



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00349
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro Se*

January 29, 2010

Decision

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

Applicant completed a security clearance application (SF-86) on October 17, 2008. On August 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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, which are effective for SORs issued after September 1, 2006.

In her August 10, 2009, response, Applicant admitted 27 of 28 allegations set forth in the SOR and requested a hearing. DOHA assigned the case to me on October 7, 2009. The parties agreed to a hearing date of November 19, 2009. A notice of hearing was issued to that effect on October 16, 2009. The notice was reissued on November 10, 2009, reflecting a change in the hearing time. The hearing was convened as scheduled. Department Counsel introduced eight documents accepted into the record without objection as exhibits (Exs.) 1-8. Applicant was accompanied by her mother, who gave testimony on her daughter's behalf. Applicant also gave testimony

and was examined by Department Counsel. Applicant introduced six documents, which were accepted into the record without objection as Exs. A-F. She was given until December 4, 2009, to supplement the record with any additional documents. The transcript (Tr.) of the proceeding was received on November 24, 2009. The record was closed on December 7, 2009.

On December 11, 2009, Applicant submitted one additional document, which was forwarded to me on December 15, 2009. Department Counsel posed no objection to the document, noting it was “helpful in completing the record.” It was accepted into the record as Ex. G on December 18, 2009, and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met her burden regarding the financial considerations security concerns raised. Security clearance is granted.

Findings of Fact

Applicant is a 34-year-old facilities manager/property administrator who has worked for the same government contractor for over one year. She has earned a high school diploma. Applicant is a single mother who has never received child support.¹ She joined a company in 1996 and received a security clearance in 2002. Between 2002 and 2004, Applicant acquired numerous credit cards, most of which had minor credit limits.² She lost her job in 2005 due to a reduction in force. She found new employment within a few weeks, but the position paid about \$14,000 less in annual salary.

In the summer of 2007, Applicant took temporary leave from her employment and received medical disability payments while she underwent foot surgery. Her doctor repeatedly extended her recuperation period.³ As she prepared to return to work in November 2007, her employment was terminated. She filed for unemployment benefits, but her claim was denied because her company reported that she “left her position and didn’t notify them of the extensions.”⁴ She appealed the denial, submitting evidence of her correspondence with her supervisor regarding her circumstances. She was awarded unemployment compensation in February 2008.⁵ Without income for four months, however, many of her credit cards became past due.⁶

¹ Tr. 41.

² Tr. 31.

³ Tr. 23. The disability payments received were less than Applicant’s regular salary.

⁴ Tr. 19-20.

⁵ Tr. 29. Applicant was paid benefits retroactively back to her November 2007 termination date.

⁶ Tr. 30. Prior to her unemployment, Applicant was in good standing with most or all of her accounts.

While the unemployment benefits awarded in February 2008 helped her financially, they expired in May 2008. Meanwhile, neither her job counseling nor job hunting proved to be effective, further vexing her desire to honor her debts. Although unemployment benefits were reinitiated in August 2008, she was hired by her present employer the next month.

Despite her new-found employment, eight combined months of unemployment left her significantly in debt. Although she tried to address her debts, the effort was “overwhelming.”⁷ She ultimately petitioned for Chapter 7 bankruptcy protection on July 29, 2009. She received credit management counseling and devised a budget.⁸ As a result of this counseling, Applicant ceased her acquisition of new credit cards. She now limits her use of credit and tries to use them only for emergency situations.⁹ The bankruptcy action and this process has been a learning experience.¹⁰ She now understands the pitfalls of credit cards, the way interest compounds, and how minimum payments make little headway toward paying off one’s purchases.¹¹ Today, Applicant lives within her means.

At work, Applicant has been entrusted with handling funds and has performed her functions with those funds successfully and responsibly.¹² She is considered a reliable employee and has maintained her job without difficulty. She has had no subsequent podiatric or other medical issues. Her mother corroborated Applicant’s version of Applicant’s recent professional and financial difficulties. The mother noted that her daughter is responsible, citing specifically to her daughter’s successful single parenting and her genuine efforts toward honoring obligations to family and friends.¹³

At issue in the SOR are 28 allegations. Each allegation represents a separate financial obligation. Most of the allegations concern credit cards.¹⁴ A cumulative debt of approximately \$21,000 is at issue. Applicant admitted 27 of the accounts at issue.¹⁵ She

⁷ Tr. 21. “I had family I had to pay back. I had friends I had to pay back. Other things, I had to get caught up. And there was just really no way to get all of that rolling and then get the fees paid to get to a good standing and, then, I went in for counseling for bankruptcy and decided to do the bankruptcy.”

⁸ Tr. 36.

⁹ Tr. 37.

¹⁰ *Id.*

¹¹ Tr. 37-38.

¹² Tr. 41.

¹³ Tr. 40.

¹⁴ Applicant possessed approximately 30 credit cards. Most of these cards carried modest credit limits, ranging from \$500 to \$1,000. Tr. 30-31.

¹⁵ Applicant denied SOR allegation ¶ 1.a, but provided no evidence the account at issue had been paid.

demonstrated that the admitted accounts were included in Schedule F of her bankruptcy petition and she offered a copy of her Bankruptcy Court Discharge of Debtor.¹⁶ The government stipulated that the 2009 bankruptcy discharge included all or substantially all of the debts at issue¹⁷ and acknowledged that “Applicant has presented evidence in mitigation on [sic] the government’s security concerns. . . .”¹⁸

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. 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. 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. . . .”¹⁹ The burden of proof is something less than a preponderance of evidence.²⁰ The ultimate burden of persuasion is on the applicant.²¹

¹⁶ Ex. G (2009 Bankruptcy Discharge and Schedule F [Creditors Holding Unsecured Nonpriority Claims]).

¹⁷ Tr. 33-34. In noting “that with only a possible couple of exceptions, all the debts included in the [SOR] are listed on the bankruptcy Schedule F petition. . . .,” Department Counsel stated that the possible exceptions were, in all likelihood, “either duplicates, or they’re collection agencies for debts that are covered under a different name and they’re in the petition.” Tr. 34. With regard to any such exceptions, it was concluded that the government has “no concerns with the two or three exceptions.” *Id.* I agree.

¹⁸ Tr. 39. This conclusion was expressed after a thorough examination of Applicant regarding her past and present use of credit. See, e.g., Tr. 36-37.

¹⁹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 an 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²³

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.”²⁴ The Directive sets out several potentially disqualifying conditions under this guideline. Here, Applicant acquired approximately \$21,000 in delinquent debt between 2005 and 2008, principally comprised of numerous overdue credit card balances. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations) apply. With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s acquisition of delinquent debt mainly occurred between 2005 and 2008, when she was subject to a 2005 reduction in force and underwent necessary podiatric surgery in 2007. As a result of her protracted recovery period, she was

²² *Id.*

²³ *Id.*

²⁴ AG ¶ 18, which also notes, “An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

terminated from her job. This situation was followed by a delay in receiving unemployment benefits, followed by difficulty in finding new employment. Lacking stable income during these periods, she became delinquent on her previously current credit card accounts despite her desire to honor her debts. Since recovering from her surgery, her health has been good. She has been able to maintain steady employment and demonstrate her reliability with regard to office and personal finances. 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) applies.

As noted, Applicant was terminated from her employment in 2005 due to a reduction in force. Necessary surgery and a protracted recovery in 2007 caused her to be let go from her next position. For the next year, she faced difficulty securing appropriate unemployment benefits and finding a new position despite her best efforts. Throughout this time, she only received intermittent state aid. Her credit cards became past-due to the point she was overwhelmed when she tried to manage them after she found new employment. Given these facts, 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) applies.

Applicant received financial counseling as part of the bankruptcy process. It brought Applicant clarity with regard to the potential hazards of unplanned credit card use, the false allure of minimum payments, and the need to first consider the use of credit in terms of one's overall financial means. As for the debt she acquired between 2005 and 2008, her debts were successfully discharged through bankruptcy. She is repaying debts to family and friends. She manages office funds reliably and is now living within her means. Consequently, 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). In contrast, however, the Appeal Board declines to acknowledge bankruptcy as a good-faith approach toward resolving one's debts. Therefore, FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply.

In presenting her case, Applicant demonstrated how easily an adverse change in financial circumstances can affect credit and credit cards which were previously in good standing. But for her periods of unemployment and reduced income, there is no reason to believe any of her accounts would have become delinquent and triggered an adverse entry on her credit report. Overwhelmed and incapable of ameliorating her financial situation on her own after adversity struck, she successfully sought bankruptcy protection.

While bankruptcy does not provide evidence that an applicant satisfied her debts through her own resources, it is a legally recognized method for resolving one's debts. More importantly, Applicant demonstrated a superior understanding of the risks associated with using credit cards, has committed herself to using them only for emergencies, and has learned the importance of living within her means at all times, both good and bad. While it could be argued that additional time is needed to gauge

how Applicant manages her income, her financial management while employed has never been at issue. The only test of whether history will repeat itself is if she were to lose her job, face difficulty qualifying for unemployment, and endure a protracted period of unemployment. A repeat of such a confluence of events is unlikely. Therefore, additional time to demonstrate her financial abilities under her current circumstances would prove to be superfluous. There is no evidence that Applicant has poor self-control or is unwilling to abide by rules. She has benefited from credit and financial counseling. Her reliability has been proven at home and at work. In light of these particular circumstances, Applicant mitigated financial considerations 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 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, as well as the "whole person" factors. Applicant's testimony was highly credible. With regard to the "whole person," many factors speak in her favor. She is a mature woman who has raised a child without financial aid. She persisted in her pursuit of employment despite adverse personal conditions during a downturn in the national economy. She recognized that she was financially "overwhelmed" after her periods of unemployment and responsibly sought to address her situation. Her delinquent debt was caused by circumstances beyond her control. She has learned that although she had her credit cards under control and in timely payment before she lost her job, an unexpected professional downturn can jeopardize otherwise well-balanced books.

Speaking against Applicant is her past use of credit cards. Between 2002 and 2005 she acquired a large number of relatively modest credit cards. She did so as a mature woman fully aware of her income, financial resources, and obligations. While she was able to keep current on her balances while employed, she lacked sufficient financial reserves to meet her minimum payments when her circumstances were reversed. While those reversals were beyond her control, prior financial counseling

could have prepared her for such adverse contingencies. In Applicant's situation, she sought bankruptcy protection and received credit counseling that taught her the risks of credit card reliance. Today, she is employed, derives a regular income, lives within her means, is debt free, and understands how to avoid setting herself up for potential credit card problems in the future. In her highly credible testimony and in response to examination by the government, she demonstrated her commitment to future restraint. In light of the unique circumstances presented in this case, I find finance-based security concerns are mitigated. Clearance is granted.

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
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Subparagraph 1.a – 1.bb	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge