



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



In the matter of:)
)
) ISCR Case No. 10-01762
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

August 23, 2011

Decision

HENRY, Mary E., Administrative Judge:

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

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on May 5, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on April 1, 2011, detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny her a security clearance. The action was 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on April 21, 2011. She submitted a notarized, written response to the SOR allegations dated April 28, 2011 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 of it on June 10, 2011. Applicant received the FORM on June 24, 2011. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response with attachments, dated July 27, 2011. DOHA assigned this case to me on August 15, 2011. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1. Her written response to the FORM is admitted into the record as Applicant exhibit A (AE A).

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 61 years old, works as a security officer for a Department of Defense contractor. She began her current employment in March 2009. From June 2000 until March 2009, Applicant worked as a program manager in mental health and substance abuse programs. From 1995 until 2000, Applicant participated and completed an in-house substance abuse program. Her past drug problem is not an issue in this case.¹

Applicant graduated from high school in 1969. She married in 1971 and divorced a year later. She has two children, ages 40 and 38. She recently received her Associate's of Arts degree and is currently pursuing her bachelor's degree. She is involved in a long-term relationship.²

Applicant's personal financial statement indicates that she earns \$3,795 a month in gross income and receives \$2,850 a month in net income. Her monthly expenses total \$1,443. She also pays \$95 a month to the Internal Revenue Service, \$150 on a credit card debt, and \$58 on a \$3,000 loan. After payment of her expenses, she has a net monthly remainder of \$1,000.³

¹Item 1; Item 5; Item 6.

²Item 6, p.8.

³Item 6, p. 34.

The SOR identified six debts totaling \$29,790, some of which are more than five years old and some of which are under three years old. Applicant negotiated a settlement of the \$1,130 debt in allegation 1.a and developed a payment plan as verified by a letter dated April 21, 2011. She made her first payment on April 25, 2011, and on April 28, 2011, the creditor issued a letter indicating the debt had been paid in full.⁴

Applicant purchased a 2003 car in September 2005. She defaulted on the loan in 2008. The creditor repossessed the car in September 2008 and sold the car. By letter dated October 24, 2008, the creditor notified Applicant that the car had been sold and advised of her of a deficiency balance. (SOR allegation 1.b) Two months before this letter, other individuals filed a class-action lawsuit against this creditor, alleging violation of state law when sending notices to debtors of repossessed cars. On March 9, 2011, the state court issued an order granting preliminary approval of a class action settlement in this case. Shortly thereafter, Applicant received a letter from the state court, advising that she is a member of the plaintiff class and may be entitled to a benefit under the settlement. This letter stated, that if the settlement is approved, the creditor agreed not to pursue collection of any deficiency balance remaining after the sale of her vehicle, meaning the creditor cannot collect any money from her; that the creditor will notify all credit bureaus to delete all references to its automobile loan accounts; and that the creditor will not report any deficiency balance on this debt in the future.⁵ The court set a hearing date for June 16, 2011. As of July 27, 2011, Applicant had not received any further information on the status of the settlement. Because of this lawsuit, the creditor has refused to discuss settlement of this debt with her. She provided the creditor with a letter, granting the creditor permission to provide information to DOHA about her debt.⁶

The \$8,200 debt in SOR allegation 1.c concerns a 2004 charged off automobile loan. The original creditor sold the account to a collection company. In March or April 2011, Applicant wrote to the collection company, asking that this debt be removed from her credit report in accordance with state law. In response to Applicant's letter containing information on the state four-year statute of limitations law, the credit collection company closed the account and showed a balance due of zero.⁷

Applicant paid or resolved the three remaining SOR debts. She negotiated a three-month payment plan for the \$1,328 medical bill listed in allegation 1.d. She fully

⁴Item 6, p. 6-9.

⁵If the settlement is approved, the creditor agrees to waive \$189,000,000 in deficiency balances and repay more than \$5,390,000 in deficiency balances collected on 23,000 claims. While the creditor denies any wrongdoing, the settlement offer is substantial and suggests that the lawsuit has validity. AE A, p. 11-12.

⁶Item 4, p. 1, 11, 15, 20-21; AE A, p. 1-3, 9-14-1.

⁷Item 4, p. 23, 28-30; Item 7; AE A, p. 15, 22.

paid her debt by June 21, 2011.⁸ Applicant provided a letter dated July 19, 2011 from the creditor in allegation 1.e (\$2,320). The letter verified that she had satisfied all her debts with this creditor.⁹ Finally, Applicant paid the remaining balance on the \$814 debt listed in allegation 1.f on July 15, 2011.¹⁰

The record in this case identifies previous unpaid debts belonging to Applicant. It also reflects that Applicant has resolved these debts, which were not listed in the SOR. She developed a repayment plan in 2009 with the Internal Revenue Service for taxes due from the years 2003 through 2005 and continues to make her \$95 monthly payment.¹¹

Applicant attributes her financial problems to low paying jobs, some unemployment, and living beyond her financial means. Her personal financial statement shows that she has sufficient income each month to pay her monthly expenses with money remaining to pay unexpected expenses. She currently saves money each month in a 401(k) account for her future retirement. She presented no evidence of financial counseling.¹²

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 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

⁸Item 4, p. 25-26; AE A, p. 16.

⁹AE A, p. 17.

¹⁰AE A, p. 18-19.

¹¹Item 4; Item 6; Item 7; AE A.

¹²Item 4; Item 6.

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, 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 relating to the guideline 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems after completing her drug rehabilitation in 2000. Her debts occurred because she lacked sufficient income to pay her bills. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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. See *also* ISCR Case No. 08-06567 at 4 (App. Bd. Oct. 29, 3009).

One SOR debt is more than five years old. The remaining SOR debts are more recent. Thus, AG ¶ 20(a) is not applicable. Applicant was unemployed for a short time and underemployed for many years, both circumstances which effected her monthly income. However, her decisions to spend more money than she earned is a circumstance within her control. She has not established that her excessive spending was for medical treatment or other unexpected expenses beyond her control. She has successfully worked to resolve many of her debts. AG ¶ 20(b) is partially applicable.

Applicant has not obtained credit counseling; however, she has gained control over her finances and her debts. She resolved a number of past due accounts and provided documentation of her efforts with her responses to interrogatories. Since the issuance of the SOR, she has paid or resolved four of the six debts listed in the SOR. When she learned the debt in SOR allegation 1.c was barred from collection under state law, she wrote the collection company, now creditor, and provided it with a copy of the law. In response, the collection company closed its account and indicated that she had a zero balance in her account. While she did not pay this debt, the collection company considers the debt resolved based on state law.¹³

Applicant is one of many plaintiffs in a class action lawsuit against the creditor in allegation 1.b for violation of state law. The creditor rightfully declines to discuss a settlement or payment plan with her. Because Applicant and this creditor are parties to the same lawsuit and are represented by counsel, they cannot communicate directly with each other. Rather, any communications must come through their respective counsel. A settlement has been proposed and presented to the court for approval. If approved, Applicant's debt to the creditor will be legally resolved since the creditor has offered to waive its right to recover any deficiency balance. If the settlement is approved, the creditor could not accept a payment of this debt after agreeing to waive the deficiency. Such an acceptance could be viewed as a violation of the settlement agreement.¹⁴ In light of the lawsuit, Applicant has done all she can do to resolve this debt at the present time. Applicant has mitigated the security concerns under AG ¶ 20(c).

Applicant contacted the creditors listed in the SOR allegations 1.a, 1.d, and 1.f about payment of her debts. Her contacts with the creditors reflect a good-faith effort to

¹³Under the applicable state statute of limitations, the collection company has no legal right to collect this debt. The collection company is well aware of the law and for this reason, closed its account after she made it aware of her knowledge of the law.

¹⁴Even if Applicant made any payments, the payments would be returned to her under the settlement proposal.

resolve her debts, which she did. AG ¶ 20(d) applies to these three debts. The remaining mitigating conditions are not applicable in this case.

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 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.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. After completing a five-year drug rehabilitation program, Applicant obtained employment in mental health and substance abuse programs, where she gained work experience while earning low wages. She spent more money than she earned, causing financial problems. Over time, she has learned to better manage her income and expenses. She paid many of her old debts. Because she is a class member of a lawsuit against one creditor, she cannot resolve her debt, if any, until the lawsuit is concluded.

Applicant took affirmative action concerning the old \$8,200 car loan debt. She wrote a letter to the creditor collection company asking it to remove the debt from her credit report, because collection of the debt was barred under the state statute of limitations law. In response to her letter, the creditor collection company closed its account and listed the balance as zero. As a result of her actions, this debt is resolved

as the creditor's letter reflects that it does not intend to take any further action on her account.¹⁵ This debt cannot be a source of improper pressure or duress. 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. While the future legal status of one debt is unknown, this debt does not raise a security concern. (See AG ¶ 2(a)(1).) Applicant has taken all the steps she can to resolve the debt in allegation 1.b. She lives within her income and pays her monthly bills. She does not live extravagantly.

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 arising from her finances under Guideline F.

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

¹⁵Department Counsel's argument that the debt may have been sold is speculative.