



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-04794
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On March 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an April 28, 2010, response, Applicant admitted in part the allegation raised under SOR allegation ¶1.a, and admitted five of nine allegations set forth under SOR allegations ¶¶ 1.b through 1.j under Guideline F. She also requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on September 10, 2010. The parties proposed a hearing date of October 28, 2010. A notice setting that date for the hearing was issued on September 30, 2010. I convened the hearing as scheduled.

Applicant gave testimony and offered one document, which was accepted into the record without objection as exhibit (Ex.) A. She was given through November 29, 2010, to submit any additional documents. The Government introduced 14 documents,

which were accepted into the record without objection as Exs. 1-14. The transcript (Tr.) of the proceeding was received on November 8, 2010. On November 15, 2010, Applicant provided Department Counsel with six additional documents, which were accepted into the record without objection as Exs. B-G and the record was closed. At Department Counsel's request, the record was reopened on February 8, 2011, for the inclusion of an additional document submitted by Applicant. That document was accepted without objection as Ex. H and the record was again closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met her burden of mitigating security concerns related to financial considerations. Clearance is granted.

Findings of Fact

Applicant is a 47-year-old production line employee who has worked for the same government contractor since May 2009. She is married. Applicant earned a high school diploma and has completed some college-level courses.

In April 2001, Applicant bought a small restaurant, which she also managed. The investment seemed to work out well when it immediately became a success. At that time, Applicant's husband was an independent trucker with his own tractor trailer. By 2002, however, an unexpected rise in petrol prices and a leaner economy adversely affected his business, which had been providing him with a net income of about \$50,000 a year.¹ He ultimately lost his truck through repossession and was unemployed for a few months, during which time Applicant and her husband relied on the restaurant's income to meet their expenses. Job opportunities were limited in their rural community of residence. Applicant's husband ultimately accepted work as a truck driver earning about \$30,000 a year.

The couple continued on a significantly reduced joint income. By 2005, Applicant's restaurant business began to decline in response to leaner times. Her husband had not yet found a higher paying job in their region. As a result of these conditions, Applicant and her husband could not meet their joint monthly obligations, and her husband was unable to maintain payments on his truck-related balance, which was a debt solely in his name. They tried to seek Chapter 7 bankruptcy protection, but were told they would have to explore a wage earner plan. They then sought Chapter 13 bankruptcy protection.

Included in the couple's joint 2005 Chapter 13 bankruptcy petition were the debts found at SOR allegations ¶¶ 1.a.1 – 1.a.6. That action was ultimately dismissed. Today, Applicant has little recollection of the filing or the debts noted therein. Those debts included:

¹ Tr. 18.

1.a.1 – Unpaid debt for \$4,281 – Applicant is unsure of the origin of this disputed account.² It is no longer reflected on Applicant’s credit report.³

1.a.2 – Unpaid debt for \$49,011⁴ – This debt was created from Applicant’s husband’s loss of his tractor-trailer for a balance of about \$39,000. It was purchased solely in his name and was not a joint obligation. To date, approximately \$25,000 has been paid toward this balance.⁵ Applicant’s husband generally has been in regular repayment on this debt since 2006. The evidence shows that the obligation belongs solely to Applicant’s husband and is not jointly Applicant’s responsibility.⁶ The SOR’s source for this debt is Applicant’s joint bankruptcy petition.⁷ This debt was included in that petition on the husband’s behalf as a matter of administrative convenience.

1.a.3 – Debt for \$2,158 – Applicant believes this debt may have been created for the purchase of appliances.⁸ She recalls making payments on some appliances in the mid-2000s, but does not remember whether she or her husband satisfied the debt. She testified she was never again contacted about a debt to an appliance merchant and has no recollection of the debt.

1.a.4 – Debt for \$2,880 – Applicant believes this debt was for a credit card balance that was previously paid.⁹ She no longer has any documentation regarding the account, noting it “would have been [from] years, years, years ago.”¹⁰

1.a.5 – Debt for \$3,414 – This debt is for her husband’s personal account with a home improvement center.¹¹ It is not a joint account. It was included on their joint bankruptcy petition as a matter of administrative convenience.

1.a.6 – Debt for \$23 – There is no information regarding this account.¹² In her response to the SOR, Applicant denied knowledge of and responsibility for this debt.

² Tr. 21-22.

³ Tr. 22.

⁴ This sum includes costs, interest, and fees. See Tr. 23.

⁵ Tr. 23; Ex. A (Payoff Report, dated Oct. 31, 2010).

⁶ *Id.*

⁷ Tr. 22, 25.

⁸ Tr. 24.

⁹ Tr. 25.

¹⁰ *Id.* As previously noted, these debts are from Applicant’s bankruptcy petition and are no longer reflected on her credit report.

¹¹ *Id.*

¹² Tr. 26.

By the late 2000s, a declining economy continued to adversely affect their part of the country. As a result, the restaurant started failing. In January 2008, Applicant sold the restaurant for about \$20,000. This gave her sufficient funds to satisfy the business' back rent and other obligations. No notable monetary gain was derived from the sale. The only business debts remaining after the restaurant's sale were for a 2006 state tax lien and a nominal telephone balance, of which she was then unaware. About a year later, Applicant's husband received clearance for hauling hazardous materials.

After selling her restaurant in 2008, Applicant held multiple low-paying, hourly-wage jobs until starting her present position as a production line worker. Her husband has since found work transporting hazardous materials. His current salary is about \$58,000 a year.

In the past few years, Applicant's husband has suffered from kidney stones. He incurred about \$9,000 in medical bills in 2009. Although he has some medical insurance, his coverage is minimal.¹³ During the weeks he was suffering from kidney stones in 2009, he was unable to work and derived no income. In his trucking job, he does not accrue medical leave.¹⁴ In addition, Applicant has faced multiple medical issues in the past few years, including a hysterectomy, treatment for Grave's disease, and radiation treatments for a thyroid condition. Each procedure demanded time off from her hourly wage employment situations. Treatment for these conditions also cost Applicant a considerable sum despite limited health insurance coverage.¹⁵

Aside from the debts noted in Applicant's dismissed bankruptcy petition, the SOR contains allegations about nine other debts.

1.b – Judgment for medical provider for \$162 – Applicant testified that this debt was previously paid, but is unable to find evidence it has been paid.¹⁶

1.c – State tax lien from 2006 for \$11,033 – Applicant has been in timely repayment on this debt for several years. The balance, as of November 5, 2010, was \$4,825.¹⁷

1.d – State tax lien from 2008 for \$4,836 – Applicant denies this allegation. She believes this reference is to a 2004 tax debt that has since been paid.¹⁸ She showed

¹³ Tr. 46.

¹⁴ Tr. 48.

¹⁵ Tr. 46-48.

¹⁶ Tr.26-27.

¹⁷ Tr. Ex. E (State tax balance owed correspondence, dated Nov.5, 2010); Ex. F (Lien information letter, dated Aug. 20, 2010).

¹⁸ Tr. 31.

that her only currently outstanding state tax lien is an account noted above at 1.c.¹⁹ Correspondence about that lien makes no reference to any other outstanding tax liens.

1.e – Collection account for medical services for \$583 – Applicant acknowledges this debt for recent medical care, which she hopes to satisfy when her tax debts are paid.

1.f – Mortgage debt for \$19,787 – This debt is for a second mortgage. Applicant became past due on this account in mid-2009, not long before she started her present position and her household income was limited. While Applicant remained current on their primary mortgage, she and her husband could not make timely payments on this account. Applicant has worked with the lender. The lender has not pursued action against her. Applicant plans on devoting the money now being paid to satisfy her state and federal tax lien toward this account when the liens are satisfied.²⁰

1.g – Telecommunications debt for \$93 – This balance, owed on the former restaurant's telephone service, remains unpaid.²¹

1.h – Utility debt for \$753 – This balance is for an electric bill. Applicant has made repayment arrangements on which payments are made, but the balance has yet to be satisfied.²²

1.i – Federal tax lien for \$5,901 – Now paid in full, Applicant was in repayment on this lien for past due joint income tax balances, dating from about 2005.²³ At the time of the hearing, the balance owed was approximately \$2,728.²⁴ She made monthly payments of \$500 through payroll deduction. She planned to have the debt paid by March 2011. After the hearing, Applicant submitted evidence that the balance had been reduced to \$953.48.²⁵ On February 4, 2011, the Internal Revenue Service (IRS) received her personal check for \$953.48 to totally satisfy this debt.²⁶

¹⁹ Tr. 36.

²⁰ Tr. 43.

²¹ Tr. 44.

²² *Id.*

²³ Ex. D (IRS letter, dated Sep. 29, 2010).

²⁴ Tr. 38.

²⁵ Ex. H at 2 (Payoff calculator, dated Feb. 4, 2011).

²⁶ *Id.* at 3 (IRS stamped check).

1.j – Medical collection account for \$26 – Applicant cannot identify this debt and disputes the debt.²⁷ The Government does not dispute Applicant’s assertion that this account is not hers.²⁸

Applicant has tried to use an organized approach in repaying her debts. Her strategy in addressing her debts has been to pay off her state and federal tax liens first, then use that money to satisfy her remaining balances. With her federal tax lien now paid, that \$500 a month will now be applied to her mortgage debt, noted at 1.f, above. Money now devoted to her state tax lien is to be expended on other balances when that debt is satisfied. She stresses the facts that some of the debts at issue in the bankruptcy petition were solely her husband’s debts, are not her obligations, and are being addressed by her husband. Applicant and her husband live simply and do not live beyond their means. There is no evidence of extravagant living or expenses, nor is there a suggestion that Applicant has purposefully or negligently neglected her obligations. Job opportunities are limited in their region, an area particularly hard hit by current economic conditions. Applicant acknowledges that her income is low, but stresses that she is trying to honor her debts to the fullest extent possible. She is making progress as speedily as she can, given their household income.

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

²⁷ Tr. 44-45.

²⁸ Tr. 49.

Department Counsel. . . .²⁹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.³⁰

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 about 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³²

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F - Financial Considerations

Under Guideline F, “failure or an 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.”³³ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”³⁴ Applicant’s 2005 bankruptcy petition and a

²⁹ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³¹ *Id.*

³² *Id.*

³³ AG ¶ 18.

³⁴ *Id.*

recent credit report reflect that Applicant has several delinquent debts, including state and federal tax liens. While some of the debts noted were shown to be solely the obligation of her husband, there is sufficient evidence to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

While significant progress has been made with regard to Applicant's tax-related debts, and although the largest debt attributed to Applicant was shown to belong to her husband for his tractor-trailer, several debts remain unaddressed.³⁵ Moreover, no evidence was introduced showing local economic conditions are on the mend or that such conditions will not adversely affect Applicant again in the future. While Applicant's evidence discerns which debts are rightly hers, as opposed to her husband's, and while it shows a deliberate strategy of first satisfying her tax liens before addressing any other creditors, there is insufficient evidence to raise Financial Considerations Mitigating Condition (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).

Applicant's debts – as well as those acquired independently by her husband – were largely created by a souring national economy and its effects on an already depressed region. Such factors led to her husband's loss of his tractor trailer, period of unemployment, and ultimate acceptance of a significantly lower paying job. It also contributed to the decline of her restaurant's business. Compounding their financial difficulties were recent medical problems and unpaid leave from work to address those medical issues. The evidence suggests, however, that the planned bankruptcy filing, Applicant's efforts to address her tax liens, and her husband's efforts to address his automotive debt were initiated at various points during their period of their financial difficulties. Such facts are sufficient to raise FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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).

Although Applicant has approached her debts with a clear strategy that aimed at first satisfying her tax debts, she has not received formal financial counseling. Therefore, FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) does not apply.

Applicant showed that nearly half of the debt attributed to her is actually debt for which her husband is solely responsible (SOR allegations ¶¶ 1.a.2 and 1.a.5). It was attributed to her in the SOR because those debts were noted in a dismissed bankruptcy petition, through which husband and wife once contemplated joint bankruptcy protection

³⁵ Even if Applicant were to be held personally liable for her husband's individually-incurred tractor-related debt (SOR allegation ¶ 1.a.2), it is notable that approximately \$25,000 has been paid toward the original obligation of about \$39,000 through regular payments.

as a matter of administrative convenience and documentary consolidation. Nearly half of the debt genuinely owed by Applicant is tax related (SOR allegations ¶¶ 1.c, 1.d, and 1.i). She has made payment of these obligations a priority. Applicant has been in repayment on her state tax obligation and recently satisfied her federal tax debt. With her federal tax debt now paid, she is poised to devote her \$500 monthly payments to her second mortgage. When her state tax balance is satisfied, she is prepared to direct her current payments toward the remainder of her debts. Given her strategy, her efforts, and her demonstrated commitment to honor her debts, FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. None of the other FC MCs apply.

The burden for mitigation in these proceedings is placed squarely on Applicant. This case is not one of an individual living beyond her means, investing in risky ventures, or failing to understand basic personal finance. Applicant presented unique facts and adequate evidence sufficiently mitigating the creation of the debts at issue. More importantly, she demonstrated an organized, methodical approach to addressing the delinquent debts created. To date, a majority of the debt at issue has been shown as either paid or as severable debts belonging solely to her husband. She provided evidence of successful repayment strategies on the largest debts at issue, as well as efforts to address her debt that significantly predate the issuance of the SOR. While debts remain, she maintains a simple lifestyle. Moreover, her repayment strategy has been proportionate with her income, effective, and earnest. There is no evidence to suggest she will discontinue her efforts. The AG does not require that all one's delinquent debts must be paid. It only requires that an applicant establish a reasonable plan to resolve the debts, and that the applicant has taken meaningful actions to implement the plan. Here, Applicant has shown a holistic, workable, and successful approach to addressing her debts that is rationally commensurate to her income. I find that financial considerations security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a highly credible and candid 47-year-old production line employee who has worked for the same government contractor since May 2009. Despite her education and her past success in business, she sought her present position in reaction to adverse economic conditions that caused her to sell her restaurant during a period when her husband was recovering from his own professional set-backs. While both aimed to stabilize their household finances and secure stable employment in their

