



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-01551
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: Sheldon L. Cohen, Esq.

September 20, 2010

Decision

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

On November 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant 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 adjudicative guidelines (AG).

In an undated answer to the SOR, Applicant admitted two of the three allegations set forth under Guideline F and requested a hearing before an administrative judge. DOHA assigned the case to me on February 19, 2010. The parties proposed a hearing date of March 18, 2010. A notice setting that date for the hearing was issued on February 26, 2010. I convened the hearing as scheduled. Applicant gave testimony and presented seven documents, which were accepted into evidence without objection as exhibits (Exs.) A-G. Department Counsel offered five documents, which were admitted as exhibits (Exs.) 1-5 without objection. Applicant was given until April 15, 2010, to submit any additional materials. DOHA received the transcript (Tr.) of the proceeding on March 24, 2010. On April 8, 2010, and April 13, 2010, respectively,

Applicant submitted two additional documents, which were accepted into the record without objection as Exs. H-I. The record was then closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet her burden in mitigating security concerns. Clearance is denied.

Findings of Fact

Applicant is a 40-year-old data miner working for a defense contractor. She has earned a bachelor of science degree in material science and engineering. She is married and has four minor children.

Applicant was married in 1995. Applicant's husband was a finance manager of a car dealership, which required him to work many long hours away from his family. By the early 2000s, he supplemented their income by working for a family business part-time while Applicant worked as a senior analyst for a technology company. Applicant's husband's workload and schedule became overwhelming. Applicant and her husband decided that he should devote his full time to the family business, which he did in early 2004. Around the same time, in May 2004, the couple had a son. After the child was born, it was discovered that the infant had congenital heart defects and had Down Syndrome.¹ These medical issues took Applicant "on a whirlwind of appointments, testing, and exams which led to the creation of bills and a lot of time off from work. Although it was tight, [they] were able to maintain [their] bills for the most part."² The family waited to see if the holes in their child's heart would heal without surgery. They did not. Surgery was performed in July 2005, weeks after Applicant discovered she was again pregnant. Applicant stayed at home to care for the child under the Family Medical Leave Act, which provided her with a job when she returned to the workplace, but did not provide her with any compensation while on leave.³ The procedure and Applicant's post-surgery care-giving "was a crucial point in [their] financial life and caused [her] to make several arrangements with creditors to ensure that some payments were made."⁴

In January 2006, Applicant had to take maternity leave for the birth of her next child. At the time, her husband was working for a new business full-time, but the work was seasonal. After Applicant returned to work in the spring of 2006, she and her husband were hit with the full impact of child care for their four children. Child care for her children, including special needs services, cost approximately \$2,000 per month.⁵ Their work, parental obligations, medical care, and other stress factors were

¹ Tr. 11-12; Ex. A (Statement).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

overwhelming.⁶ While they were able to maintain their home, vehicles, and provide for their family, their “credit suffered greatly because [they] were unable to pay anything besides the necessities.”⁷

Around 2007, Applicant’s financial situation began to stabilize and improve.⁸ Because of his developmental disabilities, Applicant’s son with medical issues was accepted into school at the age of two-and-a-half, reducing Applicant’s financial obligation to only after-school care during the school year. In 2009, further financial relief was received when the child was approved for a Social Security program. The program provides him medically necessary garments and an attendant who cares for him after school and in summers.⁹ Applicant’s two oldest children now attend school full time and no longer require day or after-school care. Presently, Applicant only pays for one child, her youngest, to attend preschool. Meanwhile, Applicant’s husband’s family business has grown each year. His income varies due to the seasonal nature of some of the business’ projects. To enhance their income, he is also working a part-time job. Applicant’s salary has increased through promotions and a recent job change. Her strategy for honoring their delinquent debt is to pay off her old debts “one at a time.”¹⁰ She has no significant medical debt, due in equal parts to good insurance and her making it a priority.¹¹

Applicant and her husband own three homes. One is a modest property in a distant state worth about \$12,000. They are current on their mortgage payments of about \$99 a month. The property is a rental and they have a reliable tenant paying \$250 a month. They have a second rental property they bought in 2002 as a residence in an area neighboring their current state of residence. They had a loyal tenant in the property until late 2007. It was then without a tenant for about a year, causing a drain on Applicant’s finances. It is now occupied, but the tenant is about three months behind in rent payments.¹² Applicant and her husband have kept current on their monthly mortgage payments of about \$670 on the property. The second rental generates about \$1,200 a month when occupied. Their main residence was financed through a mortgage. They are behind on their mortgage payment amounts, but have been making regular payments on the mortgage. An equity line was taken to help meet their debts in the late 2000s. It is at issue in SOR allegation ¶ 1.c, below.

⁶ Tr. 13. Applicant noted “[i]n fact, it was just a few months ago [that] I found a box of mail dated 2006 that I had never opened.”

⁷ Tr. 14.

⁸ Ex. A (Statement) at 2.

⁹ Tr. 14-15.

¹⁰ Tr. 15.

¹¹ Tr. 47-48, 54.

¹² Tr. 80.

At issue in the SOR are three delinquent debts.

1.a – Judgment for credit card services (\$10,487) – *In negotiation for a payment schedule* – This judgment was filed in November 2008. It is a collection agency on a credit card balance toward which Applicant could no longer make payments in 2005 or 2006.¹³ By letter of August 28, 2009, Applicant was advised that collection for the judgment was being handled by a law firm and that the firm would accept a reasonable proposal to pay the judgment.¹⁴ Applicant tried to contact the firm, but without success. The phone number on the letter for the now defunct entity is inoperative, “which has caused big problems with people.”¹⁵ Applicant contacted the underlying creditor for which the law firm had been providing collection services. She learned that a new law office took over the account in January 2010. Applicant called this law firm and was told to contact another law office. On April 6, 2010, Applicant was told that the law firm contracted to handle the collection for the new law office “would require a payoff in 2 years or less in the event [she] could not settle for 70% of the \$10,000 balance. [The contractor] said he could offer [her] a payment arrangement of \$1000 down with a payment of around \$450 per month for the next two years.”¹⁶ Applicant and her husband decided they were able to accept the offer and “make a down payment of \$1,000 and pay 24 equal payments of the remaining balance for the next two years to settle the debt,” noting they would soon be contacting the contractor to confirm that their offer will be accepted.¹⁷

1.b – Account past due (\$165) – *Account current* – The account is now current.¹⁸

1.c – Charged-off mortgage account (\$52,639) – *Awaiting modification* – This account is for a home equity loan on Applicant’s residence. At the suggestion of the creditor, Applicant requested a loan modification under the recently enacted Home Affordable Modification Program (HAMP). On January 26, 2010, their request was temporarily halted pending submission of a hardship affidavit and an IRS Form 4506-T (Request for Transcript of Tax Return).¹⁹ Applicant has been making \$584 monthly payments on this account since October 2009 because she is unsure whether a home equity loan is

¹³ Tr. 51-52.

¹⁴ Ex. B (Letter, dated Aug. 28, 2009).

¹⁵ Tr. 27, 30, 32, 97. The entity had filed for bankruptcy liquidation by December 2009, generating much press coverage in the area. See, e.g., Ex. C (Article, dated Jan. 17, 2010).

¹⁶ Ex. H (Cover letter, dated Mar. 23, 2010) at 3, noting that Applicant and her husband would make a decision about the offer by April 12, 2010..

¹⁷ Ex. I (Cover letter, dated Apr. 12, 2010).

¹⁸ Tr. 58-60; Ex. H (Cover letter, dated Mar. 23, 2010) at 1 and Tab B. See also Ex. I, *supra*, note 15, at 3.

¹⁹ Ex. D (Mortgagor letter, dated Jan. 26, 2010).

subject to modification under HAMP.²⁰ Applicant has spoken with someone from account services and explained her situation. She waited for a follow-up call, but none was received. She wrote to the company in March 2010.²¹ Applicant provided evidence of payments made while she awaits a decision on her HAMP request. Payments of \$584 are shown as paid in August 2009, February 2010, and March 2010.²²

Applicant currently earns approximately \$82,000 a year, which would yield a gross monthly income of about \$6,833.²³ Her husband's salary varies by season, with a net average of about \$1,200 per month. They have other income of about \$1,450 per month. Their monthly expenses are about \$3,315 per month, with payments toward debt of approximately \$3273.²⁴ They have a monthly net remainder of about \$291, including budgeted payments for the debts noted at SOR allegations ¶¶ 1.b and 1.c and others. They have no automobile payments. Applicant does not have a savings account, although she and her husband have a reserve checking account with a balance of about \$800.²⁵ Applicant has a 401k account with approximately \$20,000. She is living "a little bit paycheck-to-paycheck."²⁶ Applicant has not received financial counseling.²⁷

At work, Applicant is known as an individual who is "generous, kind-hearted, honest, and loyal," with a "remarkable" work ethic.²⁸ Within her community, she is known as "a hard worker, a fair and sensitive leader, and a delightful person."²⁹ She has been commended for her volunteering with youth groups.³⁰

²⁰ Tr. 71; Ex. H (Cover letter, dated Mar. 23, 2010) at 1 and Tab C..

²¹ *Id.*

²² Ex. H, *supra*, note 18 and Ex. I, *supra*, note 15.

²³ Tr. 82. Applicant's new job pays slightly more than her former position, upon which the monthly budgets submitted as part of Ex. 3 (Interrogatories) were based. Her new job, however, does not include health insurance, which she pays for independently. Tr. 83. Otherwise, her current budget is "not dramatically different" than it was when she submitted budgets previously in the summer of 2009. Tr. 86.

²⁴ Ex. 3 (Interrogatories) at 22.

²⁵ Tr. 91.

²⁶ Tr. 92.

²⁷ Tr. 99.

²⁸ Ex. F (Reference I, dated Mar. 12, 2010).

²⁹ Ex. E (Reference II, dated Mar. 12, 2010).

³⁰ Ex. G (Reference III, dated Mar. 8, 2010).

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief 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 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 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.

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. . . ." ³¹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ³²

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 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."³³ Any reasonable doubt about whether an applicant should be allowed access

³¹ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³³ *Id.*

to sensitive information must be resolved in favor of protecting such sensitive information.³⁴

Based upon consideration of the evidence, Guideline F (Financial Considerations) is pertinent to this case. Conditions pertaining to this AG 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.”³⁵ The guideline sets out several potentially disqualifying conditions. Here, Applicant admitted to delinquent debt in excess of \$63,000. To date, the overwhelming majority of that debt remains outstanding. Such facts are sufficient to raise 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). With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

The majority of the debts at issue were acquired when Applicant’s son was born in 2005 with extraordinary health issues which required major surgery in 2006. As a result, she had to take leave without pay to care for the recovering infant. Soon thereafter, she was forced to take temporary maternity leave in anticipation of the birth of another child in 2007. Such factors give rise to Financial Considerations Mitigating Condition (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). To the extent those same factors, as well as the sudden vacancy by a long-term renter of her rental property in late 2007, adversely affected Applicant’s ability to address all of her debts, 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 in part.

Although Applicant testified that she and her husband have been trying to address their delinquent debts “one debt at a time” since their finances stabilized after 2007, there is no evidence that she has tried to address her debts in a systematic or holistic manner. She has a budget in place that includes payment on some debts, including the debts noted at SOR allegations ¶¶ 1.b. and 1.c, as well as others, but

³⁴ *Id.*

³⁵ AG ¶ 18.

there is no evidence, for example, of timely, consistent monthly payments on the debt at ¶ 1.c. The evidence provided only reflects three payments on that account in the past year. Financial counseling is clearly warranted, but it has not been pursued, obviating application of 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).

The SOR was issued on November 4, 2009. Since that time, the collection entity for the debt noted at SOR allegation ¶ 1.a went out of business before Applicant responded to their August 2009 letter; Applicant made only two of three demonstrated payments on the past due account reflected in SOR allegation ¶ 1.b; and she sought a home loan modification for the debt reflected at SOR allegation ¶ 1.c. To her credit, she has recently persisted in locating the current creditor for the debt noted at SOR allegation ¶ 1.a, but there is scant evidence of effective progress on the debts reflected at SOR allegations ¶¶ 1.a and 1.c for the five months following her receipt of the SOR. To the extent the SOR prompted her to try addressing her two largest debts, however, FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies in part.

Applicant provided sufficient evidence to mitigate the conditions surrounding the acquisition of her delinquent debt. While she testified that things have improved financially since 2007, however, there is scant evidence of subsequent and effective attempts to address her two largest delinquent debts in a timely and organized manner. A minor past-due balance is now addressed. However, she only demonstrated three erratic payments and preliminary paperwork regarding an application for a home loan modification for one debt, and expressed only an intent to enter into a repayment plan on the other. Until those two delinquent debts are effectively in repayment and Applicant's finances are more organized, financial considerations security concerns remain.

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 relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on 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 is a credible and educated woman. She is a devoted mother and wife. She has demonstrated exceptional maternal concern and care for her son.

Applicant's situation is atypical to the extent that her financial issues are not the result of overspending, a lifestyle beyond her means, or investments that soured in a poor economy. In fact, she has two rental properties. While one property went unrented

for a year, both properties reap rental incomes that exceed their monthly mortgage payments. As such, they represent not only sound investments, but untouched potential assets with liquidation potential in times of need. One former residence, which was unrented for a year recently, also represents a potential sanctuary should they choose to sell their home.

Moreover, Applicant's debts are not directly related to her child's medical care, due to good insurance coverage and the fact she made such bills a priority. The debts at issue seem to have mainly derived from Applicant's medical leave to care for her son in 2006, her 2007 maternity leave, child care costs, and the lack of a tenant in one rental property for a one-year period between late 2007 and 2008.

Applicant stated, however, that her family finances started to stabilize and improve in 2007. There is no evidence showing that she tried to work with the three creditors at issue in 2008 or early 2009, even though she and her husband had an income in excess of \$100,000. No substantial efforts to address the two major debts at issue appear to have been exerted until the time the SOR was issued. By not responding to the law firm initially handling the debt noted at SOR allegation ¶ 1.a in a timely manner, Applicant was left to track down the current creditor on her own. This protracted her ability work on the debt or negotiate a payment plan. The payments shown on the account noted at SOR allegation ¶ 1.c have been erratic. She has not received financial counseling or, apparently, adhered to her written budget. There is no evidence she has considered bankruptcy, sale of one of the rental properties, or moving to their former residence. Such facts do not demonstrate a concerted effort to effectively address the two largest debts at issue.

As noted, Applicant was a credible witness. Her reputation is as a hard working and diligent person. Given her household income, her debts are not insurmountable, but she agrees she is living paycheck-to-paycheck. At present, the evidence does not indicate sufficient progress to mitigate financial considerations security concerns. The 'clearly consistent' standard indicates that security clearance determinations should err, if they must, on the side of denials. In light of the evidence presented, clearance is denied.

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	Against Applicant
Subparagraph 1.b	For Applicant
Subparagraph 1.c	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 a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge