



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



In the matter of:)	
)	
)	ISCR Case No. 09-05236
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

March 30, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

Applicant completed her Electronic Questionnaire for Investigations Processing (e-QIP) on April 13, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on October 9, 2009. DOHA acted 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) 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 October 19, 2009. She answered the SOR in writing on October 31, 2009, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on November 23, 2009. Applicant received the FORM on December 2, 2009. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response or additional evidence. DOHA assigned this case to me on March 19, 2010. The Government submitted six exhibits, which have been marked as Item 1-6 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.f of the SOR.¹ She provided an explanation for her answer. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 57 years old, works as a data-entry operator for a Department of Defense contractor. Applicant graduated from high school in 1970. She did not attend college. She never married and has no children. Applicant purchased a house in 1979.²

In June 1999, Applicant accepted a position full-time position as a human resources administrative assistant. In July 2002, she started working a part-time job as a customer service representative for an answering service. In August 2002, her full-time employer eliminated her position and laid her off. She did not immediately find a full-time position. She worked her part-time job until she was terminated in February 2003.³

Applicant accepted a full-time position as a mortgage loan officer in April 2003. When business slowed, her employer laid her off in November 2003. After four months of unemployment, she obtained another mortgage loan officer position, which ended a month later. Three months later, in July 2004, she obtained another position as a senior

¹Applicant denied owing the debt in SOR ¶ 1.d when she met with the investigator and in her response to interrogatories in August 2009 because she did not recognize the creditor. She admitted the debt in her response when the SOR identified an additional creditor which she recognized. See Item 3 and Item 5. The April 2009 credit report reflects that the debt related to miscellaneous credit cards, but does not identify which credit cards. A question is raised as to whether any of the debts in the SOR are also part of this debt. Applicant has not provided evidence to show that other SOR debts are included in this rather large debt. See Item 5.

²Item 4.

³*Id.*

teller at a bank. At the end of her probation period in October 2004, the bank terminated her, a fact she admitted on her e-QIP.⁴

Applicant worked for a temporary employment agency from April 2005 until August 2005, when she obtained a position as a terminal clerk with a trucking company. The trucking company laid her off in January 2007, when it downsized. From January 2007 until November 2008, Applicant worked for temporary employment agencies. She began her current employment in November 2008.⁵

When she completed the e-QIP, Applicant acknowledged a foreclosure, a tax lien on her property, and five debts (SOR ¶¶ 1.a, 1.c through 1.f). She also acknowledged making payments on the judgment, which had a balance of \$4,700 in April 2009.⁶

Applicant's financial problems began when she lost her full-time position in August 2002. She does not indicate her salary at this time, but states that her current income is lower than her income in 2002. Since 2002, her income has fluctuated, depending upon her employment status. Prior to losing her job, Applicant paid her living expenses and credit card debts. The record reflects that she had a significant balance on these cards before losing her job. Applicant used her credit cards to help pay some living expenses after August 2002.⁷

In 2004, Applicant defaulted on her mortgage payment and the mortgagor proceeded with foreclosure. The day before the mortgage company sold her house at public auction, she sold the property. She paid the mortgage, a second mortgage, and a property tax lien with the proceeds from the sale. The record does not reflect any indebtedness from her foreclosure.⁸

Applicant moved into her mother's home in 2004. She continues to live with her mother and pays her mother \$400 a month in rent.⁹

Applicant earns \$2,260 a month in gross salary and \$1,724 a month in net income. Her monthly expenses total \$1,440 a month, including her rent and two monthly payments on her debts. She has approximately \$385 a month for debt payment. She drives a 1993 GEO, valued at \$700, and does not own a cell phone.¹⁰

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷Item 3.

⁸Item 4; Item 5; Item 6.

⁹Item 4; Item 5.

¹⁰*Id.*

The SOR lists five debts related to credit cards and one judgment. Applicant stopped payments on these debts in 2002 and 2003. The court entered a judgment against her in 2008 for \$5,035. The April 2009 credit report reflects that Applicant paid a \$7,500 charged-off credit card debt after defaulting on her payments in 2003 and a \$5,400 debt in 2002. She also provided evidence that she paid a past due telephone debt of \$76 in August 2009.¹¹

When she first encountered difficulties paying her debts in 2002 and 2003, Applicant contacted her creditors and advised them about her employment situation. Her creditors refused to work with her. She also contacted a debt consolidation company. She did not qualify for their program because her income was too low.¹²

Applicant developed a monthly payment plan of \$30 for the \$5,035 judgment in SOR ¶ 1.b in April 2008, before she completed her e-QIP, and a monthly payment plan of \$79 for the \$3,914 debt in SOR ¶ 1.e in April 2009. She immediately started her negotiated payments. She provided documentation with her response to the August 2009 interrogatories which indicated that she complied with her payment plans through August 2009. As of August 2009, she owed \$4,525 on the judgment and \$3,519 on the debt in allegation 1.e. The record does not contain any evidence showing that she stopped her monthly payments on her debts. Given the extensive information provided on her e-QIP, her statements to the investigator, and her 17-month payment history on the judgment, an inference can be drawn that she is continuing to comply with the terms of her agreements.¹³

Applicant has not developed any payment plans for the four remaining debts, which are substantial.¹⁴ She contacted the creditors, each of whom requested that she make a lump-sum payment. She does not have the money to make such a payment. These creditors refused to accept a monthly payment from her. These debts remain unpaid.¹⁵

Applicant pays her current living expenses. The credit reports show that she has not incurred any new credit card debt since 2002 or other unpaid debts since 2004. She lives within her limited financial resources.¹⁶

¹¹Item 5; Item 6.

¹²Item 5.

¹³Item 4; Item 5.

¹⁴These balances have increased nearly 50% since she defaulted.

¹⁵Item 4.

¹⁶Item 6.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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 an 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.

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 for Financial Considerations 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts, and under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Under AG ¶ 19(e), a security concern may be raised by "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis." Applicant accumulated delinquent debt and has been unable to pay her obligations for a period of time. When she lost her job in 2002, Applicant had a high level of unpaid credit debt, which suggests that she was living beyond her financial means even though she made the monthly payments on the debts. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when "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 financial worries arose between about 2002 and 2003 after she lost her job and did not obtain steady employment. While her financial problems developed a long time ago, she has not held long-term, steady and well-paying employment since 2002, although her current position has this potential. Thus, employment problems continue to be a circumstance which could occur in the future. This mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating where "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." As noted above, Applicant's financial problems arose when she lost her full-time job in August 2002. Since 2002, Applicant has worked only part-time, not at all, or for limited periods of time. She began her current position 16 months ago, the second longest period of employment since she lost her job in 2002. Most jobs she held for short periods of time, except for the terminal clerk position, which she held for 18 months. For the last seven and one-half years, she has earned less money than she did in 2002. When she lost her job in 2002, she attempted to retain a debt consolidation company to help her manage

her debts, but the company found that she did not qualify for its program because she did not earn sufficient income. She sold the house she had owned for 25 years in 2004 and paid the three related debts. At age 52, she returned to living with her mother and still does. She paid a \$7,500 collection account sometime after 2003, another \$5,400, and a small \$76 debt. She tried to develop repayment plans with her creditors, but they declined to work with her. When she later contacted her creditors, two creditors developed payment plans and four creditors refused to do so, demanding a lump-sum payment instead. She acted reasonably under the circumstances as there was little more she could do.¹⁷ This mitigating condition applies.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Applicant contacted a debt consolidation company in 2002, but has not received any debt counseling in recent years. She pays monthly on two debts and pays her current bills. This mitigating condition has some applicability.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant developed a payment plan for the judgment in 2008 and for one debt in 2009. She pays these debts as she agreed. She does not have a payment plan for the remaining four debts listed in the SOR, and cannot develop a payment plan because the creditors demand a lump-sum payment and refuse to accept monthly payments. She has not paid the remaining four debts listed in the SOR. This mitigating condition applies to SOR allegations ¶¶ 1.b and 1.e only.¹⁸

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 an applicant’s

¹⁷The Appeal Board’s discussion of AG ¶ 20(b) in ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) clarifies the applicability of this mitigating condition when an Applicant is unable to make substantial progress on delinquent debts after circumstances outside an applicant’s control cause delinquent debt. In ISCR Case No. 08-06567 (A.J. July 27, 2009), the applicant had a judgment against him in June 2001 for \$7,948; an IRS tax lien in January 2001 for \$25,441 from tax years 1993 to 1997 (since released), and a state tax lien in September 1999 for \$6,701 (since released). These three delinquent debts established a history of financial problems, which included significant tax problems extending over eight years (1993 to 2001). *Id.* at 2. In 2007, the applicant’s business faltered (the circumstance beyond his control), and he generated about \$21,000 in additional delinquent debt. *Id.* at 3-4. He paid six of his new debts, and three debts totaling about \$17,000 remain for resolution. ISCR Case No. 08-06567 at 2 (App. Bd. Oct. 29, 2009). He obtained financial counseling, developed a repayment plan, and took reasonable actions to effectuate his repayment plan. *Id.* at 3. The Appeal Board at 3 determined that administrative judge erred when he failed to explain,

. . . what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not “responsible” in light of his limited circumstances.

¹⁸AG ¶¶ 20(e) and 20(f) are not applicable in this case.

conduct and all relevant circumstances. The 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. BD. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. BD. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd.

Apr. 4, 2008). 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a high level of unpaid credit card debt. Prior to August 2002, Applicant worked steadily and paid her monthly bills. She paid her mortgage and her property taxes. While she had high debt on her credit cards, she paid her monthly payments. The reason for her high credit card balances is unknown. She owned her house for 25 years before she defaulted on the mortgage and sold the house. She paid all debts on her house from the sale proceeds. She also paid two other debts subsequent to losing her job and a steady income.

Her financial problems first became unmanageable when she lost her job in 2002. For the last seven and one-half years, she has worked temporary jobs, one permanent job, and been unemployed. The longest she held a job was 18 months. Her earnings have not reached her 2002 income level. When she first lost her job in 2002, she tried to consolidate her debts, but did not qualify for a debt consolidation program because she did not earn enough money. She is paying two debts, but has not, cannot, and will not be able to pay most of her remaining debts until she can save up enough money for the requested lump-sum payment. The current creditors refuse to accept a monthly payment; demanding a lump-sum payment instead. Applicant lacks the financial resources to accumulate money to make a lump-sum payment, even though she works full-time. Since these creditors are not willing to work with her, Applicant cannot develop a payment plan at this time. (See AG ¶ 2(a)(1)-(3).)

Since losing her job in 2002 and her house in 2004, Applicant has changed her approach to financial management. She does not use credit cards. Her credit reports reflect that she has not accumulated any additional outstanding credit card debt when the debts at issue became delinquent in 2002 and 2003. At age 57, she lives with her mother, as she cannot afford to live elsewhere. She drives a 1993 GEO and does not own a cell phone. She pays her basic living expenses and two creditors, but lacks funds to pay her remaining creditors large, one-time payments. She has struggled to find steady employment with a good wage since 2002, and as a result she has learned to live frugally. Applicant has learned from the events of 2002 to 2004. See AG ¶ 2(a)(6).

Applicant's net monthly income averages \$1,724. After paying her living expenses and her two debt payments, she has \$385 remaining. She was willing to use some of this money to repay her debts on a monthly plan, but the creditors refuse to accept monthly payments. She does not have any savings or investments which she could use to pay the requested lump sums. Although she indicates she would like to repay her other debts, she will not be able to do so until she can accumulate the funds for lump-sum payments.

In the last seven and one-half years, Applicant had to make choices about using her scarce resources. When the mortgagor foreclosed on her house, she sold it and

with the proceeds paid off all her debts connected with her house. Her inability to pay her debts relates directly to her inability to find steady employment with a high income. She worked, but made only enough money to pay her usual living expenses. By living with her mother, she can save the money for her debts, instead of paying more for housing. She is financially stable on her current expenses. She pays her living expenses and does not use her credit cards.

Applicant's remaining unpaid debts are over six years old. She is fully aware of her debts, but cannot pay the debts. Under the State law where she resides, a creditor has six years to initiate legal action to recover unpaid debts. See State Code. §52-576. One creditor obtained a judgment against her. The remaining three creditors failed to exercise their legal rights, thus, waiving any rights to collect these debts forever. Applicant incurred these delinquent debts over seven years ago. She has not incurred any new unpaid debt, which would reflect an ongoing problem with financial and debt management. It is unlikely that Applicant could be coerced, pressured, or induced to betray secrets of the United States because of her old, unpaid debts, as she has been open and honest about her past debts and she is no longer legally liable for the debts. The fact that these debts are old and not collectible under state law does not negate her past conduct in accumulating significant debt, which she could not pay after losing her job, a factor I have considered.

Applicant was forthright and candid in her security clearance application, her responses to DOHA interrogatories, her responses to the security investigator, and her SOR response. She acts responsibly in all aspects of her life. Her current finances are good. She has no criminal record. Before 2002, she paid her bills. The loss of her job and subsequent sporadic and underemployment made it impossible for her to continue paying her credit card debts. Financial hardship forced her to make difficult decisions on how to resolve these debts. She had no choice but to default on these debts when she failed to qualify for a debt consolidation program and the creditors refused to work with her. Two creditors accepted a monthly payment plan, but the other four creditors have refused. She cannot pay a lump-sum settlement on her present income.

In the last seven and one-half years, Applicant paid two large debts and one small debt, as well as succeeded in paying all her debts related to the foreclosure action on her house. (See AG ¶ 2(a)(8).) Of course, the issue is not simply whether all her debts are paid -- it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. An alcoholic who remains sober for three or more years and a drug user who remains drug free for two or more years may be considered rehabilitated. Given Applicant has shown the ability to live within her limited income and avoid new debt for seven years, she has rehabilitated her attitude and behavior towards the acquisition of any debt. Security concerns are not raised because of these old debts. She has demonstrated that she is a reliable and responsible individual. She has been honest and forthcoming about her debts, which indicates that she would act the same if a foreign agent attempted to obtain sensitive or classified information from her. (See AG ¶ 2(a)(1), (7)-(9).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns.

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

MARY E. HENRY
Administrative Judge