



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



In the matter of:)
)
) ISCR Case No. 09-03913
)
)
Applicant for Security Clearance)

Appearances

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

January 12, 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 January 22, 2009. 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 June 30, 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 July 9, 2009.

Applicant answered the SOR in writing on July 21, 2009, providing a detailed explanation of her finances. Applicant admitted eight and denied six of the allegations under Guideline F. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 24, 2009, and the case was assigned to

me on September 4, 2009. DOHA issued a notice of hearing on October 14, 2009, scheduling a hearing for October 22, 2009. I convened the hearing as scheduled. The government offered four exhibits, marked Government Exhibits (Gov. Ex.) 1 through 4, which were received without objection. Applicant testified on her behalf and offered two exhibits, marked Applicant Exhibits (App. Ex.) A and B, which were received without objection. DOHA received the transcript of the hearing (Tr.) on November 6, 2009. I kept the record open for Applicant to file additional documents. Applicant timely filed five additional documents marked Applicant exhibits C through G, which were received without objection. Applicant exhibit G has 22 attachments. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted the factual allegations in SOR 1.a, 1.f, 1.g, 1.h, 1.i, 1.l, 1.m, and 1.n. She denied the allegations in 1.b, 1.c, 1.d, 1.e, 1.f, 1.j, and 1.k. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 44 years old and has worked as a management analyst for a defense contractor for approximately two years. She received a bachelor's degree in December 2006, and is still considered a full-time student studying for her master's degree. Applicant worked either full-time or part-time during the time she was studying for her bachelor's degree. Applicant had periods of unemployment after receiving her degree, and worked a temporary position as an administrative assistant at a hospital from October 2007 until December 2007. She also held a second job as a hair stylist during this time. She started working with the defense contractor in December 2007. When the contract she was working on lapsed, she was unemployed from October 2008 until January 2009. She worked from January 2009 until September 2009 when she was placed on unpaid leave pending the outcome of her request for a security clearance. When employed, her monthly pay is approximately \$2,400 with expenses of about \$1,800, leaving her \$600 monthly in discretionary funds. (Tr. 22-24, 43-44, 56-65; Gov. Ex. 1, Security clearance application, dated January 22, 2009).

Applicant married in September 1997. She and her husband have a son who is now a teenager. In the first years of her marriage, Applicant was employed full-time as a hairdresser. She injured her foot and could not continue to work full-time. She was apprehensive about her employment in the cosmetology industry, so Applicant started school to earn a degree and increase her chances of a good salary. She was a full-time student and a part-time hair dresser. She also became sick and had surgery in the summer of 2006 resulting in medical bills (Tr. 22-23, 44-46).

Appellant and her husband became overwhelmed with debt during their marriage. She admits to living above her means during this time. They consulted an attorney and twice decided to file bankruptcy. However, they did not believe bankruptcy was in their best interest and the petitions were dismissed. After the petitions were

dismissed, Applicant and her husband started working with a non-profit debt agency to restructure their debt and make payments. They worked with the agency for about nine months, but did not resolve their indebtedness. The marriage deteriorated and her husband moved out of their home in January 2009, when Applicant discovered he was unfaithful. They are now separated. Under the court ordered separation agreement, Applicant's husband is to pay \$461 monthly in child support and 53% of the arrearage on their house mortgage as well as pay other debt. Her husband has made only sporadic payments to her. Applicant has taken classes to renew her cosmetology license and she intends to continue working part-time in that field to earn extra income (Tr. 26-28, 40-43).

Credit reports show the following delinquent debts for Applicant: a judgment for \$246 (SOR 1.a), debts to medical providers for \$58 (SOR 1.b), \$91 (SOR 1.c), \$28 (SOR 1.d), \$29 (SOR 1.e), and \$322 (SOR 1.k), \$233 for a credit card (SOR 1.f), a telephone debt for \$336 (SOR 1.g), a mortgage debt past due more than 120 days for \$4,698 on a balance of \$70,573 (SOR 1.h), a car debt more than 60 days past due for \$1,341 on a balance of \$8,903 (SOR 1.i), a cable debt for \$22 (SOR 1.j), and a car repossession debt for \$14,651 (SOR 1.l). Applicant and her husband filed Chapter 13 bankruptcies in July 2001 (SOR 1.n) and September 2002 (SOR 1.m). Both bankruptcy actions were dismissed (Gov. Ex. 2, Credit report, dated May 15, 2009; Gov. Ex. 3, Credit report, dated February 13, 2009; Gov. Ex. 4, Credit report, dated February 4, 2009).

The delinquent debt in SOR allegation 1.a is a judgment entered against Applicant in November 2004 for \$246. Applicant paid the judgment in July 2009 (Tr. 47; App. Ex. E, Receipts, dated May 14, 2009). Applicant also paid other judgments against her that were not alleged in the SOR (Tr. 19-20; App. Ex. A, Receipt, dated July 16, 2009; App. Ex. B, Receipt, dated September 15, 2009). It is not clear if these judgments pertain only to Applicant or jointly to Applicant and her husband.

Delinquent debts SOR 1.b, 1.c, 1.d, 1.e, and 1.k are for medical debts resulting from Applicant's visits to the local state-sponsored hospital. Hospital records show that the majority of Applicant's medical bills were paid under the military medical program or other insurance programs. Applicant also notes that her and her husband's tax refunds were applied to pay and settle the remaining portions of the hospital debts in 2007 and 2008. Records show Applicant has a zero balance owed at the hospital (App. Ex. F, Receipt, dated October 26, 2009; App. Ex. G, attachments 1-22, Medical billing records, various dates).

Delinquent debt SOR 1.f is for a purchase from a mail order business. Applicant's husband placed the order in her name and was to pay the debt. He has not paid it and it is listed on Applicant's credit report since she is also on the account. She has not contacted the creditor nor paid the debt. She does not intend to pay it since it is her husband's debt (Tr. 30-31, 53-54).

Delinquent debt SOR 1.g is for telephone service. Applicant acknowledges this is her debt and her responsibility. She has not paid the debt because she does not have sufficient funds to do so. She will pay it when she is working and has the funds (Tr. 54-55).

Delinquent debt 1.h pertains to the mortgage on Applicant's house. Applicant's husband was ordered by the court to make over half of the mortgage arrearage payments on the couple's house. He has not made the payments. Applicant sought and was approved for a mortgage modification so she could afford to make her payments on her own after the arrears had been paid. Applicant should be able to afford the mortgage with her potential income without input from her husband. With the mortgage modification, her mortgage is now current (Tr. 33-35; 48-49, 59-64; App. Ex. C, Mortgage Modification Documents, dated August 13, 2009).

Delinquent debt SOR 1.i is a car loan for the car Applicant's husband drove and took with him when he left her in January 2009. Applicant had a car which she had paid in full. Her husband drove the other car and was to pay the loan. When he left, he initially took the car and refused to place the car solely in his name. He did not pay the car loan, returned the car to their house, and it was repossessed. Applicant has not paid the loan nor does she intend to pay it since it is her husband's car and responsibility (Tr. 32-33; 48-51).

Delinquent debt 1.j is for internet service which Applicant needed to continue her studies on-line. This debt has been paid in full (Tr. 53; App. Ex. D, Receipt, dated February 16, 2009).

Delinquent debt SOR 1.l is for a car that was repossessed during the marriage. The couple had two cars while married. Applicant had one car and she was responsible for paying the loan. She paid the loan in full. Her husband had the second car and was responsible for paying the loan. He did not pay the loan and the car was repossessed. Applicant has not paid the debt nor does she intend to pay the debt since it is her husband's debt for his car (Tr. 35-37, 51-52).

SOR allegations 1.m and 1n are for bankruptcy filings under Chapter 13. Applicant and her husband had financial problems during their marriage. They filed Chapter 13 bankruptcy petitions on two occasions to resolve their debts. The petitions were dismissed when they determined it was more advantageous for them to pay their creditors directly rather than use funds for administrative costs (Tr. 52-53).

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 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 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. The delinquent debts listed in credit reports for Applicant are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations). Applicant and her husband had difficulty meeting their financial obligations while they were married because they lived beyond their means. Since Applicant's husband left her in January 2009, he has not paid his part of the debts and Applicant has been left with most of the family delinquent debt.

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 during her marriage when she and her husband lived beyond their means. The problems continued and were compounded by his leaving her in January 2009, not paying his part of the debts, and not making court-ordered separation payments. Most of the debts are still outstanding and so are current debts. While the spending during the marriage was within her control, Applicant's husband's actions in leaving her and not paying his debts are beyond her control. During the marriage, Applicant tried to act responsibly towards the family's finances. Applicant worked two jobs to add to the family income. She paid her part of the debts, for example her car loan. She went to school to earn a degree to increase her earning potential. She restructured her mortgage to be within her ability to pay. Applicant and her husband twice filed for bankruptcy protection but both actions were dismissed. Bankruptcy is a legal and permissible means of resolving debt. Since the bankruptcy was filed but dismissed, the filing is not of security significance except as an indicator of financial instability. Her actions indicate she acted responsibly towards her debts.

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. Applicant has limited means to pay her delinquent debts at present since she is not now working while waiting a decision on her security clearance. She paid the internet service debt. The major portion of the medical debts were paid by insurance. However, the remaining part was paid when her state tax return was used to pay the remaining part of the debt. Since this was a payment action initiated by the state, it is not considered a

good-faith action. But the debts have been paid and are no longer outstanding. The remaining unpaid debts are not debts she initiated but which she inherited because they were initiated by her husband and she has a responsibility towards them as a joint holder of the accounts.

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. Appellant established a minimal "meaningful track record" of debt payment, including evidence of some 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 demonstrates a plan to resolve her financial problems and take 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 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.

Applicant presented sufficient information to show she is taking reasonable and responsible action to resolve her financial issues. When she and her husband had financial difficulties, she worked to provide funds for the family. She went to school to improve her opportunities for better paying and more secure job prospects. She paid her debts as best she could. The unpaid debts, while still legally her responsibility, are more attributed to her husband's actions. I reach this conclusion even though some of the debts listed in credit reports for her are still outstanding. The unpaid debts are directly attributed to Applicant's husband's failure to assume financial responsibility for the debts he incurred. Applicant acknowledged and understood that she has a legal

responsibility for the family debts as the spouse even though she did not incur the debts and her husband is suppose to pay them.

Overall, on balance the record evidence leaves me without serious 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
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

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