



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



In the matter of:)	
)	
)	ISCR Case No. 09-01456
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

September 17, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on September 15, 2008, as part of her employment with a defense contractor. On June 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for financial considerations under Guideline F. 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, and effective within the Department of Defense for SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on June 8, 2009.

Applicant answered the SOR in writing on June 14, 2009. She admitted six and denied two of the allegations under Guideline F with explanation, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 10, 2009, and the case was assigned to me on July 20, 2009. DOHA issued a Notice of Hearing on July 30, 2009, for a hearing on August 19, 2009. Applicant signed

for the Notice of Hearing on August 3, 2009. I convened the hearing as scheduled. The government offered seven exhibits, marked Government Exhibits (Gov. Ex.) 1 through 7, which were received without objection. Applicant and one witness testified on her behalf and offered nine exhibits, marked Applicant Exhibits (App. Ex.) A - I which were received without objection. DOHA received the transcript of the hearing (Tr.) on August 25, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 47 years old and has been an office manager for a defense contractor for one year. She is a high school graduate who is taking college level courses. She is married with three grown children. This is her first request for a security clearance (Tr. 22). Applicant and her husband's monthly income is approximately \$3,600. Applicant's husband is also reimbursed for some of his expenses by his employer. Their monthly expenses are approximately \$3,400, leaving \$200 monthly in discretionary funds (Tr. 35-37; Gov. Ex. 4, Answer to Interrogatories, Personal Financial Statement at 6).

Credit reports list the following financial issues for Appellant; a Chapter 13 bankruptcy filed in December 2004, and dismissed in February 2005 (SOR 1.a); a Chapter 7 bankruptcy filed in March 2005, with debts discharged in June 2005 (SOR 1.b); a cell phone account in collection for \$519 (SOR 1.c); a charged off credit union account for \$722 (SOR 1.d); a credit card in collection for \$708 (SOR 1.e); another credit card account in collection for \$1,094 (SOR 1.f); a charged off account for \$395 (SOR 1.g); and a remaining debt owed on a vehicle repossession for \$17,580 (SOR 1.h; Gov. Ex. 2, Credit report, dated March 18, 2009; Gov. Ex. 4, Credit report, dated October 21, 2008).

Applicant's daughter was living with Applicant and her husband in 2004. The daughter had medical problems and was pregnant requiring support from Applicant and her husband. Applicant and her husband were unable to pay their debts so they consulted a lawyer who suggested filing the bankruptcy. Applicant and her husband filed a Chapter 13 bankruptcy in December 2004 (SOR 1.a). The bankruptcy showed liabilities of over \$150,000 most of which was for \$137,000 owed on Applicant's house and three vehicles, two cars and a camper (Tr. 22-25; Gov. Ex. 8, Bankruptcy Schedule D, filed December 11, 2004). The wage earner plan payments were too high for them to pay so they requested the bankruptcy be dismissed. It was dismissed in February 2005. Applicant and her husband submitted a Chapter 7 bankruptcy in March 2005, listing the same debts as listed in the Chapter 13 bankruptcy (Gov. Ex. 7, Schedule D, filed March 8, 2005). All debts were discharged by the bankruptcy in June 2005, to include the loans for their house and the two cars which were returned (SOR 1.b). Applicant and her husband were starting with a clean slate of debts except for the camper which they

kept at the request of the creditor. They made payments on the camper until May 2008, when they were no longer able to make payments because their daughter's child their grandchild, was now living with them. The camper was returned to the creditor in May 2008 (Tr. 25-26).

After the bankruptcy discharge in June 2005, Applicant and her husband had to purchase new cars and find a place to live. Applicant had worked for over 12 years making \$12 per hour. She could no longer meet the physical requirements of the job and her doctor advised her to change occupations. Applicant became a receptionist but was only paid \$8 an hour for that job. She also had periods of unemployment due to sickness and injury (Tr. 26-27). Applicant continued to make some payments on her debts from March 2006 until 2009 as best she could. She did not make full payments but did make some payments on most of the debt (Tr.33-34).

The delinquent debt at SOR 1.c is for a cell phone. Applicant and her husband had service from the company at one time. They switched service providers and paid all of the bill. When notified of the debt a number of years ago, she disputed it with the provider. It has been removed from her latest credit report as reported by the credit agency (Tr. 29-30, 45-46; Gov. Ex. 6, Fax information from Applicant at 6, Experian report, dated June 11, 2009).

The credit union credit card debt at SOR 1.d was opened by Applicant's daughter without Applicant's knowledge. Applicant was listed as a co-signer on the card. She did not know about the card and never used it. The credit union acknowledged that Applicant does not owe the debt (Tr. 27-29, 46; Gov. Ex. 6, Fax Information from Applicant at 10, Letter, dated June 13, 2009).

The delinquent debts listed at SOR 1.e and 1. f are for credit cards Applicant and her husband took out after the bankruptcy discharge in 2005. The cards were mainly used in support of their Shriner activities for disabled children. They usually travel in support of Shriner activities about twice a year. Applicant has been making payments on these debts (Tr. 30-31, 46-48; Gov. Ex. 6, Fax Information from Applicant, at 11, Check, dated June 20, 2009; App. Ex. C, Bank debit, dated June 28, 2009; App. Ex. D, Bank debit, dated July 26, 2009; App. Ex. E, check, dated June 20, 2009).

The delinquent debt at SOR 1.g is for a loan Applicant's husband took out in both of their names. Applicant believed the debt was paid. After learning the debt was still outstanding, she has been paying on the debt. The remaining balance on this account is approximately \$320 (Tr. 31, 48-49; App. Ex. F, Check, dated June 16, 2009; App. Ex. G, Check, dated July 20, 2009).

The repossession debt at SOR 1.h is for the camper. The creditor requested Applicant and her husband keep the camper after the bankruptcy and continue to make payments of about \$498 monthly. When Applicant had to take a lower paying position, they continued to make payments for less than the required amount until it was returned. They voluntarily returned the camper to the creditor in May 2008, since they

could not afford to make the payments. When the creditor notified Applicant of the debt after the camper was sold, Applicant agreed to make payments of \$75 per month on the account. She has been making monthly payments since March 2009 (Tr. 31-33, 49-50; App. Ex. H, Check, dated June 22, 2009; App. Ex. I, Check, dated July 21, 2009).

Applicant's immediate supervisor testified that shortly after Applicant started working for the defense contractor, her potential for higher level positions was recognized by the company leaders. After a few months, Applicant was moved to the office manager position at corporate headquarters. She is recognized as a trustworthy employee who keeps information confidential. Her duties include managing the corporate credit card accounts and arranging employee travel. She is responsible for purchasing supplies and overseeing the payroll. She has been recommended to be the facilities security officer requiring her to have a security clearance. Applicant is considered by the company leaders to be trustworthy, reliable, and has an excellent ability to handle classified information (Tr. 51-54).

Applicant presented two letters of recommendation. A friend wrote that she has known Applicant for over 20 years and considers her to be trustworthy and reliable (App. Ex. A, Letter, undated). The leader of Applicant's Shriner chapter wrote that he has known Applicant for over ten years. Applicant is involved in a number of Shriner fund raisings and charitable activities. She is organized, efficient, competent, and has excellent rapport with others. She is very dependable and trustworthy. She has been trusted with large sums of money and personal information. He would trust her to manage any type of information (App. Ex. B, Letter, dated August 18, 2009).

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 useful 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 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.

Analysis

Financial Considerations:

Under financial considerations, 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). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect 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 terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant’s delinquent debts as listed on credit reports and admitted by Applicant are a security concern raising Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations).

A bankruptcy discharge itself is not a security concern since bankruptcy is a legal and permissible means of resolving debts. Applicant and her husband filed a Chapter

13 bankruptcy that was dismissed and a Chapter 7 bankruptcy that discharged her debts. The bankruptcy discharge released Applicant of the burden of paying most of the debts that arose from the expenses of caring for her daughter and grandchild. A creditor requested Applicant to keep one debt on a camper. Additional debts arose after the bankruptcy discharge, and they should be examined to determine financial responsibility and the impact on security worthiness. The debts she accumulated after the bankruptcy do create a financial consideration security concern and raise the disqualifying conditions.

Applicant disputed two of the debts listed in the SOR (SOR 1.c, and 1.d). I considered FC MC ¶ 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 provided documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue). One of the debts was removed from her credit report by the credit reporting agency. The creditor on the other debt acknowledged that Applicant does not owe this debt. Based on the information provided by Applicant, I conclude these debts are not delinquent debts attributable to Applicant. SOR 1.c and 1.d, are found for Applicant.

There are four delinquent debts remaining for consideration. Two debts are for credit cards used by Applicant and her husband for expenses in their charitable activities with the Shriners. One debt is for a loan taken out by Applicant's husband. The fourth debt is for the camper remaining from the bankruptcy discharge.

I considered the Financial Considerations Mitigating Conditions (FC MC) raised by Applicant's testimony concerning the four remaining debts. 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), and FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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) have some application to Applicant's circumstances. All four debts are still being paid so they are current debts and not old or infrequent. Applicant incurred the debts because she cared for her daughter and then granddaughter. She had to take a lower paying job because she could no longer physically perform her previous job. Her new job lowered her hourly pay by a third. She also was out of work for some time because of sickness and illness. These conditions were beyond her control and caused financial problems. The debts pertaining to the credit cards and the loan happened in support of their charitable and normal circumstances so they can recur. The camper repossession is a carryover from the bankruptcy and this is unlikely to recur. Applicant is paying on these debts so they do not cast doubt on her current reliability, trustworthiness, or good judgment. By making arrangement to pay these debts, she acted responsibly under the circumstances.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Evidence of past irresponsibility is not mitigated by payment of debt only under pressure of qualifying for a security clearance. Applicant has the ability and a strong desire to pay the debts. She established her good-faith effort to pay the four debts. She presented information to show that she has been paying the debts according to her agreements with the creditors. The payment plans are credible and reasonable under her financial circumstances. Applicant mitigated security concerns based on her finances.

“Whole Person” Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant’s security eligibility by considering the totality of the 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. I considered Applicant's good reputation at work and in the community for trustworthiness, reliability, and good judgment. I considered that she and her husband devote their time to the charitable activities of the Shriners. I considered that some of her debts are directly attributed to their charitable activities.

Applicant must establish a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. She is not required, as a matter of law, to establish that she paid off each and every debt listed in the SOR. All that is required is that she has a plan to resolve her financial problems and takes significant action to implement that plan. The entirety of her financial situation and her actions can reasonably be considered in evaluating the extent to which her plan to

reduce her outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, 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.

Applicant established a meaningful track record of debt payment by presenting sufficient information to show she has payment plans in effect for the four outstanding debts and that her payments are current according to the plan. She has sufficient monthly income to meet her present obligations. Applicant demonstrated that her plan is credible and realistic, and she is managing her finances responsibly under the circumstances. The management of her present finances and her past obligations indicates she will be concerned, responsible, and not careless in regard to classified information. Applicant is not financially overextended and she is living within her means. Overall, the record evidence leaves me with no questions or doubts as to Applicant's judgment, reliability, and trustworthiness. She established she is suitable for a security clearance. I conclude Appellant has mitigated the security concerns arising from her financial situation.

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 - h: For Applicant

Conclusions

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.

THOMAS M. CREAN
Administrative Judge