



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00686
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

April 28, 2010

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant has made progress in getting her delinquent debts under control, it is too soon to conclude they no longer pose a security concern considering the amount remaining to be satisfied. Clearance is denied.

Statement of the Case

On July 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 adjudicative guidelines. (AG)

DOHA received Applicant's SOR answer on August 24, 2009. She admitted SOR subparagraphs 1.b through 1.f, 1.m, 1.o through 1.p, 1.s, and 1.v. She denied the

remainder, and requested an administrative determination. On August 31, 2009, DOHA received Applicant's supplemental answer withdrawing her admission of SOR subparagraph 1.v. The case was assigned to me on November 3, 2009.¹ On December 9, 2009, a notice of hearing was issued scheduling the case for January 12, 2010. At the hearing, I received four Government exhibits, eight Applicant exhibits, and the testimony of two witnesses. At the close of the hearing, Applicant moved to keep the record open to enable her to submit additional documents. Department Counsel did not object and I granted the motion. Within the time allotted, Applicant submitted seven additional exhibits that I admitted. DOHA received the transcript on January 19, 2010.

Findings of Fact

Applicant is a 26-year-old single woman with one child, age nine. She has a high school education, and she is currently pursuing an associate's degree in computer information systems. (Tr. 27)

Applicant works for a defense contractor as a security guard. She has worked for the same company since October 2008. (Tr. 28) According to her supervisor, she is "a model employee, who is always on time, and has always conducted herself in a highly professional manner." (GE 2 at 22)

The SOR lists 26 debts totalling approximately \$34,000. Approximately \$28,000 of the debt consist of delinquent rental payments (SOR subparagraphs 1.a and 1.e), and the deficiencies from two automobile repossessions. (SOR subparagraphs 1.d and 1.o)

Applicant accrued the debt listed in SOR subparagraph 1.a in 2003 after she put "her name on the lease with [a friend] to help him get an apartment," and the friend failed to pay the rent. (Tr. 48) Subsequently, the court entered a judgment against Applicant for \$3,705. By November 2009, Applicant had satisfied it through a wage garnishment. (AE G)

Applicant accrued the other rental delinquency, as listed in SOR subparagraph 1.e, under similar circumstances as she accrued the rental delinquency as listed in SOR subparagraph 1.a. Specifically, she signed a lease for her father to help him qualify for an apartment, and he subsequently failed to make the monthly rental payments. (Tr. 31) She owes the landlord \$1,620. (Answer at 1) She has not made any arrangements to satisfy this delinquency.

Applicant's first car repossession, as listed in SOR subparagraph 1.d, occurred in 2003 after she lost her job² and could not make the monthly car payments. (Tr. 31) She

¹The record contains no evidence of whether Department Counsel requested a hearing or whether Applicant changed her mind and opted for a hearing.

²Applicant was out of work for approximately eight months.

owes a deficiency of \$12,768. (Answer at 1) She has not yet made plans to settle this account. (Tr. 31)

The other repossession, as listed in SOR subparagraph 1.o, occurred in 2006. (Tr. 35, 80) Applicant owes a \$9,395 deficiency. Currently, she has no plans to satisfy this deficiency. (Tr. 80)

Approximately \$4,400 of Applicant's delinquencies consist of a department store account (SOR subparagraph 1.f), four phone bills (SOR subparagraphs 1.m, 1.r, 1.s, and 1.z), and a student loan. (SOR subparagraph 1.p)

Applicant accrued the department store account, in the amount of \$911, before she lost her job in 2003. (Tr. 32) She calls the creditor "every couple of months to . . . update . . . [her] situation." (Tr. 66) Approximately three months ago, she promised to arrange a payment plan once the garnishment related to SOR subparagraph 1.a was completed. (Tr. 66) The garnishment was completed in November 2009, but Applicant has not yet contacted the department store creditor. (Tr. 66)

Applicant satisfied the phone bill totalling \$255 listed in SOR subparagraph 1.m. (AE A) The remaining delinquent phone accounts total approximately \$1,122. She accrued the phone bill listed in SOR subparagraph 1.r, in the amount of \$658, after she lost her job in 2003. (Tr. 38) Applicant's last contact with this creditor was in July 2009. (Tr. 85) She has no current plan to repay the debt. (*Id.*) She has no current plans to satisfy the phone bills listed in SOR subparagraphs 1.s and 1.z, either. (Tr. 89) She intends to arrange plans "in the near future." (Tr. 89)

Applicant obtained the student loan listed in SOR subparagraph 1.p, when she first enrolled in college in 2005. (Tr. 35) While enrolled, the loan was in deferment. (Tr. 36) After relocating to another state and transferring schools, the loan's deferment status lapsed, and became due. (GE 1 at 9-10; Tr. 36) On March 1, 2010, Applicant filed a deferment request, which is pending approval. (AE O) Currently, approximately \$1,858 is outstanding.

With the help of a credit counselor whom Applicant retained in April 2009, she disputed the remainder of the SOR debts. (GE 2 at 20; AE J) Nine of the disputed debts are medical accounts (SOR subparagraphs 1.b,³ 1.g - 1.j, 1.l, 1.t, 1.x, and 1.y), and four include a creditor whom Applicant did not recognize (SOR subparagraph 1.k - \$69), a utility bill (SOR subparagraph 1.n - \$181), a public library account (SOR subparagraph 1.u - \$64), and a bill allegedly owed to an insurance company. (SOR subparagraph 1.w - \$168)

The disputed medical accounts total approximately \$1,200. Applicant contends that she never accrued these bills, and that they may have been accrued by her mother. Their names are similar. (Tr. 78)

³SOR subparagraph 1.v is a duplicate of SOR subparagraph 1.b.

After an investigation, the credit reporting agency rejected Applicant's dispute of SOR subparagraph 1.b. (Tr. 53) She plans on paying it. Applicant's dispute of SOR subparagraphs 1.g through 1.j, 1.i, 1.l, 1.w, and 1.y was successful, as they were deleted from her credit report. (AE D) Applicant's dispute of the remaining medical accounts is pending. (Tr. 34, 39, 40)

The Government's evidence supporting its contention that Applicant is indebted to the creditor listed in SOR subparagraph 1.k is a credit report entry, which states that the "consumer disputes this information." (GE 4 at 8) Applicant opened the utility bill account listed in SOR subparagraph 1.n for her father. (Tr. 35) Her dispute is still pending. (Tr. 35) SOR subparagraph 1.u is for overdue library books. (Tr. 107) This account belongs to her mother. (Tr. 108 - Mother's Testimony)

Applicant lives with her parents. (Tr. 91) She is currently not working pending the outcome of this security clearance decision. (Tr. 93) When she last worked, in December 2009, she earned approximately \$842 in after-expense, monthly income. (AE H; Tr. 90-94)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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. (AG ¶ 18) The Government relies upon the inclusion of the debt listed in SOR subparagraph 1.k in a 2008 credit report to support its contention that it is delinquent. However, the credit report characterizes the debt as disputed. This evidence fails to establish that Applicant is responsible for the debt. (Directive ¶ E3.1.14) I resolve SOR subparagraph 1.k in Applicant’s favor.

Conversely, the Government’s evidence, together with Applicant’s admissions establish the remainder of the debts. Consequently, I conclude Applicant has a history of financial delinquencies that trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant satisfied the debt listed in SOR subparagraph 1.a., and successfully disputed the debts listed in SOR subparagraphs 1.g through 1.i, 1.l, 1.w, and 1.y. I resolve these in her favor. Applicant established that the debt listed in SOR subparagraph 1.u was not hers, through her mother’s testimony. I resolve SOR subparagraph 1.u in Applicant’s favor.

Although the credit reporting agency rejected Applicant’s dispute of SOR subparagraph 1.b, and the remainder of Applicant’s disputed debts are still under investigation, the detailed, organized nature of the dispute process she developed is sufficient to trigger 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.”

Applicant attributes much of her financial problems to a lengthy unemployment in 2003. Irresponsibility, however, was equally, if not a more significant factor, as Applicant repeatedly opened accounts for other people who then defaulted. AG ¶ 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,” does not apply.

Although Applicant retained a credit counselor, her focus appears to be exclusively on disputing debts. The substantial majority of Applicant’s delinquencies are not in dispute, and remain unaddressed. Consequently, AG ¶¶ 29(c), “the person has received or is receiving counseling for the problem . . .,” and 29(d), “the individual

initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” only apply partially.

Whole-Person Concept

Under the whole-person concept, 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.

Applicant is an exceptional employee. She deserves credit for consulting a credit counselor to assist her with disputing several bills. However, the only significant bill that she satisfied was through a wage garnishment. Approximately \$25,000 of delinquent debt remains outstanding, and she has no concrete plan to resolve it. Upon considering Applicant’s case in the context of the whole-person concept, I conclude that her application for a security clearance must be denied.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of financial rehabilitation necessary to mitigate the financial consideration security concern. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, she may well demonstrate persuasive evidence of security worthiness.

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:	For Applicant
Subparagraphs 1.b - 1.f:	Against Applicant
Subparagraphs 1.g - 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.k - 1.m:	For Applicant

Subparagraphs 1.n - 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	For Applicant
Subparagraph 1.x:	Against Applicant
Subparagraphs 1.y:	For Applicant
Subparagraphs 1.z:	Against Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge