



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



In the matter of:)	
)	
)	ISCR Case No. 09-02769
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro Se*

September 14, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Positions (SF 86) on November 28, 2008 as a requirement for her employment with a defense contractor (Item 5). On May 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F (Item 1). 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 May 20, 2009.

Applicant answered the SOR in writing on June 5, 2009. Applicant admitted all but three of the 16 allegations in the SOR (Items 4). She elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on July 7, 2009. Applicant received a complete file of relevant material (FORM) on July 13, 2009, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying

conditions. Applicant responded and provided additional information on August 10, 2009. On August 12, 2009, Department Counsel noted no objection to consideration of the additional material. The case was assigned to me on August 19, 2009. Based on a review of the case file and pleadings, eligibility for access to classified information is granted.

Findings of Fact

I thoroughly reviewed the case file, and the pleadings. I make the following findings of fact.

Applicant is 39 years old and has been employed as an administrative assistant for a defense contractor since October 2008. She is divorced with no children. In approximately 1999, Applicant's parents experienced long term illness and Applicant left her job to care for them full time. She did seek some part-time work and temporary work when her care schedule permitted. Her father passed away in 2001, and Applicant sought public assistance for her mother's care. Her mother did not qualify for public assistance, so they subsisted on her mother's social security benefits, and Applicant's temporary and part-time income. They eventually received some public assistance enabling Applicant to work more. She and her mother were able to live comfortably on this income while also cutting back on expenses until her mother passed away in 2006.

Applicant started working full time and paying some of her delinquent debts after her mother passed away. She was laid off in March 2007 and was unemployed for ten months. She drew unemployment for this time. In September 2007, Applicant also experienced a fire in her apartment building resulting in property loss and requiring her to move, thus incurring additional expenses. She found full time work in December 2007, and she started again to pay some of her delinquent debts. In September 2008, she started living rent free with a friend (Item 4). Applicant again became unemployed in August 2009 when her access to classified information was suspended based on the SOR. She started drawing unemployment again but she has continued to honor the agreements and settlements she entered with creditors (Response to FORM, dated August 10, 2009).

Credit reports show delinquent debt for a judgment for a department store of \$359 (SOR 1.a); a utility debt in collection for \$1,751 (SOR 1.b); a television service account placed for collection for \$671 (SOR 1.c); another collection account for \$197 (SOR 1.d); a television cable account placed for collection for \$346 (SOR 1.e); a cell phone account placed for collection for \$311 (SOR 1.f); a store debt placed for collection for \$35 (SOR 1.g); a credit card debt placed for collection for \$606 (SOR 1.h); a credit card account placed for collection for \$620 (SOR 1.i); a rent account placed for collection for \$7,014 (SOR 1.j); another rent account to the same company placed for collection for \$3,671 (SOR 1.k); a veterinary debt placed for collection for \$1,061 (SOR 1.l); a cell phone account placed for collection for \$850 (SOR 1.m); a debt to the state placed for collection for \$469 (SOR 1.n); a cell phone debt placed for collection for \$475

(SOR 1.o); and a car insurance debt placed for collection for \$561 (SOR 1.p). Applicant admitted all debts except 1.j, 1.k, and 1.m.

In her response to the SOR, Applicant noted she is negotiating a settlement with the creditor for the debt in SOR 1.a. She made arrangement with the creditor for SOR 1.b and is making \$50 monthly payments until the debt is paid in full. She reached a settlement with the creditor for SOR 1.c and presented receipts to establish the debt was paid in full. She presented receipts to show that the debt in SOR 1.d was paid in full in May 2009. She reached a settlement with the creditors for SOR 1.e and 1.f and is making payments on the accounts. She presented a receipt to show payment in full of the debt at SOR 1.g. Applicant noted she is making payments on the debt at SOR 1.h. She settled the debt at SOR 1.i for \$351.70 and is paying \$58.50 monthly until the debt is paid. She presented documents to show that the debts in SOR 1.j and 1.k are the same and are in dispute with a court action scheduled for August 2009. Applicant negotiated payment plans with the creditors for the debts listed at 1.l, 1.n, 1.o, and 1.p. Applicant is making payments according to the plans. Applicant contacted the creditor for the debt at SOR 1.m to learn about the debt but the creditor has not responded (Item 4).

In response to the FORM, Applicant stated that she had financial problems because of circumstances beyond her control, that is, her parents' illnesses and the fire that destroyed her property and required her to move. She learned from these experiences how to prioritize payment of her bills and debts and cut expenses. She is now working to restore her financial situation. She presented documentary information to show payments to creditors of \$1,145 from June 2009 until her response to the FORM in August 2009. She has been able to continue these payments despite having been suspended from her job after the SOR was issued. She is again drawing unemployment as the source of her income. She presented documents to show the dispute of the debts listed at SOR 1.j, and 1.k was resolved, and she is making payments on the settlement. She also presented documentation of her consultation with a credit counselor (Response to FORM, dated August 10, 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 over-arching 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 established by credit reports and Applicant's admissions to most of the debts raises 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). The information from credit reports and responses to interrogatories show that she had an inability to satisfy debts and establishes that there is a history of her not meeting financial obligations.

I considered Financial Considerations Mitigating Conditions (FC MC) ¶ 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). Applicant's financial problems started in 1999 when she had to leave her employment to care for her ill parents. She worked part-time or intermittently while caring for them until 2006 when her mother passed away. She incurred further debt in 2007 when she lost work for ten months and suffered a loss in a fire. The circumstances causing her debt were beyond her control. Since her parents are deceased, these circumstances should not recur. She acted responsibly under the circumstances by working when she could and cutting expenses. She has acted responsibly under the circumstances by paying her debts when she could and now negotiating payment plans with creditors. The mitigating conditions apply.

I considered FC MC AG ¶ 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). Applicant presented documentation to establish she sought and received assistance from a credit counseling organization. She has a plan to resolve her finances and is making payments on that plan so there are clear indications that her financial problems are being resolved.

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 presented information to show she paid six of the debts, negotiated payment plans for the remaining debts, and is paying those debts according to the payment plans. Applicant appears to have sufficient resources to make the agreed payments on her delinquent debts. She presented a concrete plan to pay her delinquent debts. Her plans to pay debts incurred by circumstances beyond her control are reasonable, prudent, and honest. She started paying the debts before applying for a security clearance so her plans are not entirely motivated by requirements for a security clearance. Applicant presented sufficient information to establish a good-faith effort to pay creditors or

resolve debts. Her finances are under control and she has acted responsibly. She mitigated security concerns for financial considerations.

“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.

Appellant has to show 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 his 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.

Applicant was able to establish a "meaningful track record" of debt payment by presenting sufficient information to show she is taking sufficient, consistent, reasonable, and responsible action to resolve her financial issues. She contacted the creditors listed on her credit reports, paid some of the debts and negotiated payment plans for the remaining debts. Applicant demonstrated that she is managing her finances responsibly under the circumstances. The management of present finances and past obligations indicates she will be concerned, responsible, and not careless in regard to classified information. Overall, the record evidence leaves me with no questions or doubts as to Applicant’s judgment, reliability, and trustworthiness. She established that he is suitable for a security clearance. For all these reasons, I conclude Appellant has mitigated the security concerns arising from her financial situation. Clearance is granted.

Formal Findings

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
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	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.

THOMAS M. CREAN
Administrative Judge