



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



In the matter of:)
)
-----) ISCR Case No. 09-02895
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

June 18, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind on several consumer credit card accounts in 2007 and 2008, when she was in college and her spouse held odd jobs following a job layoff. With some financial assistance from her parents and full-time employment with a defense contractor, Applicant has settled four debts over the past year. Her progress in resolving her debts has been hampered by having to file for divorce from her abusive spouse. She also took out a new loan to pay private school tuition for her young son. As of April 2010, she owed more than \$12,000 in delinquent consumer credit debt. Based on her track record of debt repayment, she is likely to continue to address her debt. Clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 23, 2008. On August 31, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny her a security clearance and to refer the matter to an

administrative judge. 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 as of September 1, 2006.

Applicant submitted an undated response to the SOR and requested a hearing. On October 7, 2009, the case was assigned to me to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 16, 2009, I scheduled a hearing for November 17, 2009.

I convened the hearing as scheduled. Five Government exhibits (Ex. 1-5) and three Applicant exhibits (Ex. A-C) were admitted without an objection. Applicant also testified, as reflected in a transcript (Tr.) received on November 25, 2009.

The record was held open for two weeks for post-hearing submissions from Applicant. No documents were received by the December 1, 2009 due date. At my request, Department Counsel confirmed with Applicant on June 1, 2010, that she had been unable to locate the documents she had planned to submit. In response to an assertion from Applicant that she had paid three debts, Department Counsel told her to fax proof of payment directly to me. On June 10, 2010, I notified Applicant that any documents had to be received within the next five days. Applicant immediately faxed a one-page record documenting satisfaction of the debt in SOR 1.d. The document was admitted as Exhibit D with no objections from the Government.

Findings of Fact

DOHA alleged under Guideline F, Financial Considerations, that Applicant owed delinquent debt totaling \$13,156 to six creditors as of August 2009 (SOR 1.a-1.f). Applicant admitted the debts without explanation. After considering the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 23-year-old senior mechanical draftsman, who has worked for a defense contractor since September 2008. (Ex. 1, 2.) She requires a secret-level security clearance for her duties. (Ex. 1.) She has two children, ages five and three, who she supports financially with no help from her spouse, from whom she is now estranged. As of November 2009, their divorce was pending. (Tr. 42-43.)

Applicant and her spouse married in September 2004, when she was 18 and he was 38. She had just started her last year of high school, and he was a construction worker. (Ex. 1, Tr. 29.) Since he had a poor credit record, Applicant opened credit card accounts in her name, including those identified in the SOR. She paid the balances in full initially, but then made only the monthly minimum payments because she was told it would improve her credit score. (Tr. 55.) In September 2005, she also took out an automobile loan of \$13,199, to be repaid at \$331 per month. (Ex. 4, 5, Tr. 29.)

In 2006, Applicant began attending a technical college toward a degree in architectural engineering. (Ex. 1, Tr. 29.) She financed her education through student loans of \$11,385 in September 2006, \$6,886 in April 2007, \$3,000 in July 2007, and \$2,667 in September 2007 (Ex. 4). After she earned her associate degree in December 2007 (Ex. 1.), Applicant continued her studies toward a bachelor's degree. In January 2008, she borrowed another \$16,982, and in September 2008, another \$1,212. (Ex. 4.)

To help out financially, Applicant worked at a local coffee shop from October 2007 to March 2008 at \$8.50 per hour plus tips. (Tr. 56, 72.) After her spouse was laid off in July 2007, she could not longer afford even to make the monthly minimum payments on several accounts (Tr. 29, 35-36.), as set forth in the following table.

Debt	Delinquency history	Payment status as of November 2009
Charged off credit card debt \$5,659 (SOR 1.a)	Revolving charge opened Jun. 2005, \$5,196 high credit for collection Dec. 2006, \$5,196 balance as of Oct. 2008 (Ex. 4.), \$5,659 balance as of Jul. 2009. (Ex. 5.)	Unpaid. (Tr. 49.) No contact with the creditor since about Jul. 2008. (Ex. 2.)
Collection debt \$750 (SOR 1.b)	Revolving charge opened Mar. 2006, \$750 high credit, last activity Nov. 2007, for collection Sep. 2008 (Ex. 4.), \$750 balance as of Jun. 2009. (Ex. 5.)	Does not recognize debt and had made no attempt to verify it as of Nov. 2009. (Tr. 52.)
Collection debt \$760 (SOR 1.c)	Revolving charge opened Apr. 2006, \$595 high credit, last activity Aug. 2007, \$725 balance for collection Aug. 2008, balance \$732 as of Oct. 2008 (Ex. 4.), \$760 past due as of Jun. 2009. (Ex. 5.)	Unpaid. (Tr. 53.)

Collection debt \$783 (SOR 1.d)	Revolving charge opened Apr. 2006 for a television (Tr. 51.), \$702 high credit, last activity Sep. 2006, for collection Oct. 2007, balance \$750 as of Oct. 2008 (Ex. 4.), \$783 past due as of Jun. 2009. (Ex. 5.)	No contact with creditor as of Nov. 2009 (Tr. 49, 51.), settled as of Apr. 2, 2010. (Ex. D.)
Collection debt \$5,018 (SOR 1.e)	Revolving charge opened Nov. 2005, \$3,300 credit limit, last activity Jun. 2006, \$3,842 balance for collection Nov. 2007, \$4,501 past due as of Oct. 2008 (Ex. 4.), \$5,018 balance as of Jun. 2009. (Ex. 5.)	Unpaid. (Tr. 49, 54.)
Collection debt \$186 (SOR 1.f)	Revolving charge opened Mar. 2006, \$100 credit limit, last activity Feb. 2007, balance \$171 as of Oct. 2008 (Ex. 4.), for collection Dec. 2008, balance \$186 as of Jun. 2009. (Ex. 5.)	Last contact Oct. 2009, no success reaching current collection agency. (Tr. 51-52.)
Collection debt \$1,119 (not alleged)	Revolving charge opened Oct. 2005, last activity Sep. 2007, \$1,119 balance in collection as of Oct. 2008. (Ex. 4.)	Paid \$750 in settlement in Jan. or Feb. 2009. (Ex. 5, Tr. 30, 36, 38.)
Collection debt \$362 (not alleged)	Gasoline credit card with \$300 credit limit, assigned for collection Nov. 2006. (Ex. 2, 4.)	Settled as of Jul. 2009. (Ex. 5.)
Cancelled credit card account \$1,092 (not alleged)	Revolving charge opened Jan. 2006, credit limit \$1,300, as of Aug. 2008 past due 90 days, closed by credit grantor. Balance \$1,092 as of Oct. 2008. (Ex. 4)	Paid \$330 in May, Jun. and Jul. 2009 to satisfy debt. (Ex. 2, 5, Tr. 30, 36-38.)

By December 2007, Applicant was seriously delinquent on her automobile loan. The car was repossessed in about March 2008, but she redeemed the vehicle four days later and paid off the debt with \$9,000 of the proceeds from her spouse's 401(k) account. (Ex. 2, Tr. 58-59.) Another \$5,000 of his 401(k) monies went to pay back rent. (Tr. 58-59.)

Applicant worked as a substitute teacher during the first half of 2008. (Ex. 1, 2, Tr. 56-57.) She was paid \$80 a day. Initially, she worked two or three days per week. Toward the end of the academic year, she worked five days a week. (Tr. 72.) Her spouse held odd jobs, but he would not help her make the payments on the credit card obligations which were in her name. (Ex. 2.)

Applicant started working as a mechanical draftsman for her current employer in September 2008 at \$17.54 per hour. (Ex. 1, Tr. 30, 48.) On her e-QIP completed on October 23, 2008, she disclosed that she and her estranged spouse had separated in early October 2008, and that she owed \$4,000 in delinquent credit card debt to the creditor identified in SOR 1.a because her spouse had been laid off. (Ex. 1.) Her spouse had been abusive to her, and she obtained an abuse prevention order against him in October 2008. (Tr. 39-40.)

On December 23, 2008, Applicant was interviewed by a government investigator about her financial delinquencies. She did not dispute that she owed the debts identified in SOR 1.a, 1.c, 1.d, and 1.e, as well as the \$1,119 and \$362 credit card debts not alleged. The creditor in SOR 1.a demanded an unaffordable lump sum payment of more than \$4,000. She expressed an intent to attempt settlements with her creditors in the near future. Concerning the debt identified in SOR 1.d, she planned to contact the creditor later that day and pay it off. Applicant related that she had repaid a few of her accounts between September and November 2008, including the debt identified in SOR 1.f, although available records show that the debt had not been satisfied a year later. Applicant did not recognize the debt identified in SOR 1.b. She claimed she would not have opened the credit card accounts if she had known that her spouse was going to lose his job. (Ex. 2.)

Applicant paid \$750 to settle the \$1,119 credit card debt (not alleged) in February or March 2009. (Ex. 5, Tr. 30, 36, 38.) In May 2009, she paid an attorney \$2,000 to file for divorce. (Tr. 31-32.) She saved up \$1,500 by putting away \$50 when she could, and her parents gave her the rest. (Tr. 70-71.) On May 30, 2009, Applicant admitted to DOHA that she had not settled the debts in the SOR. She indicated that she would pay the debt in SOR 1.f within the week, and that she would then address a \$362 gasoline credit card debt (not alleged). (Ex. 3.) A check of Applicant's credit on July 13, 2009, confirmed that she settled the \$362 credit card debt as promised, but the debts in the SOR remained outstanding. Her student loans were in deferment. (Ex. 5.)

In late September 2009, Applicant was awarded her bachelor of science degree. (Tr. 44.) Her son began attending a private preschool at a cost of \$10,000 for the ten-month school year. Tuition payments were due from June 2009, and she used part of her \$2,225 income tax refund for his tuition. She also took out a loan to cover some of

the tuition, although her parents were helping her by paying half of their grandson's tuition costs. (Tr. 61-63.) As of November 2009, about \$6,000 of her son's tuition for the 2009/10 school year had been paid. (Tr. 63, 73.) Her parents were not willing to help her repay her delinquent consumer credit debts. (Tr. 65.) Applicant did not have daycare costs for her daughter, who was being cared for by Applicant's sister when Applicant was at work. (Tr. 63.)

In October 2009, Applicant secured a renewal of the abuse prevention order. Her estranged spouse violated the order by not staying away from her, and he was in jail as of her hearing in November 2009. (Tr. 40.) She had paid her divorce attorney an additional \$250 since May 2009,¹ and her divorce hearing was scheduled for March 2010. (Tr. 32-33)

Applicant owes more than \$30,000 in student loan debt for her education² that she began repaying at \$153 per month in October 2009. (Tr. 45-46.) Her parents cosigned on the loans for her. (Tr. 65.)

On November 1, 2009, Applicant's hourly wage increased to \$20.19 from \$19.74. (Tr. 48.) She and her children have been living with her parents since about October 2008. Two months into her current employment, she began paying her parents rent at \$450 per month. (Tr. 64-65, 73.) Since May 2009, if not before, she has also been paying them \$200 per month toward the utilities. (Ex. 3, Tr. 64-65.) As of November 2009, Applicant was setting aside \$100 per week for paying off her old debts. She had \$300 saved that she intended to put toward her credit card debt. (Tr. 31-32.) She had little to nothing in additional discretionary funds (Tr. 68-69.), due in part to commuting costs. She works ten-hour days, four days a week, and drives 87 miles one way to work. (Tr. 84.) Any extra funds go into a savings account for emergency expenses. In early November 2009, she was out of work for a week due to illness. While it was paid leave, she incurred a \$600 emergency room bill that she has to repay. (Tr. 80-82.) As of April 2, 2010, Applicant settled the debt in SOR 1.d. (Ex. D.)

Applicant proved to be a fast learner in her first year on the job with the defense contractor. She takes pride in her work and has been a team player. Her supervisor and coworkers have found her to be responsible and reliable, and of good moral character. (Ex. A, B, C.)

¹Applicant testified that the retainer fee was \$1,000, the fee to file for divorce was \$220, and her attorney was charging her \$220 an hour. (Tr. 32.)

²Her December 2008 credit report (Ex. 4) lists eight student loan accounts totaling \$46,816. Applicant's July 2009 credit report (Ex. 5) lists ten student loan accounts totaling \$56,133. Three of the loans were taken out between September and October 2008 in the total amount of \$16,136. Applicant testified that each quarter or trimester of her college was \$5,500 and that at the end of the "term," she owed roughly \$30,000. (Tr. 45.) It is unclear whether some of this debt is for her son's preschool, or whether some of the student loan entries are not new debts but rather represent consolidation amounts.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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. 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 that 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).

Analysis

Guideline F, Financial Considerations

The security concern about finances 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.

Applicant incurred credit card debts in her name during her marriage while she was in college and her spouse was employed. She initially paid the balances in full, but then paid only the monthly minimums after she was told that it would improve her credit score. She stopped paying on several accounts after her spouse was laid off around July 2007. By October 2008 when she filed her e-QIP, she owed \$12,100 on the delinquent accounts identified in the SOR, and \$2,573 in additional consumer credit card debt that was not alleged. AG ¶ 19(c), "a history of not meeting financial obligations," applies. AG ¶ 19(a), "inability or unwillingness to satisfy debts," is also implicated in that she did not have the funds to make timely payments on those obligations.

Concerning potential factors in mitigation, there are no accounts that have recently fallen delinquent. Yet, with limited exception, her delinquent debts have not been resolved. Under the circumstances, 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," does not apply.

AG ¶ 20(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," applies in part. The debts were incurred voluntarily, but her spouse's unforeseen layoff from his job, and his inconsistent employment thereafter, had a negative impact on their finances. Applicant earned \$80 per day working as a substitute teacher during the spring of 2008, but her income was insufficient to cover their living expenses and her credit card obligations. When her spouse was laid off, he received a 401(k) payout of \$26,000. About \$9,000 went to redeem her car from repossession and satisfy her loan. Another \$5,000 went to pay back rent. However, he refused to pay any of the credit card debt that was only in Applicant's name, even though the debt was incurred during their marriage. They had an abusive relationship, and Applicant was apparently not in a position to demand that he cover the marital debts. Nor was she in a position financially to make the payments on her own.

Applicant's personal situation has changed significantly since October 2008. She has been consistently employed full time by a defense contractor, and she has been living with her parents, to whom she pays \$450 per month in rent and \$200 in utility costs. Her parents paid about \$500 of the legal fees for her divorce. They are also

paying half of her son's \$10,000 preschool tuition for this school year. For AG ¶ 20(b) to fully apply, Applicant must have acted responsibly, which would include taking steps as required to address her obligations once the financial crisis had passed. One has to question Applicant's financial judgment in taking on a new loan to pay for private preschool tuition for her son when she owed delinquent consumer credit debt of about \$13,156, and more than \$30,000 in student loans that would have to be repaid starting around October 2009. It is understandable that Applicant would want the best for her son, and she might otherwise have had costs for daycare or an alternate preschool placement. But she only adds to her debt burden by taking on a new loan.

Applicant's settlement of three delinquent accounts not alleged in the SOR, and, most recently, the debt in SOR 1.d, implicates AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." She was aware as of the date of her interview in December 2008 that the government was concerned about her finances. She stated that she would contact the lender identified in SOR 1.d that evening and attempt to settle the \$750 debt or, if necessary, pay it in full because she had the funds available. That debt was not resolved until April 2010, but she settled three other debts (not alleged in the SOR) between February and July 2009. Additional divorce fees of \$250 and loan repayments for her son's tuition delayed further payments on her debts. Yet, she exhibited good faith in continuing to work with her creditors after her hearing, as evidenced by her recent satisfaction of the debt in SOR 1.d.

Applicant has not incurred any new delinquent debt, and she is living within her budget, albeit largely because of financial help from her parents. However, with \$600 in hospital emergency room charges incurred just weeks before her hearing and only about \$300 in savings as of November 2009, Applicant's financial struggles are likely to persist in the near future. But she has also made a credible attempt to resolve her debts on an hourly wage of around \$20 with no child support and a lengthy commute to work. While it would be premature to fully mitigate the financial concerns under 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 is likely to continue to address her debts if given the opportunity to earn the income needed.

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 conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).³ Applicant's youth and financial naivete, and the influence of a spouse some

³The adjudicative process requires assessment of the following factors:

(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

20 years older, led her to take on consumer credit obligations in her name during her marriage that she could not repay after her spouse was laid off. After Applicant and her spouse separated in October 2008, he provided no financial support for her or their two young children. Applicant showed personal determination and good judgment in continuing to pursue her bachelor's degree to ensure her family's future while beginning her career with a defense contractor. It would be unreasonable to expect Applicant to immediately address her old debts, when she was earning only \$17.54 an hour. In 2009, her hourly wage has increased incrementally to a current \$20.19. While only one debt in the SOR has been settled, she made payments to resolve three other debts not alleged. She settled a \$1,119 credit card debt for \$750 in February or March 2009, paid \$330 in May, June, and July 2009, to satisfy another debt, and resolved a \$362 gasoline credit card debt in July 2009.

The DOHA Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

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." However, an applicant is not required, as a matter of law, to establish that [she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that [she] has ' . . . established a plan to resolve [her] financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and [her] actions in evaluating the extent to which that applicant's plan for the reduction of [her] 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. 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant learned a valuable lesson in that she is not incurring any new credit card delinquencies. Her plan appears to be to address her debts one by one when she has saved the funds to make repayment arrangements. While it is going to take some time before Applicant is able to satisfy or settle her remaining delinquent debt of about \$12,373, she has established a meaningful track record of repayment over the last year. I am confident that she will continue to resolve her delinquent debt. Evidence of her good character indicates that she is not likely to engage in illegal acts that could jeopardize the employment that she needs to provide for her two young children.

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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
Subparagraph 1.f:	For Applicant

Conclusion

In light of 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.

Elizabeth M. Matchinski
Administrative Judge