



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



In the matter of:

ISCR Case No. 09-01409

Applicant for Security Clearance

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

November 9, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's efforts to resolve her delinquent accounts are sufficient to show financial responsibility. She mitigated the financial considerations and personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 1, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as modified and revised.¹ The SOR alleges a security concern

¹ On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of the revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security*

under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied or revoked.

On April 8, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on June 3, 2009. DOHA issued a notice of hearing on June 12, 2009. The hearing was convened as scheduled on June 24, 2009. The government offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on her own behalf and submitted Applicant Exhibits (AE) 1 through 7, which were admitted without objection.² DOHA received the transcript of the hearing (Tr.) on July 6, 2009.

Findings of Fact

Applicant admitted the 19 factual allegations under SOR ¶ 1. She denied the three allegations under SOR ¶ 2. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 30-year-old part-time office clerk. She attended college from 1997 to 2001, and received her bachelor's degree in biology in 2001. She paid for her college education by taking approximately \$47,000 in student loans. Applicant also used her credit cards to pay for her day-to-day living expenses. Additionally, she admitted that she was financially irresponsible during college because she abused her credit cards shopping. When Applicant graduated from college, her mother purchased a car for her. Applicant was responsible for making the monthly car payments.

Applicant's work history shows that she was employed at fast food restaurants from 1995 to February 2005. She worked as a clerk/secretary at a hospital from February 2005 to August 2007. Initially, she worked part-time, and by the time she left she was working full time. In August 2007, she was hired by a government contractor to provide secretarial services to a government agency. When the contract ended, she was hired by the government agency pending adjudication of her security clearance. She worked for the agency until March 2009, when the SOR was issued. Applicant testified her government employer would hire her back if she receives access to classified information. Since March 2009, she has worked part-time approximately 10 hours a week, with a salary of \$10.00 an hour (Tr. 65-71).

Program (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

² AE 7 was admitted post-hearing.

In March 2005, Applicant filed for Chapter 7 bankruptcy protection and had her debts discharged. While in college she abused her credit cards and had a lot of debt she could not afford to pay. Additionally, she was involved in a car accident and totaled the car her mother gave her. In 2005, she wanted to purchase a home and was advised to file for bankruptcy protection to repair her credit and start anew. Applicant participated in financial counseling when she was going through the bankruptcy (Tr. 72-73).

During the bankruptcy case, Applicant learned her student loans were not dischargeable. From 2004 to 2008, Applicant paid her student loans sporadically. In January 2008, she started a payment plan with the creditor and made payments of \$479 a month up to March 2009. Because she is now working part-time, the payments were reduced to \$263. She is making her payments using her unemployment benefits and her part-time job earnings. She anticipated being out of default by September 2009.

In 2006, Applicant was working part-time at a hospital. In October 2007, she was converted to a full-time employee and signed up for medical insurance. She claimed that, she did not then know she was pregnant, and failed to disclose her pregnancy to her insurer. Through out the year, she incurred numerous medical bills related to her pregnancy. The insurance company denied her claims for reimbursement because it considered Applicant's pregnancy as a pre existing condition that she was required to disclose. All of the alleged medical bills in the SOR are from this period and related to her pregnancy (Tr. 74).

In November 2007, Applicant became aware of the denial of her medical claims. She started participating in a debt consolidation program to resolve her debts (Tr. 59). Since November 2007, she has been consistently making her payments to pay the company's fee. The company has been taking her money, but has failed to settle or pay any of her debts (Tr. 86-87). Applicant claimed she did not know the debt consolidation company was not making the payments until she started gathering information for her security clearance hearing.

Applicant married her husband in April 2007, and they have a two-year-old child (Tr. 29). Applicant's spouse was unemployed or underemployed while Applicant was pregnant, and they did not have medical insurance. He started working for a government agency in October 2008, and earns around \$2,600 a month. Applicant and her spouse share the responsibility of paying the household debts.

Applicant attributed her financial problems to four main causes: her husband's periods of unemployment and underemployment; her periods of unemployment and underemployment; the medical bills she acquired as a result of her pregnancy; and not having medical insurance (Tr. 60). Because of her limited income, she could not afford to pay both her past financial obligations and her day-to-day living expenses.

Paragraph 2 of the SOR alleges that Applicant deliberately failed to disclose in her October 2008 security clearance application that she filed for bankruptcy in March

2005, that she had debts over 180 days delinquent during the last seven years, and that she was currently 90 days delinquent on her debts.

Concerning her failure to disclose her bankruptcy, Applicant credibly explained that in 2007 she submitted her first ever security clearance application to another agency. In her 2007 security clearance application, Applicant disclosed that she had filed for Chapter 7 bankruptcy protection (AE 7). In 2008, she was asked to update her 2007 security clearance application and resubmit it. She believed that all the information she submitted in 2007, was already in possession of the government. Thus, she indicated "No" in 2008, to show she had not filed for a Chapter 13 proceeding.

Concerning her failure to disclose she had debts over 180 days delinquent, and that she was currently 90 days delinquent on her debts, Applicant explained that, when she submitted her October 2008 security clearance application, she had been participating on her debt consolidation program since November 2007 (Tr. 55). She mistakenly believed that the debt consolidation company was already settling her debts and making payments for her. She made the mistake of believing that she was no longer delinquent on any debts because the debts were being addressed through the debt consolidation program.

The SOR alleges 18 delinquent and/or charged off accounts, totaling approximately \$62,000, which have been delinquent for a number of years. Except for SOR ¶ 1.n (alleging an \$858 bank debt, which Applicant believes concerns a student loan) and SOR ¶ 1.m (alleging \$47,000 delinquent student loans), all 16 remaining allegations concern Applicant's medical debts. All her medical debts were incurred at the same hospital as a result of Applicant's pregnancy between 2006 and 2007. At the time, she and her spouse were underemployed or unemployed and did not have medical insurance.

Although unemployed and/or underemployed, Applicant has saved \$800 to pay her delinquent debts. She used last year's tax refund, earnings from her part-time job, and her unemployment benefits to accumulate the \$800. She promised to settle and pay all of her debts in the near future. Applicant expressed remorse for her financial problems.

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 required 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 controlling

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.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”³ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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 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* Executive Order 12968 (Aug. 2, 1995), Section 3.

³ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

The SOR alleged 16 delinquent and/or charged off debts that have been delinquent for a number of years. These debts are Applicant's debts as established by the evidence and Applicant's admissions. She acquired these debts after she was discharged of all her delinquent debts through a 2005 Chapter 7 bankruptcy proceeding. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant established circumstances beyond her control contributing to her inability to pay her debts, i.e., her and her spouse's periods of unemployment and

underemployment; lack of medical insurance coverage; and the medical expenses associated with her pregnancy and delivery of her child. I find AG ¶ 20(b) applies.

Except for the delinquent student loans that Applicant has been carrying since 2001 (SOR ¶¶ 1.m and 1.n), all of Applicant's current delinquent debts are for medical expenses she incurred at one hospital as a result of her pregnancy. She credibly explained she believed her medical debts were covered by her insurance. However, her coverage was denied because the insurance company considered her pregnancy a preexisting condition.

Applicant has not used any credit cards since her 2005 bankruptcy discharge and there is no evidence she has abused her credit. She appears to be living a financially responsible lifestyle. As soon as she was informed that the insurance company was denying coverage in November 2007, Applicant started participating in a debt consolidation program. She has been regularly paying the fees for the debt consolidation program.

Applicant sporadically paid her student loans from 2006 to 2008. In 2008, she contacted her creditors and started making routine monthly payments. She has continued to do so notwithstanding her part-time employment. She anticipates her student loans will be out of default in the near future. She has been using her unemployment benefits, part-time job income, and tax refunds to pay for her student loans. She has saved approximately \$800 to pay for her delinquent debts after the debt consolidation company settles some of the accounts.

Applicant's actions are sufficient to show some responsibility under the circumstances. She presented documentary evidence of debt payments, participation in a debt consolidation program, financial counseling, and contacts with creditors. Applicant and her husband seem to be living a financially responsible lifestyle. I believe that when Applicant starts her full-time job, she and her husband will have their financial problems under control.

AG ¶ 20 (a) partially applies. Applicant's financial problems are ongoing; however, they occurred under circumstances that are not likely to recur. Her behavior addressing her financial problems so far speak well for her reliability, trustworthiness, and judgment. AG ¶¶ 20 (c) and (d) apply. She received financial counseling and she is making efforts to resolve her financial problems. AG ¶¶ 20 (e) and (f) do not apply.

Considering the record as a whole, Applicant's actions show a concerned effort to correct her financial problems, demonstrate maturity, and financial responsibility. Financial considerations concerns are mitigated.⁴

⁴ Of course, the government can re-validate Applicant's financial status at any time through credit reports, investigation, and/or additional interrogatories. Approval of a clearance now does not bar the government from subsequently revoking it, if warranted. Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant failed to disclose in her October 2008 security clearance application that she filed for bankruptcy in March 2005, that she had debts over 180 days delinquent during the last seven years, and that she was currently 90 days delinquent on some of her debts.

Applicant's 2007 security clearance application to another agency shows that she disclosed that she had filed for Chapter 7 bankruptcy protection (AE 7). When she updated the 2007 application to submit it in 2008, she believed that all the information she submitted in 2007, was already in possession of the government. Thus, she indicated "No" in 2008, to show she had not filed for a Chapter 13 proceeding. Having listened to Applicant and observed her demeanor, I believe Applicant made an honest mistake as a result of her lack of familiarity with the security clearance process.

Concerning her failure to disclose she had debts over 180 days delinquent, and that she was currently 90 days delinquent on her debts, Applicant credibly explained that, she mistakenly believed that the debt consolidation company was already settling her debts and making payments for her. She made the mistake of believing that she was no longer delinquent on any debts because the debts were being addressed through the debt consolidation program. I find Applicant's omissions were not with the intent to falsify or mislead the government. As such, Applicant's actions do not create security concerns under the personal conduct guideline.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

revocation of a security clearance. Completion of a security clearance decision documents and establishes a warning to Applicants about the importance of financial responsibility and retention of documentation about debt resolution. The comments in this footnote do not imply that this clearance is conditional.

(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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is attempting to correct her financial situation by participating in financial counseling, contacting her creditors, participating in a debt consolidation program, making a budget, and living a financially responsible lifestyle since 2005. She successfully worked for a defense contractor and a government agency for approximately 20 months. There is no evidence she has ever compromised classified information or committed any security violations. Applicant expressed remorse for her financial mistakes and promised to repay her creditors. She established circumstances beyond her control contributing to her inability to pay her debts. These factors show responsibility, good judgment, and mitigation.

On the other hand, Applicant filed for bankruptcy protection in 2005 because she had abused her credit cards. She now has approximately 16 delinquent medical bills resulting from her lack of medical insurance.

On balance, I conclude Applicant presented sufficient evidence to show she is behaving responsibly and making progress in resolving her financial problems. She presented documentary evidence of efforts to pay her financial obligations or to resolve her debts. There are indications that her financial problems are being resolved. Her ability to pay her student loans, the debt consolidation company, and saving \$800 to pay creditors, show she is making good-faith efforts to resolve her situation. Applicant's favorable evidence is sufficient to mitigate the security concerns arising under the financial considerations guideline.

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.s:	For Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraphs 2.a - 2.c:

For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is granted.

JUAN J. RIVERA
Administrative Judge