



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-00851
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

March 29, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by her troubled finances and omission of delinquencies from her security clearance application. Clearance is granted.

On September 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, financial considerations, and E, personal conduct. 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on October 13, 2009, admitting to SOR subparagraphs 1.a, 1.g, 1.k., 1.m, 1.o, 1.r, 1.w, 1. ee, 1. ff, and 1. hh. She denied the remainder, and requested a hearing. The case was assigned to me on November 19, 2009. On December 9, 2009, a hearing was scheduled for January 5, 2010. During the

hearing, which was held as scheduled, I received 12 government exhibits, 14 Applicant exhibits, and the testimony of two witnesses for Applicant. At the close of the hearing, I left the record open at Applicant's request to allow her to submit additional exhibits. Within the time allotted, she submitted another 11 exhibits, which I incorporated into the record. The transcript (Tr.) was received on January 12, 2010.

Preliminary Ruling

At the beginning of the hearing, Department Counsel stipulated that Applicant satisfied the accounts set forth in the following SOR subparagraphs: 1.c, 1.e, 1.g, 1.i (as duplicated in 1.x), 1.q, 1.v, 1.w, 1.y, 1.z, 1.ff, and 1.dd. Also, Department Counsel stipulated that Applicant successfully disputed the accounts set forth in SOR subparagraphs 1.p, 1.s, and 1.u. I resolve all of these SOR allegations for Applicant.

Paragraph 2 of the SOR alleges Applicant falsified her security clearance application by intentionally omitting delinquent debts in response to questions requiring their disclosure. At the close of the hearing, Department Counsel conceded that Applicant's omissions were unintentional, and that Guideline E no longer posed a security concern. Consequently, I resolve Paragraph 2 in Applicant's favor.

Findings of Fact

Applicant is a 45-year-old single woman with two sons, ages 24 and 14. Two prior marriages ended in divorce (Tr. 25). She is a veteran of the United States Air Force where she served from 1983 to her retirement in 2004. She has a high school education and has taken various courses in information management over the years (Tr. 25).

Since 2006, she has worked as an executive assistant for a government agency director (Tr. 14). Her employer who assigned her to the position is a defense contractor (AE A). Applicant's duties include coordinating plans and preparing the agency director for meetings. According to the program manager who coordinates the placement of contract employees, "she is responsible for carrying out complex assignments [and] exercising independent judgment, initiative, and tact" (*Id.*). According to her supervisor, her "integrity is of the highest level" (Tr. 15).

Applicant's finances were stable through August 2005. Then, in September 2005, Hurricane Katrina struck the Gulf Coast, destroying her grandmother's home and displacing her mother from her home. Within six weeks of the disaster, both relatives moved in with Applicant (Tr. 151) Applicant's grandmother was a 96-year-old double amputee with severe health problems requiring intensive, expensive medical care (Tr. 163). When living at home, Applicant's grandmother received Medicare to cover these expenses. When she relocated, Applicant's state did not begin to cover her grandmother's expenses until approximately three months later (Tr. 163). During this three-month period, Applicant incurred approximately \$3,000 of out-of-pocket medical expenses for her grandmother's care for which she was never reimbursed (Tr. 165).

In October 2005, approximately a month after Applicant's relatives moved into her home, she fell and broke her ankle (Tr. 152). Although she continued to perform consulting work during this period, she was unable to work for her primary employer, and consequently earned substantially less income for approximately two months (Tr. 152). Applicant gradually began to fall behind on her bills (Tr. 98,155).

In December 2005, Applicant's cousin, another relative displaced by Hurricane Katrina, moved in with her (Tr. 154). Applicant's grandmother died in January 2006, and her mother moved from her home in May 2006 (Tr. 154). In late 2006, Applicant discovered that her cousin had charged thousands of dollars of credit purchases on credit cards opened fraudulently in her name (Tr. 99, 155-156). Shortly after this revelation, Applicant's cousin moved from her home. However, Applicant's financial standing continued to deteriorate.

At or about the time Applicant began struggling to pay her bills, her job increasingly began requiring extensive overnight travel. Her continuous struggle to provide child care for her youngest son during the overnight travel periods compelled her to quit the job in June 2006 (Tr. 158). She was unemployed for the next two months.

By March 2009, Applicant had accrued approximately \$42,000 of delinquent debt, and had assumed responsibility for one debt for approximately \$27,600.¹ She then began organizing her finances and addressing her delinquent debt by contacting creditors to either arrange payment plans or dispute them. In October 2009, Applicant retained an attorney to assist her with resolving the disputed debts (GE 3 at 78). Although Applicant periodically received advice through her credit union and several credit consolidation agencies, she did not complete a formal credit counseling course (Tr. 171). By May 2009, Applicant had either satisfied or successfully disputed approximately \$35,000 of the alleged delinquent debt, as identified in the Preliminary Ruling, above.

Fourteen debts, as set forth in SOR subparagraphs 1.a, 1.b, 1.d, 1.f, 1.h, 1.k, 1.j, 1.m, 1.n, 1.r, 1.x, 1.aa, 1.cc, 1.ee, and 1.gg, remained at issue after the parties' stipulations. They total \$45,000. Three other SOR debts (subparagraphs 1.o, 1.t, 1.hh) are duplicates totaling approximately \$37,000.

SOR subparagraph 1.a is a dental bill for \$422 from August 2004 (Tr. 51). Applicant's dentist originally submitted her a bill for \$2.40, which noted that her insurance company would cover the remainder (GE 3 at 10). Later, Applicant discovered that her insurance company did not pay its expected share (Tr. 54). Applicant contested the bill. By July 2009, the dental office had assigned it to a collection agent and the balance had increased to \$1,185 (GE 3 at 11). Applicant and the collection agent negotiated a settlement for \$969. In October 2009, Applicant began satisfying it (*Id.*). She satisfied it completely by February 2010 (AE R).

¹See discussion of SOR subparagraph 1.k, *infra*.

The creditor listed in SOR subparagraph 1.b is a collection agent for a loan allegedly delinquent since 2002 (Tr. 59). Applicant disputes this claim, asserting that she had satisfied it before retiring from the military (Tr. 59). The alleged balance due is \$2,694. Since April 2009, Applicant has been making monthly payments into an escrow account while the dispute is pending (AE D; Tr. 59, 61). So far, she has paid \$726 (*Id.*).

SOR subparagraph 1.f, as duplicated in SOR subparagraph 1.t, is a disputed phone bill for \$871 (Tr. 63). Applicant acknowledges falling behind when she was unemployed, but contends she satisfied it (Tr. 64). Her attorney wrote a dispute letter to the creditor on October 2, 2009 (GE 3 at 28). Applicant has another account with the same phone company that is current (*Id.*).

SOR subparagraph 1.h is a debt Applicant allegedly owes stemming from a loan for which she applied while in the military (Tr. 69). She contends she satisfied it in 2003 through automatic allotments before retiring (GE 3 at 35). Her attorney notified the collection agent of the dispute on October 13, 2009 (GE 3 at 34). After conducting an investigation, the collection agent rejected Applicant's dispute, and concluded that she owed \$3,888 (AE N). Applicant still disputes the claim and contends that a credit report indicates that she satisfied it (AE M at 7). Although AE M indicates she satisfied a loan owed to the same creditor, the account numbers are different (*cf.* AE M at 7 with GE 10 at 3).

Applicant paid the creditors listed in SOR subparagraphs 1.i and 1.j, collectively in the amount of \$1,750, through negotiated settlements (AE T; AE X at 2, respectively). The debt listed in SOR subparagraph 1.k is a student loan her oldest son obtained to help finance his graduate school education (AE G at 3). Although Applicant did not cosign the loan, she assumed it after he defaulted in March 2009 (GE 3 at 48). Consistent with the agreement, Applicant now owes approximately \$27,600 (AE W at 9). She has been making \$200 monthly payments, as agreed, since March 2009 (GE 3 at 46)

The debt listed in SOR subparagraph 1.m and duplicated in SOR subparagraphs 1.o and 1.hh is the deficiency owed from a car that was voluntarily repossessed at or about the time Applicant's relatives were living with her (GE 4 at 12). As of March 2009, the balance was \$24,550 (GE 3 at 56). She has been making monthly payments since then (GE 3 at 56-58).

SOR subparagraph 1.n is a debt for \$172 owed to a department store. Applicant paid it through a negotiated settlement in March 2009 (AE X). SOR subparagraph 1.r is a collection agent for a credit card company that is delinquent in the amount of \$1,553. Applicant disputes this bill contending that her cousin accrued it (Tr. 82). Nevertheless, she has been making monthly payments while the dispute is pending (AE M at 10). As of January 2010, the balance was \$331 (*Id.*).

SOR subparagraph 1.aa is a debt for \$450. Applicant settled it for \$221 and satisfied it in March 2009 (GE 3 at 102).

Applicant identified the 1993 judgment for \$1,898 listed in SOR subparagraph 1.gg as stemming from a delinquent credit card account that her first husband opened approximately 20 years ago (Tr. 131). Applicant denies responsibility for this account contending that her name was not on the account and that her ex-husband satisfied it years ago (Tr. 131). She attempted to locate court records verifying this judgment was satisfied, but was unsuccessful (AE L at 1).

Applicant maintains a budget. She earns a salary of approximately \$81,500 after taxes (AE B) She receives an additional \$24,000 through her pension and her child support (*Id.*). She has approximately \$4,000 in savings, and \$4,000 of after-expense income (*Id.*; Tr. 168).

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.

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. 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.

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 Guideline F, "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). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*). Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

As of August 2005, Applicant’s finances were stable. However, within six months, three relatives displaced by Hurricane Katrina moved in with her. One was an invalid requiring costly treatment which Applicant incurred, and another was a thief who stole her identity and charged thousands of dollars on credit cards opened in Applicant’s name. During part of this time, Applicant was underemployed.

One of Applicant’s relatives is deceased and the others no longer live with her. For the past year, Applicant has been confronting her delinquent debts either through satisfying them entirely, making monthly payments, or disputing them with the help of an attorney. She maintains a budget and has ample savings and income to continue adhering to her payment plans or to satisfy any disputed debt not resolved in her favor. 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,” 20(c), “the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

Applicant’s attorney provided comprehensive written notice to all of the creditors whose debts Applicant disputed. Thus far, the creditors have resolved some of the disputes in her favor and others are pending. Applicant resolved one dispute, as listed in SOR subparagraph 1.a, by negotiating a settlement, and satisfying it.

I did not find the evidence supporting Applicant’s dispute of SOR subparagraph 1.h, a debt for \$3,888, to be persuasive because the account number for the account she paid did not match the account number for the debt the creditor alleges is outstanding. I conclude her basis for disputing SOR subparagraph 1.h is honest, but mistaken. 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.

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.

Of the \$45,000 of delinquent SOR debt remaining after the parties' stipulations, more than half stemmed from a student loan that Applicant did not accrue. Rather, she assumed it after her son defaulted, and has been paying it timely since then. Upon considering the voluminous evidence that Applicant provided, I conclude her finances are clearly under control. The circumstances that led to her financial distress are not likely to recur. Evaluating this case in the context of the whole person concept, I conclude Applicant has mitigated the security concerns.

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 - 1.hh:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.d:	For Applicant

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge

