



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



In the matter of:

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) ISCR Case No. 09-02995
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Applicant for Security Clearance

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro Se*

January 29, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) as part of her employment with a defense contractor on December 11, 2008. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), dated September 8, 2009, to Applicant detailing security concerns for financial considerations under Guideline F. 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 September 15, 2009.

Applicant answered the SOR on October 14, 2009, admitting seven and denying one of the eight allegations under Guideline F. Applicant provided a detailed explanation of the status of her debts. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 17, 2009, and the case was assigned to me on November 18, 2009. DOHA issued a Notice of Hearing on November 23, 2009, scheduling a hearing for December 10, 2009. I convened the

hearing as scheduled. The government offered six exhibits, marked Government Exhibits (Gov. Ex.) 1 through 6, which were admitted without objection. Applicant testified on her behalf and offered six exhibits, marked Applicant Exhibit (App. Ex.) A through F, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 23, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Issues

Applicant received the Notice of Hearing approximately December 3, 2009. Applicant is entitled to 15 days advance notice of the hearing (Directive ¶ E3.1.8). Applicant discussed with Department Counsel the hearing date of December 10, 2009, prior to the Notice of Hearing being mailed so actual notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only about one week prior to the hearing. At the hearing, Applicant waived the 15 days notice requirement (Tr. 6-7).

Findings of Fact

Applicant admitted all eight factual allegations in the SOR. I included Applicant's admission in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 38 years old, and has worked as a financial specialist for a defense contractor for approximately one year. She is a single mother with a five year old son. Applicant's monthly pay is approximately \$1,960. Her son's father has a court order to pay child support. In the past, he has not been consistent in paying the support. Since September 2009, when he was jailed for failing to pay the support, he has consistently provided the monthly support of \$800. This brings Applicant's monthly income to approximately \$2,800. Applicant now lives with her mother to save expenses, she refinanced her car loan, and her son is now in school and does not require day care. Her monthly expenses are approximately \$1,215 leaving her with about \$1,500 in monthly discretionary funds. (Tr. 33-41; Gov. Ex. 1, e-QIP, dated December 11, 2008; Response to SOR, dated October 14, 2009, at child support court order, dated August 28, 2009, and car refinance document, dated October 7, 2009).

Credit reports (Gov. Ex. 4, Credit report, dated December 29, 2008, Gov. Ex. 5, Credit report, dated April 23, 2009, and Gov. Ex. 6, Credit report, dated November 3, 2009) show the following delinquent debts for Applicant: a medical debt for \$728 (SOR 1.a); a telephone debt for \$60 (listed at both SOR 1.b and SOR 1.g), a medical debt for \$612 (SOR 1.c), a credit card debt for \$1,760 (SOR 1.d); a credit card debt for \$4,879 (and listed at both SOR 1.e and SOR 1.h); and another credit card debt for \$5,756 (SOR 1.f). The balance owed, considering that two allegations are have duplicate entries, is \$13,560.

Applicant was current with her debts until her employer of over five years lost the contract she was working and she lost employment in 2002. She lost her health insurance and had medical problems of her own that required treatment and surgery. She became pregnant and turned to state Medicaid to cover the cost of her pregnancy and the child's birth. After the child was born, Applicant could not immediately return to work because the child was sick and could not be in day care. She took a position as a nanny. After a few years, the family moved and her son was healthy enough to go to day care. Applicant was unable to pay her past due obligations when she did return to work because the cost of her son's day care and her living expenses took all of her income. Since September 2009, her financial circumstances have changed. Her son started school and no longer requires day care. She now consistently receives child support. With these changes, she has been able to start paying her delinquent debts (Tr. 18-25; Response to SOR, dated October 14, 2009, See, Medical letter for son, dated October 1, 2009, and day care expense).

Applicant provided a detailed update on the status of her debts listed in the SOR (App. Ex. A, Status list, undated). The list shows that four of the debts listed in the SOR have been paid, and two other debts are being paid under payment plans. Applicant also provided a copy of her bank statement showing payment withdrawals from her bank account to correspond to each payment made on her delinquent debts (App. Ex. C, Bank statement, dated October 30, 2009). After receiving the SOR, Applicant sought out credit counseling. She learned that some of the debts were duplicates. After confirming the actual debts to be paid, Applicant established a debt management plan (Response to SOR, dated October 14, 2009, at Letter, dated September 22, 2009).

Delinquent debt at SOR 1.a is a medical debt owed for a foot surgery. Applicant settled the debt for \$582.30. Applicant withdrew funds from her 401K account, and the debt has been paid in full (Tr. 21-22; Response to SOR, dated October 14, 2009, at exhibit A, and 401K withdrawal notice, dated September 25, 2009; App. Ex. C, Bank statement, dated October 30, 2009; App. Ex. D, paid letter, dated November 23, 2009).

Delinquent debts listed at SOR 1.b and 1 g are the same debt. The debt has been paid in full (Tr. 22-23; Response to SOR, dated October 14, 2009, at exhibit B, Letter, dated September 21, 2009; Gov. Ex. 6, Credit report, dated November 3, 2009, debt paid notice at 1).

Delinquent debt at SOR 1.c is a medical debt Applicant settled for \$459.51. Applicant used funds she withdrew from her 401k account to pay this debt in full (Tr. 23-24; Response to SOR, dated October 14, 2009, at exhibit C, letter, dated October 2, 2009, and 401k withdrawal letter, dated September 25, 2009; App. Ex. B, Debts update, undated; App. Ex. C, Bank statement, dated October 30, 2009; App. Ex E, Paid letter, dated November 7, 2009).

Delinquent debt SOR 1.d is a credit card account. Applicant settled this account for \$455.71, and the account has been paid (Tr. 14-15; App. Ex. A, Settlement letter,

dated October 20, 2009; App. Ex. B, debt update, undated; App. Ex. C, Bank Statement, dated October 30, 2009).

The delinquent debts listed at SOR 1.e and SOR 1.h are the same credit card debt. Applicant settled the debt for \$2,439.74. Applicant's agreement with the creditor is for an initial payment and then five monthly payment until the debt is paid in February 2010. Applicant made the initial payment of \$1,008, and has made four of the five monthly payment of \$367.94. The payments are automatically taken from her account (Tr. 25-30; Response to SOR, dated October 14, 2009, at exhibits E and H, letter, dated October 6, 2009; App. Ex. B, Debt update, undated; App. Ex. C, Bank statement, dated October 30, 2009; App. Ex. F, Settlement letter, date October 14, 2009).

The delinquent debt at SOR 1.f is for a credit card Applicant settled for \$2,776.81. Applicant will pay \$132 monthly until March 2010, when she will pay the remaining balance of \$1,984.81. Funds are automatically taken from her account each month to pay the \$132 (Tr. 30-33; Response to SOR, dated October 14, 2009, at Exhibit F, letter, dated October 6, 2009, App. Ex. B debt update, undated; App. Ex. C, Bank statement, dated October 30, 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 must 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. 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 to obtain 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 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:

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. The delinquent debts listed in credit reports for Applicant are a security concern raising Financial Consideration 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). Applicant incurred delinquent debt when the company she worked for lost a contract and Applicant was unemployed. She was sick and could not work. She also had a sick child which prevented her from working. Her son’s father did not provide court ordered child support. She could not pay her medical debts, and used credit cards to support herself and her son.

I considered Financial Considerations Mitigating Conditions (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment), and FC MC AG ¶ 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). These mitigating conditions partially apply. Applicant was current with her debt payments until she lost work because her company lost the contract she was working on. She also required medical care and was pregnant. When her son was born, she could not work because he was sick and she needed to care for him at home. These conditions were beyond her control, and not likely to recur. She acted reasonably under the circumstances by paying most of her delinquent debts and entering payment plans on the other delinquent debts. Since her debts have been paid or are being paid, her finances do not cast doubt on her current reliability, trustworthiness, or good judgment.

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). The mitigating condition applies. After receiving the SOR, Applicant sought and followed credit counsel. There are clear indication her debts are either paid or being paid.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ AG 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. Applicant has sufficient discretionary funds to pay her delinquent debts. She presented information to show that six of the eight delinquent debts have been paid in full. The remaining two debts are being paid under settlement payment plans and will be paid by March 2010. Applicant's action to contact her creditors and arrange and make payment of the debts and enter payment plans are good-faith efforts to repay her creditors, so the mitigating condition applies.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant must establish 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 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 actions to reduce her 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. 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.

Applicant established a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. Applicant presented sufficient information to show she is taking reasonable and responsible action to resolve her financial issues. She paid six of the eight delinquent debts. She has payment plans for the remaining two debts and is paying according to the plans. These two debts will be paid in full by March 2010. Applicant's management of her finances and past obligations indicates she will be concerned, responsible, and careful regarding classified information. Applicant mitigated security concerns based on her finances.

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

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
Subparagraph 1.g:	For Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge