.

they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. Under AG ¶ 2(c), this 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. 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. . . ." ³⁸ The burden of proof is something less than a preponderance of evidence. ³⁹ The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant. ⁴⁰

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 EO 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." EO 12968, Section 3.1(b), lists multiple prerequisites for access to classified or sensitive information. The Appeal Board has stated that "(t)he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁴¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴² The decision to deny an individual a security

³⁸ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴¹ *Id.*

⁴² *Id.*

clearance is not necessarily a determination as to the loyalty of an applicant.⁴³ It is merely an indication that an 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 the following adjudicative guideline to be the most pertinent to the evaluation of the facts in this case:

Guideline F – Financial Considerations. *The Concern:* 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.⁴⁴

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those that would mitigate security concerns, are set forth and discussed in the conclusions below.

Analysis

Applicant's debts were discharged through bankruptcy in 2003. Since that time, newly acquired debts have also become delinquent. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and FC DC AG ¶ 19 (c) (*a history of not meeting financial obligations*) apply. With such conditions raised, the burden shifts to Appellant to overcome the case against her and mitigate security concerns.

In 2003, Applicant's former debts were discharged through bankruptcy. Since then, Applicant accumulated more delinquent debts because her expenses exceeded her income, she lacked medical insurance, and she experienced periods of leave without pay. Today, her expenses continue to exceed her income, she still lacks medical insurance, and she was on leave without pay for over half of this year due to medical issues. Unless or until Applicant gets a position with health coverage or can otherwise learn to live within her means, there is no indication that either her current financial situation will improve or that she will be able to expeditiously address her delinquent debt. Therefore, Financial Considerations Mitigating Condition (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*) partially applies.

For several years, the father of Applicant's older children failed to provide financial assistance. The location of the father of her youngest children, who provides no child support, is unknown. Moreover, health issues forced her to stay home from her temporary position and precluded her from generating income. Therefore, Financial

⁴³ Executive Order 10865 § 7.

⁴⁴ AG ¶ 18.

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*) partially applies.

Although Applicant received financial counselling, there is no evidence that counseling has helped her resolve her delinquent debts. At most, it motivated her to consider another bankruptcy. Therefore, FC MC AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) does not apply.

Of the 21 delinquent debts at issue, Applicant provided evidence that one debt has been paid and one is in repayment. The evidence tends to show that one account was addressed by her 2003 bankruptcy discharge. Remaining unaddressed are 18 debts. While there is testimony regarding attempts to contact or negotiate with creditors, no documentary evidence regarding these efforts was submitted. Because some efforts have been exerted to honor these debts, FC MC AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to a limited extent.

Applicant stated that although she admitted all allegations, she cannot identify some of the accounts at issue. Although she may dispute some of these accounts, she provided no evidence that she has formally disputed them with any of the credit reporting bureaus and failed to offer any documentation tending to substantiate the basis of her dispute. Consequently, FC MC AG ¶ 20(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*) does not apply. Moreover, FC MC AG ¶ 20(f) (*the affluence resulted from a legal source of income*) is not applicable.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve, or at least address, her delinquent debts and her overall financial condition. Today, Applicant continues to expend more than she earns and she is not even financially capable of pursuing another bankruptcy filing. She admits that she is currently “at a standstill” with regard to her finances. Given these circumstances, I am not convinced Applicant’s limited evidence mitigates security concerns.

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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. In reviewing the complete record, 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 noted above.

Applicant is a highly credible young woman. Multiple factors speak in her favor. She has devoted her surplus time and energy to being a good single mother. She successfully persevered in both college and graduate school while balancing work and a growing family. Consequently, Applicant is preparing to transition from "temp" work to more permanent, professional employment. She renewed her friendship with the father of her older children, who recently assumed responsibility for his children. As a result, those children now benefit from the guidance of both parents while Applicant can benefit from an increase in her available income. Moreover, Applicant no longer maintains contact with the father of her two youngest children, a man she describes as abusive.

While Applicant must be admired for her academic success in light of her growing maternal obligations, multiple factors speak against her with regard to her finances. The freedom from debt she received with her 2003 bankruptcy discharge was short lived. A 2003 car purchase immediately put her back on the road to indebtedness. Rather than temporarily postpone her achievement of a master's degree and pursue a permanent position which offered health insurance, she continued with her "temp" work and acquired more student loan debt and more medical debt. Applicant continued to accrue debt and spend more money than she earned for about five years before she sought financial counseling. By the time she received such counseling, her debt was such that she was advised to again seek bankruptcy. She has been less than diligent in seeking court-ordered child support. Finally, she failed to submit any additional documents that could substantiate her efforts on some of the debts at issue despite the fact the record was kept open for over two weeks following the hearing.

Applicant has made some progress toward addressing her debt. That progress, however, has been minimal. She presented no evidence of a budget designed to address her delinquent debt and her approach toward addressing her debt does not reflect a coordinated effort. Short of another bankruptcy filing, which she is financially unable to complete at this time, Applicant failed to articulate any alternative solutions for addressing her debt. In light of these facts, she failed to mitigate security concerns regarding her finances. It is worth repeating, however, that an adverse determination does not speak ill of Applicant or her loyalty. It merely indicates that in presenting her

case, she failed to meet the strict guidelines involved in this process and the standards expected of one seeking a security clearance. Clearance is denied.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	For Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge