



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



In the matter of:

ISCR Case No. 08-11961

Applicant for Security Clearance

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel

For Applicant: *Pro Se*

February 26, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant had six charged off accounts or accounts placed for collection, which totaled in excess of \$31,000. She is now current on her \$23,000 student loan, is making payments on some of her accounts, and the car company agreed to settle their debt for \$4,500. 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 April 16, 2009, detailing security concerns under financial considerations.

Applicant's answer to the SOR was received June 8, 2009, in which she requested a hearing. On July 15, 2009, I was assigned the case. On July 28, 2009, DOHA issued a notice of hearing scheduling the hearing, which was held on September 2, 2009.

The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through C, which were admitted into evidence. The record was held open to allow additional information from Applicant. Additional material was submitted in a timely manner. Department Counsel had no objection to the material, which was admitted into the record as Ex. D through N. On September 14, 2009, the transcript (Tr.) was received.

Findings of Fact

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

Applicant is a 29-year-old administrative temporary contractor doing clerical work and data entry who has worked as a contractor since March 2009, and is seeking to obtain a security clearance. The director of her company states Applicant demonstrates professionalism, a strong work ethic, excellent multi-tasking skills, and has strong initiative. (Ex. I)

Applicant had three charged off accounts (\$324, SOR ¶ 1.a; \$109, SOR ¶ 1.b; and \$126, SOR ¶ 1.c) with a telephone provider. The largest of these three accounts is her ex-husband's cell phone account. (Tr. 28) On September 4, 2009, she made a \$118 payment, leaving a balance of \$109 on the debts listed in SOR ¶ 1.b and SOR ¶ 1.c. (Ex. F) She is paying \$50 per month on her ex-husband's account. (Ex. M, Tr. 29, 40) She was indebted (\$956) on a credit card account (SOR ¶ 1.f) placed for collection. Her ex-husband had purchased a stereo and TV. (Tr. 54) In September 2009, Applicant made a \$100 payment on this debt. (Ex. C) Applicant has arranged with the creditor to pay \$100 each month by automatic debit until this debt is paid. (Ex. G) Applicant owes \$23,158 on her student loan (SOR ¶ 1.d). (Ex. G) She is making \$165 per month payments on this debt. (Ex. C, Tr. 46)

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.

In May 2007, Applicant and her then husband separated. (Tr. 26) They had married in September 2006. Applicant has a three-year old daughter. The divorce decree (Ex. A) states there were no children of the marriage. Following the separation, her husband made a few payments to Applicant before ceasing all payments. In May 2009, their divorce was final and Applicant remarried. The divorce decree did not include a property settlement or any child support obligation. Her current husband receives \$334 disability each month. (Ex. H, Tr. 72)

In August 2007, Applicant lost her \$60,000 a year job as an account executive at a mortgage company. (Tr. 26, 89, 102) She had been with the company since June 2003. (Ex. B) She remained unemployed for a year, collecting unemployment compensation of \$263 per week. (Tr. 90, 91) In order to limit her expenses, Applicant moved in with her mother. In October 2007, her car was repossessed. (Tr. 95) She had purchased the car for \$17,564 with monthly payments of \$293. Following repossession, the vehicle was sold with \$7,183 remaining on the original obligation. In August 2009, the creditor offered to settle the debt for \$4,500. (Ex. N)

In March 2009, Applicant began working for a temporary employment agency. She is paid \$14 per hour. (Ex. H) With her limited income, Applicant intends to pay three of the debts first and then address the remainder. (Tr. 63) She intends to pay all her obligations. She intends to save up to make a lump sum payment on the car debt. Applicant has sought counseling from her mother-in-law who is an accountant. (Tr. 85)

A summary of Applicant's debts and their current status follows:

	Creditor	Amount	Current Status
a	Telephone provider.	\$324	This is her ex-husband's phone bill on which she pays \$50 monthly.
b	Telephone provider.	\$109	Paying. Applicant paid \$118 on this debt which has been combined with the following debt.
c	Telephone provider.	\$126	This debt is with the same provider listed above.
d	Collection service collecting on her student loan.	\$23,158	Applicant has arranged to pay \$165 per month on this debt. She has started her payments.
e	Reposessed vehicle.	\$7,183	The creditor has agreed to settle this matter for \$4,500.

	Creditor	Amount	Current Status
f	Credit card collection account.	\$956	Applicant has arranged to pay \$100 per month by automatic debit on this debt. Payment has commenced.
	Total debt listed in SOR	\$31,856	

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 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. Applicant had six charged off accounts or accounts placed for collection, which totaled in excess of \$31,000. Applicant admits the debts. 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 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.

Applicant had a good job as an account executive at a mortgage company paying \$60,000 per year. She was unemployed for a year collecting \$263 per week unemployment compensation. Her car was repossessed. She now works for a temporary employment agency making \$14 per hour. With her limited income she has begun to repay her debts.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because she did not resolve all of her delinquent SOR debts through payment, established payment plans or disputes. Her delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

AG ¶ 20(b) applies. Applicant experienced both separation and divorce along with the financial burden associated with each. Additionally, she lost her job in the mortgage industry and was unemployed for a year causing an adverse financial impact. These are factors beyond her control. She acted reasonably to limit her financial problems by moving in with her mother to save expenses.

The Appeal Board's discussion of AG ¶ 20(b) in ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) clarifies the applicability of this mitigating condition when an Applicant is unable to make substantial progress on delinquent debts after circumstances outside an applicant's control cause delinquent debt. In ISCR Case No. 08-06567 (A.J. July 27, 2009), the applicant had obtained financial counseling,

developed a repayment plan, and took reasonable actions to effectuate his repayment plan. *Id.* at 3. The Appeal Board found:

. . . an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

Once Applicant returned to full-time employment in March 2009, she worked to pay her creditors.² For example, she paid her student loan and the telecommunications debts. She has not made any payments to the creditor in SOR ¶ 1.e, but is saving in order to be able to accept the creditor’s offer and make a lump sum payment. She has contacted all of her SOR creditors and knows what she must do to resolve her debts. Applicant has acted responsibly under the circumstances. There are clear indications that her financial problem is being resolved or is under control. She has established her financial responsibility.

Applicant has received financial advice and counseling from her mother-in-law, an accountant. AG ¶ 20(c) applies. She has reached agreement and started making payments on all but the repossession debt.

The loss of her \$60,000 a year job was not only an unexpected event, but an event which under such circumstances is unlikely to recur and does not cast doubt on Applicant’s current reliability, trustworthiness, or good judgment. She was not living beyond her means. The debts were three phone accounts, her student loan, a vehicle repossession, and less than \$1,000 owed on a credit card. She has initiated a good-good faith³ to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) partially applies.

²“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

³The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must

The creditor has offered to settle the car debt for \$4,500. With her limited amount of available income, Applicant has chosen to address her other debts first. She intends to save money to allow her to make a lump-sum payment on this debt. This sole remaining debt does not raise concern about her current reliability, trustworthiness, or good judgment.

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. Applicant is paying the majority of her debts. She is saving money to accept an offer on the remaining obligation. Her debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid or are being paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts were incurred when she had a \$60,000 job. Viewed in that context, her debts are not unreasonable obligations. She owed a \$1,000 credit card debt and less than \$500 for telephone services. The largest of her debts was not incurred on luxuries, but was her student loan. The repossession of her car would not have occurred absent the loss of her job.

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

Subparagraphs 1.a – 1. f: 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