



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



In the matter of:)	
)	
)	ISCR Case No. 09-02294
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

April 21, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Applicant signed her Electronic Questionnaire for Investigations Processing (e-QIP) on October 21, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on October 22, 2009. 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) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on October 27, 2009. She answered the SOR in writing on November 24, 2009, and requested a hearing before an administrative judge. DOHA received the request on November 25, 2009. Department

Counsel was prepared to proceed on December 7, 2009, and I received the case assignment on January 14, 2010. DOHA issued a notice of hearing on February 2, 2010, and I convened the hearing as scheduled on February 24, 2010. The Government offered five exhibits (GE) 1 through 5, which were marked and admitted into evidence without objection. Applicant testified on her own behalf. She submitted five exhibits (AE) A through F, which were marked and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on March 11, 2010. I held the record open until March 24, 2010, for Applicant to submit additional matters. On March 22, 2010, Applicant requested an additional 14 days to submit her documentation. For good cause shown, I held the record open until April 7, 2010 in an order issued on March 23, 2010. Applicant submitted Exhibit G (15 pages), without objection. The record closed on April 7, 2010.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, and 1.e of the SOR, with explanations. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶ 1.d of the SOR, as well as the reasons for the Government's security concerns.¹ She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 41 years old, works as a technical project lead for a Department of Defense contractor. She manages a staff of programmers, web developers, and infrastructure personnel. She started working for her employer in April 2003 at the help desk. Her employer rated her outstanding in her last two performance evaluations. Her managers describe her as impressive person and hard worker. Both believe she is a person of integrity and recommend her for a security clearance without reservation.²

Applicant earned a bachelor of science degree in April 2000. At this time, she worked as an executive assistant for a large manufacturing company in the textile industry. Applicant and her husband married in 2000 and have a daughter who is 10 years old.³

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted).

²GE 1; AE B; AE C; Tr. 21.

³GE 1; Tr. 21.

In 2001, Applicant's textile employer undertook companywide restructuring and offered a voluntary layoff to many employees. After learning from her supervisor that the plant would probably close in a few years, Applicant accepted the voluntary layoff. She received severance pay based on her years of service and returned to school for two years to learn computers. She received an associate's degree in computers, which included prerequisite courses needed to enroll in a master's degree program. She is currently working towards a master's degree in business administration.⁴

In March 2002, Applicant's husband started a business. She worked with marketing, data base development, and finances for the business, which ended by the end of 2002 or early 2003. The business created a lot of stress for them and the stress caused them to separate in late 2002. These two events created significant financial problems for them. After their separation, Applicant started looking for employment. She accepted a job with her current employer in April 2003 at a salary of \$35,000. When the business ended, her husband also sought and obtained employment.⁵

Applicant's financial problems began in late 2002 when she and her husband separated and he ended his business. They had debts from his business as well as their own debts. They decided to sell their townhouse and placed it on the market in December 2002. At the same time, they decided to sell their Ford Expedition. Her father offered to assume the monthly payments on this vehicle. However, he did not make the payments as promised. Applicant retrieved the vehicle and sold it. She purchased a less expensive vehicle for herself. They sold their townhouse in February 2004 and paid the mortgages on this house with the proceeds.⁶

In 2003, Applicant moved into a two-bedroom trailer. Her parents helped her pay some of her bills and provided money for her to purchase the trailer. She incurred a \$14,000 debt to her parents, which she has paid. From March 2003 until August 2005, Applicant's husband provided financial support to his seriously ill mother. His mother did not work, did not have medical insurance, and did not qualify for state medical assistance programs. He provided \$500 to \$600 a month for food and medicine, and his sister also provided financial support to his mother. His mother died in July 2005 and they helped pay the funeral costs.⁷

In 2003, Applicant met with a financial counselor. After this meeting, Applicant decided to pay her bills and not to file bankruptcy. She paid her smaller bills and what

⁴GE 1; Tr. 22-23.

⁵GE 2; Tr. 22-24.

⁶Tr. 25.

⁷*Id.* 23, 25-27.

she could on her larger debts. In 2004, Applicant and her husband reconciled and are still together.⁸

Between October 2004 and March 2006, Applicant paid three credit card debts, totaling more than \$6,600, through negotiated settlements. She paid her debt to her parents by 2008. In 2009 and prior to the issuance of the SOR, Applicant resolved four smaller debts. After the issuance of the SOR and before the hearing, Applicant resolved two more smaller debts.⁹

When her debts became unmanageable, Applicant tried to negotiate payment plans with her creditors, but the creditors would not cooperate. Over time, the amount owed increased many times above the original amount owed. In 2008, Applicant met with the financial counselor at the bank. Her parents, who are financially sound, participated in this meeting as she trusted them to help her.¹⁰

DOHA prepared and forwarded interrogatories to Applicant in May or June 2009, listing 10 debts owed by Applicant. Applicant responded to the interrogatories on July 6, 2009. Her answers indicated that the first debt listed (a) was the same as the eighth (h) and ninth (i) debts listed, and that the seventh debt (g) was the same as the tenth debt (j) listed. The SOR contains only four of these debts (allegations 1.b through 1.e).¹¹

In 2009, Applicant's gross salary totaled \$67,529 and husband's gross salary totaled \$47,742. Their net monthly income in 2009 averaged about \$6,700 a month. Applicant prepared a budget, which shows a net monthly income of \$6,900 and monthly expenses of \$4,422, leaving a monthly remainder of \$2,480. She also provided information showing that she pays her mortgage payment, her car payments, her daughter's college fund, and various credit cards every month. Her records reflect that she has sufficient income each month to pay her bills.¹²

Applicant saved her money to pay her debts listed in the SOR. She paid the \$358 medical bill in allegation 1.a on December 3, 2009, and the \$760 debt collection account in allegation 1.d for a communications bill on January 21, 2010, after disputing this bill. She also resolved the \$15,000 collection account in allegation 1.e. on December 15, 2009.¹³

⁸*Id.* 25, 28

⁹AE E.

¹⁰Tr. 29, 49.

¹¹SOR; GE 2.

¹²AE D.

¹³AE E.

The creditor for the \$12,000 debt in allegation 1.b obtained a judgment against Applicant in December 2006. At the time of the hearing, Applicant, through her attorney, has been negotiating a settlement of this debt. The parties reached an agreement to resolve this debt in March 2010, and Applicant paid the settlement March 24, 2010. The attorney for the creditor notified the court and authorized the judgment to be cancelled.¹⁴

The credit card debt in allegation 1.c remains unpaid. At the present time, Applicant does not know which creditor, if any, owns this debt. The creditor listed in the SOR no longer owns the debt. However, before the creditor sold the debt, she talked with its representative. During the summer of 2009, she reached a tentative agreement to settle her debt. Before she made the payment, she discussed it with her husband and her attorney. She had asked her attorney to resolve many of her past debts because she had been unable to do so. This credit card debt was a debt she had requested him to resolve. She needed to know what he had accomplished. She called the creditor several months after the tentative agreement had been reached. This is when she learned that the debt had been sold again. At this time, she has funds to pay the debt, but cannot pay it because she does not know to whom she should pay the debt.¹⁵

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 conditions and mitigating conditions, which are used 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.

¹⁴AE F; Tr. 30, 41-42, 46-48.

¹⁵AE AE; Tr. 32-33, 41-42, 52.

Under 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. . . .” An applicant has the ultimate burden of persuasion for 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 an 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated significant delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these disqualifying conditions.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when “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.” Applicant’s financial worries arose about seven years ago and have continued until very recently. Thus, this mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant’s financial problems began a year after she accepted a voluntary layoff from her employer, her husband ended his small business, and they separated in the late fall 2002. Although she was attending school full-time when these events occurred, she immediately started looking for work. She decided to sell her townhouse and Ford Expedition. These decisions show that she acted reasonably under the circumstances in which she found herself in late 2002. Her husband helped her with their debts. In addition to these immediate problems, over the next several years, her husband provided financial support to his seriously ill and income-deprived mother, which impacted their ability to pay their debts, even after they reconciled in 2004. This mitigating condition applies this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Applicant twice sought financial counseling, once in 2003 and once in 2008. She decided not to file for bankruptcy in 2003, but to pay her debts. She tried to develop payment plans with her creditors, but not all of them would work with her. Between 2004 and 2006, she paid three past-due credit card debts and her smaller debts. Her parents provided \$14,000 in financial support to her in 2002 and 2003. She did not take advantage of her parents’ financial help; rather, she repaid them the money she borrowed. She paid several additional small debts in 2009, when she realized she had not resolved these debt. Applicant continued to work towards a resolution of her remaining debts after the issuance of the SOR and after the hearing. With one exception, she has paid all the debts listed in the SOR. She finally settled the judgment after months of negotiations. She cannot pay the one remaining debt because she does not know the current owner of the debt. Her current monthly expenses and debts are being paid and are under control. This mitigating condition applies.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” From 2004 through 2008, Applicant, on her own initiative, worked to resolve her debts, including the debt she owed her parents. She successfully resolved three credit card debts which are not listed on the SOR. Because she encountered difficulties resolving some of her old debts, she retained a lawyer to help her resolve more of her debts. With his assistance and her own work, she resolved several of the debts listed in the SOR. She has demonstrated a good-faith effort to resolve her debts. She is now financially sound and has sufficient monthly income to manage unexpected expenses. I conclude this mitigating condition has partial applicability.

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 an applicant’s conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. The decision to grant or deny a security

clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began primarily when she and her husband separated and he discontinued his small business. Her lack of employment while attending school full-time contributed to their financial problems, which included significant business and personal credit card debt. When they realized that they could not pay all their debts, they made a difficult decision to sell their house. They also sold a vehicle and purchased a less expensive vehicle.

During the last seven years, Applicant, on her own and with her husband, has worked to resolve her past debts and rebuild financial security. She and her husband have been steadily employed since 2003. During this time, their income has steadily increased, enabling them to repay old debts and to pay current living expenses and debts. Applicant never ignored her past debts. She paid them one at a time. She tried to work with her creditors, achieving success with some but not others. She sought financial counseling on two occasions and retained an attorney to help her resolve her remaining old debts. She still has to pay one old debt, but cannot do so at this time as the actual creditor is not known. She is a solid and stable individual. She accepted responsibility for her debts and paid them. Her supervisors think highly of her and her work record is commendable. She has a stable domestic environment for her family. Most significantly, she has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) Her one unpaid debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. Her finances are stable and are insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances under Guideline F.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

MARY E. HENRY
Administrative Judge