



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



In the matter of:)
)
-----) ISCR Case No. 09-05388
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

April 29, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists three debts totaling \$34,483. She settled and paid one debt. Another debt was cancelled. She has paid all of the third SOR debt except for \$1,283, which will be paid at the end of April 2010. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On May 4, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86). (GE 1) On December 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On December 29, 2009, Applicant responded to the SOR and requested a hearing. (HE 3) On January 19, 2010, Department Counsel indicated she was ready to proceed on Applicant's case. On January 26, 2009, DOHA assigned Applicant's case to me. On February 19, 2010, DOHA issued a hearing notice. (HE 1) On March 9, 2010, Applicant's hearing was held. At the hearing, Department Counsel offered six exhibits (GE 1-6) (Tr. 16-17), and Applicant offered eight exhibits. (Tr. 18-21; AE A-H) There were no objections, and I admitted GE 1-6 and AE A-H. (Tr. 17, 21) Additionally, I admitted the hearing notice, SOR, response to the SOR, and Department Counsel's response to Applicant's post-hearing documents. (HE 1-4) On March 17, 2010, I received the transcript. On April 14, 2010, I received 27 pages of documents from Department Counsel, who previously received them from Applicant on April 9, 2010. (AE I) Department Counsel did not object to my consideration of AE I. (HE 4) AE I is admitted into evidence.

Findings of Fact¹

Applicant's SOR response admitted that she owed the creditors in SOR ¶¶ 1.a to 1.c. (HE 3) She disputed the amounts of the debts. Her admissions are accepted as findings of fact.

Applicant is a 48-year-old employee of a government contractor.² (Tr. 20) She has worked for the government contractor since January 2009 as a functional analyst and part-time information technology specialist. (Tr. 30, 73) If she receives a security clearance, she will move into more sensitive work for her employer. (Tr. 74) She earned a bachelor's degree in organizational psychology and development in September 2007. (Tr. 5) She graduated Summa Cum Laude with a 4.0 gaining grade point average. She married in July 1985, and she was divorced in May 2005. (Tr. 26) She married in June 2008. (Tr. 6) Her daughter is 23, her son is 20, and her stepchildren are ages 14 and 11. (Tr. 6) Her daughter and granddaughter (age 2) live with Applicant and her husband. (Tr. 46, 48) Applicant's stepchildren live near Applicant with their mother. (Tr. 49) Her husband pays child support and some expenses for his children to his former spouse. (Tr. 50)

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

²Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's May 4, 2009 SF 86. (GE 1)

Applicant did not disclose any unpaid liens, garnishments, or civil court actions on her security clearance application. She did not disclose any unpaid taxes or bankruptcies. She did disclose numerous debts that were either currently over 90 days delinquent, or over 180 days delinquent in the last seven years. She also disclosed the judgment in SOR ¶ 1.a (\$6,953). She did not disclose any illegal drug use, or alcohol-related offenses.

Financial Considerations

The SOR lists three credit card debts totaling \$34,483 as follows: 1.a (\$6,953); 1.b (\$16,186); and 1.c (\$11,344). (Tr. 51-52) The status of those three SOR debts are as follows:

SOR ¶ 1.a (\$6,953)—Resolved (PAID). On February 16, 2010, Applicant settled the \$6,953 credit card debt for a single payment of \$4,000. (Tr. 42; AE A at 1, 9) The creditor provided a letter indicating the debt was resolved. (AE A at 2)

SOR ¶ 1.b (\$16,186)—Resolved (PAYMENT PLAN). The credit card creditor in SOR ¶ 1.b offered to settle the \$16,186 debt for a \$500 payment in February and another \$500 payment in March 2010. A \$6,283 payment was due by April 24, 2010. (AE B at 2) Applicant made the two \$500 payments as agreed. (Tr. 43; AE B at 1, 2, 3, 4) On April 10, 2010, she paid the creditor \$5,000. (AE I at 2, 19) She will send the remainder of \$1,283 on April 24, 2010. (AE I at 2)

SOR ¶ 1.c (\$11,344)—Resolved (CANCELLED). On November 9, 2008, the credit card company cancelled the debt in SOR ¶ 1.c. (Tr. 52-53; AE C at 1, 2; AE I at 6) She tried to pay the creditor after the debt was cancelled; however, the creditor refused to accept her offer. (Tr. 53) The creditor sent Applicant an Internal Revenue Service (IRS) form 1099-C to ensure Applicant paid taxes on the cancelled debt. (Tr. 52; AE C at 2; AE I at 7) On April 2, 2010, Applicant amended her 2008 federal tax return and sent an additional \$1,095 to the IRS. (Tr. 55-56; AE I at 7-11) She sent letters to the credit reporting companies to ensure the account was removed from her credit reports. (Tr. 56-58; AE I at 20-21)

Applicant's husband of almost 20 years was removed from their residence in February 2004 because of domestic violence. (Tr. 22) Her husband quit his job, and the family's income went from \$100,000 to \$15,000. (Tr. 22, 26) Applicant used credit cards to sustain the family because her employment was inadequate to financially sustain her family. (Tr. 22) She was earning about \$8 per hour as a physical therapist. (Tr. 27) She needed to make repairs on their home before it could be sold. (Tr. 23) In August 2005, she sold her house and made a \$35,000 profit. (Tr. 30, 31)

Applicant had kidney stones, cysts, and mysterious blood in her urine. (Tr. 69-71) Sometimes her medical insurance did not pay the medical bills. (Tr. 69-70) The doctors had difficulty diagnosing the source and determining the treatment for her medical problems. (Tr. 69-70) She paid the medical bills whenever she could not otherwise resolve them. (Tr. 70-71) Her son had medical problems which caused behavioral

issues and additional expenses. (Tr. 66-69) Her son smashed holes in the walls and set fires in their home. (Tr. 68) He had to leave the local public schools, and he was committed to a psychiatric institution. (Tr. 67) He now lives in a different state from Applicant.

Applicant used \$15,000 of the \$35,000 she received from the sale of her home to pay her credit card debts. (Tr. 31) She saved the remainder for family expenses. (Tr. 31) Applicant quit her job because she was so upset about all the financial and familial stress in her life. (Tr. 23) She made payments to the creditors at a hardship level from 2005 to 2006. (Tr. 23, 34, 35; AE I at 12-18) Her husband did not pay alimony or child support. (Tr. 24)

Applicant moved to a different state and held temporary employment positions. (Tr. 28) She paid an attorney \$1,000 to assist with her divorce issues and debts. (Tr. 24, 36) In November 2006, her attorney sent letters to the creditors in SOR ¶¶ 1.a to 1.c. (Tr. 35; GE 2) In April 2007, her attorney sent a letter to the creditor in SOR ¶ 1.b. (Tr. 36) In July 2008, she sent a letter to the creditor in SOR ¶ 1.b and made a settlement offer; however, she did not receive a response from the creditor. (Tr. 38) In 2009, Applicant sent her attorney her credit report and information on her debts; however, he did not respond to her requests for information. (Tr. 37)

Applicant moved to the East Coast and held several different jobs in health services and teaching. (Tr. 29-30) She also helped her children with some of their finances even though they were adults. (Tr. 25)

Applicant completed her bachelor's degree and now owes \$30,000 in student loans. (Tr. 32) Her student loans are current. (Tr. 32) On June 16, 2009, Applicant and her husband closed on a house. (Tr. 41) Her \$2,400 monthly house payment is current. (Tr. 41-42) Her monthly car payment on a Honda is \$798, and it is current. (Tr. 45)

Applicant received financial counseling from three different sources, including the Dave Ramsey program. (Tr. 58-62; AE I at 24-25) Her most recent financial counseling was at a base in February 2009. (Tr. 61; AE I at 23) She generated a budget. (AE I at 26-27) Applicant and her husband's net monthly pay is about \$10,000. (Tr. 45) He is a major in the Marine Corps. (HE 3) They have sufficient income to pay the SOR debts as well as to maintain her other debts in current status. She promised to maintain financial responsibility and avoid future delinquent debts.

Applicant provided character references from her colleagues and supervisors at work. (AE D, E, F, G) They described her as hardworking, honest, friendly, responsible, and diligent. Applicant has been and will continue to be a valuable resource to her company.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security

emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of

disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guideline F (financial considerations).

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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 ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in her credit reports, her security clearance application, her SOR response, and her statement at her hearing.

Applicant’s SOR lists three debts totaling \$34,483. The debt in SOR ¶ 1.c (\$11,344) was cancelled on November 9, 2008, leaving \$23,139 in unresolved delinquent debt. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct warrants full application of AG ¶ 20(b). Her marriage of almost 20 years ended in divorce and her son was having significant psychiatric problems. Her estranged husband quit his job and was not providing financial support. Applicant was ill and physicians were unable to properly diagnose and treat her medical problems. Applicant was unemployed or underemployed. Her lack of income was unexpected. Nevertheless, she showed responsibility, self-discipline, and tenacity in maintaining contact with her creditors and making hardship payments.³ She acted aggressively and conscientiously to resolve her delinquent debts. She fully disclosed her delinquent debts and the judgment in SOR ¶ 1.a when she completed her security clearance application. She established that she acted responsibly under the circumstances.

AG ¶ 20(c) fully applies. Applicant received financial counseling. Applicant created a plan to resolve her delinquent debts and followed through with it, accomplishing complete resolution of two debts and payment of all except \$1,283 of the third SOR debt. Applicant understands what she must do to maintain her financial responsibility.

³“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)) A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

Applicant also established some mitigation under AG ¶ 20(d) by showing some good-faith⁴ in the resolution of her SOR debts by admitting responsibility for them and paying or resolving over 95% of her delinquent SOR debts. The last 5% of her delinquent SOR debt should be paid by the end of April 2010.

AG ¶ 20(e) does not apply. Applicant admitted her responsibility for all of her debts. Applicant did not provide documentation showing she disputed any of her SOR debts.

In sum, Applicant diligently and responsibly resolved her delinquent SOR debts. She has had steady employment for the last 15 months, and she used a large portion of her income to pay her creditors. She provided documentary proof of debt resolution. Financial consideration concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the 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.

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. AG ¶ 2(c) I have incorporated my comments

⁴The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001))

under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

The whole person factors against reinstatement of Applicant's clearance are significant; however, they do not warrant revocation of her security clearance. Applicant's failure to pay or resolve her just debts in accordance with contracts she signed was not prudent or responsible. She has a history of financial problems. Her credit reports, security clearance application, and SOR response listed delinquent debts including one judgment.

The rationale for granting or reinstating Applicant's clearance is more substantial. She was forthright and candid in her security clearance application, her responses to DOHA interrogatories, her SOR response, and at her hearing about her financial problems. Several problems beyond her control adversely affected her financial status. Her debts resulted from divorce, underemployment, unemployment, her medical problems, and her son's medical problems. Of her three SOR debts, one was paid, one was cancelled, and \$1,283 remains to be paid on her third debt. All of her SOR debts should be resolved by the end of April 2010. Her mortgage, car loan, and student loans are all current. I am confident she will keep her promise to avoid future delinquent debt. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. 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.' 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. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant is 48 years old. She has achieved some important educational and employment goals, demonstrating her self-discipline, responsibility and dedication. Her financial problems were caused by circumstances beyond her control, rather than by her misconduct or irresponsible spending. Applicant is an intelligent person, and she

understands how to budget and what she needs to do to establish and maintain her financial responsibility. There is simply no reason not to trust her. Moreover, she has established a “meaningful track record” of debt re-payment.

Applicant has demonstrated her loyalty, patriotism and trustworthiness through her service to the Department of Defense as a contractor. Character witnesses described Applicant as professional, honest, and diligent. Her evaluations document her solid work performance and good character. She is an asset to her employer. Her security clearance application does not list any reportable incidents involving illegal drugs, alcohol, the police, or courts.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors,”⁵ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. I conclude Applicant has shown sufficient responsibility and rehabilitation to mitigate the financial considerations security concerns. For the reasons stated, I conclude she is eligible for access to classified information.

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

Subparagraphs 1.a to 1.c: For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge

⁵See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006)