



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



In the matter of:)
)
) ISCR Case No. 09-05805
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

August 16, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has established a plan to resolve her financial problems, caused in part because of circumstances beyond her control, and has taken significant actions to implement her plan. She mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 1, 2009, Applicant submitted a security clearance application. On January 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) implemented within DOD on September 1, 2006.

The SOR alleges security concerns under Guideline F (Financial Considerations). 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 her, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

Applicant's answered the SOR on February 17, 2010. She elected to have her case decided on the written record in lieu of a hearing. (Item 2) A complete copy of the Government's file of relevant material (FORM), dated March 18, 2010, was provided to her. Applicant received the FORM on March 23, 2010, and submitted her response on April 8, 2010. Applicant's response included numerous documents in refutation, extenuation, and mitigation, which were admitted without objection. The case was assigned to me on April 30, 2010.

Findings of Fact

Applicant denied the two financial allegations in the SOR. After a thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 47-year-old senior buyer employed by a defense contractor. She finished high school in January 1983. She married her husband in May 1988. They have a 20-year-old son.

Applicant has been continuously employed since October 1996. She reported no periods of unemployment on her security clearance application. (Item 4) She has worked for her current employer, a government contractor, since January 2008. Her performance reviews lauded her strong work ethic, professionalism, and leadership abilities. She is considered to be an asset to her employer, and has been consistently rated as exceeding or achieving her employer's expectations. She also is considered to be a responsible, dedicated, and trustworthy employee. Her supervisors support her eligibility for a security clearance.

In her May 2009 security clearance application, Applicant disclosed she had financial problems. Specifically, she disclosed the two debts alleged in the SOR (a collection account for around \$10,736, and a charged off account for \$3,444), and four additional delinquent accounts with a bank (credit card debt for \$12,000); a credit card debt for \$1,300; a consumer card debt for \$2,500; and her husband's consumer card debt for \$6,600. Applicant stated that, when she submitted he security clearance application, she was in contact with her creditors trying to establish repayment plans on her delinquent accounts.

Applicant's background investigation addressed her financial problems. In May 2009, she was interviewed about her numerous delinquent accounts. During the interview, Applicant explained to the government investigator the circumstances that led to her financial problems. In 2000, her husband, a carpenter by trade, started a home inspection and repair company, which performed well until July 2006. There is no

evidence Applicant had financial problems before 2006. During the summer of 2006, the business began to fall off; however, they were able to meet their financial obligations for some time. By September 2008, there was little or no business income. Applicant's salary (\$2,800 a month) was not sufficient to cover the business and family's financial obligations of approximately \$5,000. She and her husband were overwhelmed and could not meet their financial obligations.

The credit reports show Applicant was current on most of her obligations until late 2008. Applicant and her husband tried to keep their business afloat by using their credit cards to pay for their business, day-to-day living expenses, and sometimes to cover their home mortgage. Applicant's husband was unemployed from October 2008 until May 2009, when he closed his business and took a full-time position as a carpenter with a restoration company. As soon as her husband started earning money, Applicant began contacting their creditors trying to establish payment plans.

SOR ¶ 1.a alleges a \$10,736 consumer card account in collection. Applicant stated that in October 2008, as a gesture of good faith, she offered to pay \$20 a month to the original creditor. The creditor declined the offer. When her husband started working in May 2009, she called the creditor and was informed her account was sold to a collection agency. She sent a letter to the collection agency offering to make payments on the account. In January 2010, after a period of negotiations, Applicant entered into an agreement to pay \$250 a month. She made payments in February and March 2010.

SOR ¶ 1.b alleges a \$3,444 charged off account, which became delinquent in 2008, after her husband became unemployed. In late 2008, Applicant offered to pay \$20 a month to the original creditor. The creditor declined the offer. She again attempted to enter into a payment agreement in June 2009, but the account has been charged off. In January 2010, she was informed of the new account holder. Applicant contacted the collection agency and agreed to pay \$100 a month. She made payments in February and March 2010.

In her response to the FORM, Applicant included documents showing that in April 2009, she entered into a repayment agreement with a bank to pay \$210 a month on a delinquent credit card account that was not alleged in the SOR. She presented documentary evidence of four payments under to the agreement. Item 8 (December 2009 Equifax credit report) and Applicant's October 2009 credit report show the account was current when it was closed, presumably as a result of a contract modification.

Applicant and her husband established a budget and developed a financial plan to pay all their debts by 2013 (except their mortgage). She submitted a spreadsheet showing that as of June 2009, they had seven delinquent accounts (including the two alleged in the SOR) totaling approximately \$60,493. Applicant's documents show she established payment plans with the seven creditors. As of March 2010, she had a total debt balance of \$50,910. In 10 months, Applicant reduced \$10,025 of her debt. The

credit reports support her claim that they have not incurred any new large obligations, and they have no new delinquent accounts.

Applicant was also delinquent on her mortgage payments. She presented documents showing she is undergoing a trial period on a mortgage modification plan. At the end of the trial period, she will be able to bring her mortgage to a current status pursuant to a mortgage modification contract.

Applicant stated that she does not live a lavish lifestyle. She and her husband are modifying their lifestyle to reduce expenses so that they can address their financial obligations. They have not incurred any new debt since 2008, live as frugally as possible buying only their day-to-day necessities, and use a wood stove to heat the house to save money. They have saved around \$1,500 for emergencies, and she contributes to a retirement plan.

As previously mentioned, Applicant disclosed her financial problems in her May 2009 security clearance application. She provided detailed information about her financial problems in her application, during her interview with a government investigator, and in her response to the DOHA financial interrogatories. She has been forthright during the security clearance investigation process.

Applicant acknowledged her financial problems and her inability to resolve her delinquent debts diligently. She expressed remorse for her financial problems and promised to resolve them. Her financial situation has improved substantially since her husband started working his current job. With her husband's assistance, she is now in a better financial position to address her past debt. She complied with her promise to a government investigator to make payment arrangements with her creditors and to modify her mortgage loan to bring her accounts current. Her diligent efforts to resolve her debts show some financial responsibility.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required 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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence.”¹ Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. 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).

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.

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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

¹ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

The SOR alleged two delinquent debts totaling approximately \$14,200, which were delinquent for a number of years. The record also shows Applicant was delinquent on five other accounts not alleged in the SOR and late on her mortgage payments. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant presented documentary evidence to show that she and her husband developed financial problems in late 2008, after her husband's business floundered because of the downfall of the housing market and the national economy. Notwithstanding her financial problems, Applicant continued communication with her creditors and attempted to resolve her debts. Immediately after her husband started working, she again contacted her creditors and established payment plans. She established payment agreements with the creditors of SOR ¶¶ 1.a and 1.b in January 2010. She is making payments on both accounts.

Applicant also established payment agreements with five other creditors for debts not alleged in the SOR. Her evidence shows she has been addressing all of her debts

and that she has resolved other debts in addition to the ones mentioned above. Between June 2009 and March 2010, Applicant reduced her debt \$10,000, from approximately \$60,000 to \$50,000. She is making payments on all of her accounts.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because her financial problems are ongoing. She established circumstances beyond her control, which contributed to her inability to pay her debts, i.e., the floundering of her husband's business, his subsequent period of unemployment, and the current downturn in the real estate market. I find Applicant acted with initiative and good faith on her efforts to resolve her delinquent debts. AG ¶ 20(b) applies.

AG ¶ 20(c) fully applies. Although Applicant has not participated in financial counseling, she demonstrated she has the self-discipline necessary to reduce and resolve her debts. She followed a budget, settled and established payment plans with creditors, and substantially reduced her debts. She also has also established partial mitigation under AG ¶ 20(d) because she showed good faith² in the resolution of her debts. AG ¶ 20(e) also applies in part. Applicant disputed some of her questionable debts. When the debts were confirmed as her debts, she entered into a payment plan.

Considering the evidence as a whole, there are clear indications that her financial problems are being resolved or are under control. Applicant's evidence shows she maintained contact with her creditors, she established payment plans with her creditors, and paid other debts. She has a viable plan to resolve her financial predicament, and I believe that she will be able to avoid similar financial problems in the future. Although Applicant still has a large unresolved debt, her past behavior and current financial situation do not raise doubts about her current reliability, trustworthiness, and judgment. Financial considerations concerns are mitigated.

²The 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 [or statute of limitations]) 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)).

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 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.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant and her husband overextended themselves financially with their venture. With the downturn of the economy and the real estate market, their business and personal accounts become delinquent. Notwithstanding, after her husband started working, Applicant has been diligent and aggressive in her efforts to establish payment plans, modify her mortgage loan, and to pay her delinquent debts. Considering her and her husband's current salary, Applicant appears to have sufficient income to make progress in her delinquent debt resolution. These factors show some financial responsibility and judgment. 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).

The mitigating evidence under the whole-person concept is sufficient to warrant granting Applicant's security clearance. She has worked for a government contractor since January 2008. There is no evidence she has ever compromised or caused others to compromise classified information. She has a reputation as a responsible, dedicated, and a trustworthy employee. Her performance reviews lauded her strong work ethic, professionalism, and leadership abilities. She is considered to be an asset to her employer, and her supervisors support her eligibility for a security clearance.

Applicant's financial problems were mostly caused by factors beyond her control. She has taken control of her financial situation and has made significant progress in resolving her debts. She has established a plan to resolve her financial problems and has taken significant actions to implement her plan. She seems to understand what is required of her to be eligible to possess a security clearance. These factors show responsibility, good judgment, and mitigation. On balance, I conclude that Applicant has mitigated the financial considerations security concern.

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-1.b:	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 eligibility for a security clearance for Applicant. Eligibility for a security clearance is granted.

JUAN J. RIVERA
Administrative Judge