



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-01739
)
)
Applicant for Security Clearance)

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: Dawn M. Laubach, Esquire

April 27, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On December 2, 2008, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). On September 18, 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) and Guideline 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 Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on November 16, 2009, and requested a hearing before an administrative judge. On January 22, 2010, DOHA assigned the case

to me. On February 5, 2010, DOHA issued a Notice of Hearing setting the case for February 24, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence without objection. Applicant testified. She offered exhibits marked as Tabs 1 through 13 into evidence without objection. DOHA received the hearing transcript on March 4, 2010. The record remained open until March 15, 2010, to give Applicant an opportunity to submit additional information. On that day, Applicant submitted an exhibit that I marked as Tab 14 and admitted into evidence without objection.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the allegations contained in SOR ¶ 1, except those alleged in ¶ 1.b, 1.g, and 1.o. She denied the allegations contained in SOR ¶ 2. She provided extensive information in support of her answers.

Applicant is 37-years-old, married, and has a five-year-old daughter. In March 2002, she earned an associate's degree in information technology. She is completing a bachelor's degree in database administration. Her husband works for the airline industry.

In April 2002, Applicant purchased a house with the assistance of her father. She and her husband (then fiancé) intended to rent the house for a year before getting married and moving into it. They planned to have the tenants' rent cover the mortgage and to use their salaries to pay other debts. About two months after the tenants moved into the house, they broke the lease and moved out. As a result, Applicant became responsible for the mortgage. At the time, she had just finished her associate's degree and obtained a position as a help desk technician. Her \$24,000 salary was insufficient to cover the mortgage and pay her bills.¹ She decided to pay the mortgage and stopped making minimal payments on other bills, including credit cards. (Tr. 53.) In December 2002, she and her husband married, and she moved into the house with her husband, who had lived there since the tenants left. By January 2003, her debts started to become delinquent. (Tr. 64.)

In November 2005, Applicant began working for federal contractors and earning about \$40,000 annually. By 2008, she and her husband had a combined income of slightly less than a \$100,000. During 2009, she earned \$89,000 as a database administrator and her husband earned about \$30,000 for a combined income of over \$100,000. (Tr. 85-86.) They are financially stable and current with all of their expenses and obligations. (Tr. 54.)

Subsequent to completing her first e-QIP, on December 12, 2008, Applicant met with a government investigator to discuss her finances. During that meeting, she reviewed her credit bureau report (CBR) for the first time and learned of the number of reported delinquent debts. (Tr. 27.) About a month later, she sought credit counseling

¹Prior to this position, Applicant worked as a Hospice care aide and earned \$9,000 annually.

with a firm in order to resolve or consolidate the debts. A counselor with the firm advised her that they could not help her because the debts were too old. (Tr. 92.) In March 2009, she and her husband enrolled in a 13-week financial counseling course. (Tr. 91-93; Tab 14 at 7.). After finishing the course, she implemented techniques for responsible financial management that she has continued to follow. (Tr. 57.) In October 2009, she consulted with another consumer credit counseling service for assistance with resolving her old debts. The counselor performed a financial analysis and established a suggested budget. He advised her to dispute all old debts listed on her credit bureau reports in accordance with the applicable credit laws, which she did. (Tab 10.)

Based on credit bureau reports (CBR) from October 2008, December 2008, and July 2009, the SOR alleged that Applicant accumulated 17 delinquent debts totaling \$24,522. (GE 2, 3, 4.) The majority of the debts accrued between 2000 and 2004. The status of each debt is listed below:

Debts Paid

1. (¶ 1.a) The \$134 debt was paid in November 2009. (Tab 1.)
2. (¶ 1.c) The \$59 debt was paid in November 2009. (Tab 2.)
3. (¶ 1.q) The \$319 debt was paid in October 2009. (Tab 3.)

Debts Disputed

4. (¶ 1.b) In October and November 2009, Applicant disputed the \$602 debt owed to a credit card company, as not being her debt. (Tab 5.) A November 2009 CBR noted the dispute. (Tab 9.) She denies owing the debt.
5. (¶ 1.g) In October 2009, Applicant disputed the \$560 debt owed to a bank credit card. (Tab 6.) In November 2009, the debt was deleted from the credit bureau reports. (Tab 6a.)
6. (¶ 1.o) In October 2009, Applicant disputed the \$3,710 debt alleged to be owed to a health club. (Tab 7.) The debt does not appear on the February 2010 credit bureau report. (Tab 9, 10a.)

Debt Being Paid

7. (¶ 1.i) The \$1,786 debt is owed to the university which she attends. She was unaware of it until she reviewed her credit bureau report in December 2008. Generally, the student loan carrier sent her tuition payments to the school. She never received a bill for that unpaid amount. She started making \$100 monthly payments in February 2010. (Tr. 35; Tab 4a.)

Debts Being Resolved

- 8 -10. (¶¶ 1.d, 1.e and 1.f) These three alleged debts total \$5,476 and are owed to the same credit card company. In 2002, the delinquent debt was \$685. Applicant's attorney recently located the current creditor. She thinks the debt will be resolved for \$205. (Tab 14 at 4.)
11. (¶ 1.h) The \$464 debt is owed to a bank credit card. She is willing to pay the debt, but is unable to locate the current creditor.
12. (¶ 1.j) The \$2,262 debt is owed to a company for a computer she purchased in 2002 and returned when she could not afford the payments. In October 2009, she wrote the computer company to inquire about the debt. (Tab 12.) She is willing to pay the debt, but has not received a response from the creditor. (Tr. 106.)
13. (¶ 1.k) The \$1,165 debt is owed to a bank credit card. She sent a letter to the creditor in October 2009, but did not receive a response. She is willing to pay the debt, but is unable to resolve it. (Tr. 75; Tab 5a.)
- 14-15. (¶¶ 1.l, 1.m) These duplicate debts total \$6,126. Applicant has attempted to resolve this debt since October 2009. (Tab 13.) Her attorney is unable to obtain the name of the current creditor, in order to resolve it. (Tab 14 at 5.)
16. (¶ 1.n) The \$1,204 debt is owed to a department store. She is willing to pay the debt, but is unable to locate the current owner of the debt. (Tr. 106.)
17. (¶ 1.p) The \$655 debt is owed to a credit card company. She is willing to pay the debt, but is unable to locate the current owner of the debt. (Tr. 50.)

In summary, Applicant has addressed or attempted to address each debt. She paid \$512 to creditors, is paying the university bill of \$1,786, and successfully disputed \$4,872 of debt. She is willing to pay or resolve the remaining \$17,300 debt if she receives a response from the creditors to her letters. She submitted a copy of her budget. Her family's net monthly income is \$6,840. After paying expenses, she has approximately \$2,100 remaining for other items and debt reduction. (Tab 10 at 10.) She saves a large portion of that money. (Tr. at 83.)

Since working for federal contractors, Applicant has completed two public trust applications and one security clearance application. On November 13, 2007, Applicant completed her initial questionnaire for Public Trust Positions (SF-85P). In response to "Question 22: *Your Financial Record: b: Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government,*" she answered "No," and did not disclose the 17 debts listed in

the SOR. On September 17, 2008, Applicant completed another SF-85P. In response to “*Question 22: Your Financial Record: b. Are you now over 180 days delinquent on any loan or financial obligation,*” she answered “No,” and again did not disclose the 17 debts. She interpreted the questions as seeking information about current debts and obligations, not old debts. (Tr. 31.) She did not know until her meeting with an investigator in December 2008 that she owed money to the university. (Tr. 34.) She denied that she intentionally falsified the SF-85Ps. (Tr. 30-31.) Her explanation for the omissions is credible.

On December 2, 2008, Applicant’s employer asked her to complete an e-QIP that same day. She did not know that the application related to obtaining a secret security clearance or the significance of accurate disclosure. She thought it was required for updating her records. She did not realize that she needed a credit report or other financial records available. (Tr. 73; GE 1) In response to “*Section 27: Financial Record b. In the last 7 years have you had your wages garnished or had any property repossessed for any reason,*” she answered “No.” She was unaware that a timeshare property, on which she stopped making payments in early 2000s because she could not afford the payments, became a repossession in July 2003. She denied that she intentionally withheld that information from the Government. (Tr. 25-27; GE 5.) Her explanation for the omission is credible.

In response to “*Section 28. Financial Delinquencies: Your Financial Delinquencies: a. In the last 7 years, have you been over 180 days delinquent on any debt(s),*” and “*Section 28: b. Are you currently over 90 days delinquent on any debts(s),*” she answered “No,” and did not list the 17 delinquent debts alleged in the SOR. She knew that she had old debts, but did not think they fell within the seven-year time frame because she obtained a mortgage in 2002, which she knew required an acceptable credit rating, and she had not received any information about the debts over the years. As to debts delinquent more than 90 days, she again interpreted the question to inquire into the status of current on-going obligations. She was not delinquent on those obligations. She denied that she intentionally withheld the information. She emphasized that she did not have her credit report or financial records available when her employer asked her to complete the form in one day. (Tr. 29.) Her explanations for the omissions are credible.

Applicant was a candid and forthright witness. She demonstrated an in-depth knowledge about her financial situation and delinquent debts. She exhibited a strong sense of fiscal responsibility. She was remorseful about her unpaid earlier delinquent debts, but asserted her commitment to living debt free and resolving her obligations.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and has the ultimate burden of persuasion as to obtaining a favorable clearance 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.

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."

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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 ¶ 19 describes two conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated the majority of her delinquent debt between 2000 and 2004, when she had insufficient money to pay them. In early 2009, she began to resolve them. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 provides conditions that could mitigate 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.

The bulk of Applicant's debts accumulated six to ten years ago, when she purchased a home that she intended to rent for a year. When her tenants left after two months instead of one year, she was unable to pay both the mortgage and previously incurred debts because of her limited income. As a result, she ceased paying older debts, which then became delinquent. Given her present salary, those circumstances are unlikely to recur and do not cast doubt on her current judgment. AG ¶ 20(a) applies.

Similarly, AG ¶ 20(b) has some application due to the unforeseen circumstances mentioned above. However, this mitigating condition has limited application because she did not present any documentation to demonstrate that she attempted to manage the debts until early 2009, after she learned of the Government's security concerns.

Applicant presented evidence that shortly after learning of her delinquent debts she sought credit counseling in early 2009. She participated in a 13-week financial planning course and obtained additional credit counseling in October 2009. At this time, she has paid three debts, is paying one of the debts, successfully disputed three debts, and has attempted to resolve the remaining ten debts with her attorney's assistance. There are clear indications that the problem is being resolved and is under control, warranting the application of AG ¶ 20(c). Her payments to four creditors demonstrate a good-faith effort to pay and resolve debts, and trigger the application of AG ¶ 20(d). She is also willing to pay the outstanding debts, if she is able to locate the current creditor.

Applicant disputed numerous debts listed on her credit bureau reports. As a result, at least three debts were deleted from recent credit bureau reports. She provided proof of those disputes, which is sufficient for the application of AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

Guideline E, Personal Conduct

The security concern pertaining to the guideline for personal conduct is set out in AG ¶ 15:

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.

The Government alleged in SOR ¶ 2.a that Applicant falsified questions related to her delinquent debts on two SF-85Ps and an e-QIP; to wit, she failed to disclose a timeshare repossession and debts that were more than 90 and 180 days delinquent. The Government contended that those omissions may raise a security concern and be disqualifying under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that she intentionally omitted information about the delinquent debts. When a falsification allegation is controverted or denied, the government has the burden of proving it. An omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. (See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004))

Applicant explained that she misinterpreted the questions on the SF-85Ps. She thought the questions inquired whether her current obligations were delinquent and not whether she had ever had delinquent debts. After reviewing the language of the questions, her explanations are credible. On the day that she was required to complete the e-QIP, she did not have a CBR to review or her financial records. She was unaware of the importance of accuracy while filling out the form, and in fact, did not realize that it was a security clearance application. At the time, she did not know that a previously purchased timeshare had become a repossession in 2003. Although she knew she had old debts, she did not think they fell within the seven-year timeframe, especially given the knowledge that she obtained a mortgage in 2002. As to the debts older than 90 days, she again misinterpreted the question as she had done in the SF-85Ps. Based on her demeanor and candor while testifying, her explanations are credible. The omission of the information may have been the result of a lack of diligence, but it was not intentional. Hence, the evidence did not establish deliberate falsification. The allegations contained in SOR ¶ 2 are found in her favor.

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

- (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 include 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. Applicant is a 37-year-old intelligent, candid, and hard-working woman. She has successfully worked for federal contractors since 2005 and within the last two years has obtained significant salary increases. Prior to 2004, she accumulated delinquent debt that she chose not to address because of limited income and possible immaturity. After learning of the Government's concerns regarding her delinquent debts in December 2008, she obtained credit counseling and financial planning. She assumed responsibility for her debts and pursued resolution of them. She is committed to financial solvency and established a budget that accommodates her goal. Based on the evidence and her testimony, it is unlikely that similar financial problems will recur, as she is aware of the negative effect that future delinquencies will have on her eligibility to maintain a security clearance and retain her employment.

Overall, the record evidence leaves me without doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under financial considerations and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.q:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a through 2.d:	For Applicant

Conclusion

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

SHARI DAM
Administrative Judge