



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



In the matter of:)
)
) ISCR Case No. 09-07782
)
Applicant for Security Clearance)

Appearances

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

April 28, 2011

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On March 2, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) for a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued two interrogatories to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA could not make the preliminary affirmative finding required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated October 8, 2010, to Applicant detailing security concerns for financial considerations under Guideline F. These actions were taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on October 20, 2010.

Applicant answered the SOR on November 1, 2010. She denied all allegations under Guideline F. Department Counsel was prepared to proceed on December 20, 2010, and the case was assigned to me that day. DOHA issued a Notice of Hearing on December 28, 2010, scheduling a hearing for January 26, 2010. I convened the hearing as scheduled. The Government offered six exhibits that I marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 6. Applicant testified on her behalf. Applicant offered 14 exhibits I marked and admitted without objection as Applicant Exhibits (App. Ex.) A through N. I left the record open for Applicant to submit additional documents. Applicant did not submit additional documents. DOHA received the transcript of the hearing (Tr.) on February 3, 2011.

Procedural Issues

Applicant did not receive the Notice of Hearing until a few days before the hearing. She discussed the hearing date with Department Counsel prior to the mailing of the Notice of Hearing on December 28, 2010. Applicant is entitled to 15 days advanced notice of a hearing. (Directive E3.1.8.). Applicant was ready to proceed at the hearing on January 26, 2011, and she had sufficient time to prepare. She waived the 15 day notice requirement. (Tr. 7-8)

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 50 years old and has been employed by a defense contractor as a senior project engineer which requires access to classified information for approximately two years. Applicant previously worked as a senior project engineer for the same contractor for over seven years in a non-defense related position not requiring access to classified information. She has almost completed her bachelor's degree in engineering. She has never been married but has three sons, two in college and one at home. She has raised her sons as a single mother. One of her sons had a serious medical problem that required her to be out of work and on public assistance to care for him for over a year. (Tr. 49-50)

Her present monthly income is \$4,200 with monthly expenses of \$3,445, leaving \$755 in discretionary income. Her income history shows a steady rise in income from yearly salary of less than \$20,000 in the late 1990s, including one year of no income, to her present yearly salary of over \$75,000. Her income started to rise in 1999 and steadily grew during the early 2000s. (Tr. 98-99, 123-127; App. Ex. B, Budget, dated January 2011; App. Ex B, Social Security Earnings, dated August 14, 2008)

Credit reports (Gov. Ex. 4, dated July 19, 2009; Gov. Ex. 5, dated November 2, 2011, and Gov. Ex. 6, dated September 2, 2010) show the following delinquent debts for Applicant: an account in collection for \$3,966 (SOR 1.a); a telephone account in collection for \$308 (SOR 1.b); car repossession debt in collection for \$11,054 (SOR

1.c); a debt for apartment rent in collection for \$2,270 (SOR 1.d); a credit card debt in collection for \$1,684 (SOR 1.e); and a cable bill in collection for \$275 (SOR 1.f). The amount of debt is approximately \$19,557 with over half this amount from the result of the car repossession debt. Applicant did not inquire about these debts after they arose because she did not have the resources to pay them. She learned of the delinquent debts in her credit report when questioned by a security investigator in September 2009. (Tr. 38-41)

In response to interrogatories, Applicant noted that the debt at SOR 1.a was for a computer she purchased in the late 1990s. When she lost her job and experienced financial hardships, she was unable to continue paying the bill for the computer. Applicant also noted that the debt at SOR 1.b was for a telephone bill which she paid after learning it was delinquent in 2009. The debt at SOR 1.c is for a car that was repossessed in 1997 when she was on public assistance. Since she was not working, Applicant could not make the loan payments and voluntarily returned the car to the dealer. The debt at SOR 1.d is for the final rent payment for an apartment Applicant occupied for over 10 years while employed. She left this apartment to move to accept a position with her current employer which is located in a different state. She disputes this debt because she tried to pay the debt when she left the apartment but she and the landlord's agent could not agree on the final amount due on the rent. The debt at SOR 1.e is for a credit card Applicant had in the late 1990s. She disputes the debt since the card limit was only \$200. The debt at SOR 1.f is for cable service that Applicant said she paid in April 2009 after learning of the debt. (Gov. Ex. 3, Answer to Interrogatories, dated June 16, 2010)

Applicant testified at the hearing that she was unsure of the origin of the debt at SOR 1.a. She believes it may have been for a computer. She purchased the computer for \$2,000 and made payments while she was employed. After losing employment, she could no longer make the payments leaving \$500 more to pay on the debt. She disputed the debt with the credit reporting agencies, and the debt is not listed on her latest credit report. (Tr. 28-29, 71-754, 114-115; App. Ex. A, credit report, dated January 24, 2011)

Applicant believes the debt at SOR 1.b is a telephone debt. Applicant believes she paid the debt in April 2009 but was not able to provide a receipt. (Tr. 74-77, 112-114)

The debt at SOR 1.c is for the debt remaining from a car repossession. Applicant paid \$9,000 for the car and made payments for a few years. At the time of repossession, she believes she paid approximately \$3,000 of the debt leaving \$6,000 to be paid. She requested the creditor provide her with information on the amount and origin of the debt. Applicant believes she owes a debt but is unsure of the amount. She did not make any inquires about this debt until she discussed it with a security investigator in September 2009. She has enlisted the support of her state's attorney general's office to resolve the debt. (Tr. 29-30, 65-71, 110-112; App. Ex. N, Attorney General information, dated December 23, 2010)

Applicant agrees the debt at SOR 1.d is for the last month's rent on an apartment she lived in for ten years and occupied prior to moving to her present location in 2009. Applicant gave the proper notice under the lease that she was vacating the apartment. She received a bill from the landlord for \$1,115. Applicant purchased a cashier's check to pay the debt. When she attempted to present the check, the landlord's agent refused it because she could not determine the final debt owed. Applicant refused to provide final payment unless the agent signed off on the document showing the final bill was paid. Since there was no agreement, the debt was not paid and is now listed at \$2,270. (Tr. 30-37, 57-65, 121-123; Gov. Ex. 2, Answer to Interrogatories, dated June 16, 2010 at 98-108)

Applicant disputes the amount of the credit card debt at SOR 1.e. Applicant admits she at one time had a credit card with the credit company but the limit was only \$200, so the amount of the debt could not be as much as \$1,684. She disputed the debt with the credit reporting agencies but has not received a response from them. (Tr. 37, 77-80)

Applicant disputed the debt for the cable company at SOR 1.f. Even though she disputed the debt, she paid the debt in full. (Tr. 116-118; App. Ex. M, Paid in Full Letter, dated June 16, 2010)

Applicant's latest credit report shows only one delinquent debt, the apartment rent noted in SOR 1.c that has not been resolved but is under dispute. The other listed debt on this credit report was paid in full. (App. Ex. E, Letter, dated May 6, 2009) She is paying a federal tax debt incurred when she received moving funds from her employer for the move to her present location by payroll deduction. (App. Ex. H, Transaction log, dated January 17, 2011) She pays her student loans by payroll deduction. (Tr. 89-92) She closed a telephone account and received a refund. (App. Ex. L, check, dated February 8, 2005) Applicant also presented information to show she took steps to obtain financial counseling and safeguard her financial information and integrity. She enlisted the assistance of the state attorney general to assist her in resolving some of her disputes with creditors. (App. Ex. N, Attorney General Information, dated January 11, 2011) She purchased a plan to assist her in monitoring her credit and credit reports. (App. Ex. C, Order information, dated January 23, 2011) She also received financial counseling through a religious organization providing such service and through a program provided by her bank. (Tr. 38-40) Applicant has lived frugally, both at her former location and at her present location. She used public transportation in her former location and lives far outside the city at her present location so as to provide a better living environment for her children and to keep overhead costs down. (Tr. 39-44) She contributes to charitable organizations. (App. Ex. J, Letters, dated December 2009 and January 2010)

Applicant is highly regarded by her employer, supervisors, and co-workers. She is considered to be a person of fine character who is worthy of trust and confidence. She is reliable and always follows rules and regulations for her work. She is considered

trustworthy, industrious, and talented. Applicant was awarded the Employee of the Year award in 2000 for her company. She has continued to receive recognition for her academic studies and self improvement. (App. Ex. I and K, Letters and Certificates, various dates)

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 must be considered 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel" The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. While Applicant denied the debts listed in the statement of reasons, credit reports and Applicant's statement to a security investigator show that she had delinquent debts totaling approximately \$19,557. The majority of this debt is the result of a car repossession. These delinquent debts established by the Government raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts); and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). The information indicates an inability and not an unwillingness to satisfy debt.

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government. The most of the delinquent debts in the SOR arose in the 1990s when Applicant had periods of unemployment and was raising three sons as a single mother on welfare. She has been gainfully employed since at least 1999, and managed her finances since then so she did not incur any additional delinquent debt except for the disputed apartment rent. Because the debts were incurred so long ago and have been sold to many collection agencies, Applicant is unclear as to the origin and status of her debts as reflected in her confusion responding to questions from security investigators and providing testimony at the hearing. She was not aware of adverse information in her credit history until she talked to a security investigator in September 2009. However, she did provide sufficiently clear information at the hearing to determine whether she mitigated the security concerns.

I considered 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) and FC MC AG ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances). These mitigating conditions are partially raised by the facts in this case. The most of debts in the SOR were incurred in the mid-1990s and have not been resolved. Since Applicant now is receiving adequate pay and lives within her means with monthly discretionary funds, it is unlikely she will incur more delinquent debts. In fact, she has not incurred additional delinquent debt except for the disputed apartment rent. Any debts she recently incurred have been paid. The financial problems were the result of conditions beyond Applicant's control when she was unemployed and required to stay home to care for her son. She did not act responsibly concerning her finances when she first incurred delinquent debt. She did not inquire about her debts or try to resolve them, mainly because she did not have the resources to do so. She has only started to address these old delinquent debts after the issue was raised during her security interview. By that time, it was difficult for her to determine the origin, amount, and holder of the debts.

I considered FC MC ¶ 20(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). This mitigating condition applies. Applicant has engaged the services of a religious organization, her bank, and a credit protection company to assist her in resolving her delinquent debts and managing her finances. Because of these efforts, her financial problems are being resolved and are under control.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish that she paid each and every debt listed. All that is required is that Applicant demonstrates an established plan to resolve her financial problems and show she has taken significant actions to implement that plan. Of the six delinquent debts, Applicant established she paid two (SOR 1.b, and 1.f), disputed three (SOR 1.c, 1.d, and 1.e), and only one is still unresolved because she is unsure of the origin of the debt and the debt holder (SOR 1.a). She is seeking state authority assistance to resolve the disputed debts. She is paying her current debts, some by automatic payroll deduction. She has not incurred delinquent debt for many years, and Applicant has sufficient funds to meet her financial obligations. Applicant's actions in inquiring about her past due debts, making arrangements to pay those that have been established, and seeking assistance to resolve her debts provide significant and credible information to establish a good-faith

effort to repay or resolve debt. Her actions show she is acting reasonably and responsibly to resolve her financial problems. Her past delinquent debts do not reflect adversely on her present trustworthiness, honesty, and good judgment.

I considered FC MC ¶ 20(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 presented documented evidence from the credit reporting agencies that she filed disputes with them. (App. Ex. F and G) Some of the disputes were resolved in her favor and others are still under consideration.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant is a good employee who is highly regarded by her employer and co-workers. I considered that Applicant's financial problems arose years ago from conditions beyond her control. She initially did not attempt to resolve the debts because she did not have the income to pay them. When she inquired about the debts after the security interview, it was difficult to locate the current holder of the debts. However, she attempted to resolve the debts. She disputed three debts that she did not consider to be her debts or believed the amount of the debt was wrong. She paid two debts. She has not paid one debt that she cannot identify the debt or the proper creditor to pay. She is current with her other debts and her current debts have been paid. Applicant established a "meaningful track record" of payment of her delinquent debts, as well as a good-faith effort to resolve her debts. Applicant's actions to resolve her past financial obligations indicate she will be concerned, responsible, and careful regarding classified information. Overall, the record

