



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



In the matter of:)	
)	
)	ISCR Case No. 10-02609
)	
Applicant for Security Clearance)	

Appearances

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

August 11, 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.

Statement of the Case

On November 17, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain 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 an interrogatory to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated October 28, 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 26, 2010.

Applicant answered the SOR in an undated response received at DOHA on November 19, 2010. She admitted seven allegations (1.a, 1.b, 1.c, 1.d, 1.g, 1.h, and 1.i), and denied two allegations (1.e, and 1.f) under Guideline F. Department Counsel was prepared to proceed on February 3, 2011, and the case was assigned to me on February 22, 2011. DOHA issued a Notice of Hearing on April 19, 2011, scheduling a hearing for May 4, 2011. I convened the hearing as scheduled. The Government offered seven exhibits which were marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 7. Applicant testified on her behalf and offered seven exhibits that I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A through G. I left the record open for Applicant to submit additional documents. Applicant timely submitted six documents which I marked and admitted to the record as App. Ex. H through M. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 8, Memorandum, dated May 24, 2011) DOHA received the transcript of the hearing (Tr.) on May 13, 2011.

Procedural Issues

Applicant received the Notice of Hearing on April 25, 2011. She discussed the hearing date with Department Counsel prior to the mailing of the Notice of Hearing on April 18, 2011. Applicant is entitled to 15 days advance notice of a hearing. (Directive E3.1.8.). Applicant was ready to proceed at the hearing on May 4, 2011, and she had sufficient time to prepare. She waived the 15-day notice requirement. (Tr. 6-8)

Findings of Fact

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

Applicant is a 44-year-old high school graduate employed as a security officer for over ten years. She married in 1997 and divorced in 2005. She has two children who are grown. She helps support two grandchildren. Her monthly net pay is \$2,468, with monthly expenses of approximately \$2,000, leaving her with \$400 to \$500 in monthly discretionary funds. She is current with her taxes and her present debts are paid as agreed. (Tr. 47-54)

Credit reports (Gov. Ex. 4, dated December 8, 2009, and Gov. Ex. 5, dated July 26, 2010), and Applicant's response to an Interrogatory (Gov. Ex. 2, dated August 10, 2010) show the following delinquent debts for Applicant: a medical debt for \$152 (SOR 1.a); an account in collection for \$408 (SOR 1.b); medical accounts for \$69 (SOR 1.c) and \$40 (SOR 1.d); an account past due for \$40 (SOR 1.e); a debt in collection for \$534 (SOR 1.f); another account in collection for \$10,836 (SOR 1.g); and an account past due for \$178 (SOR 1.i). Also listed in the credit reports is a Chapter 7 bankruptcy filed

on February 24, 2000, with debts discharged on July 12, 2000 (SOR 1.h). The total amount of her current delinquent debt is \$12,257, with the majority of the total debt from the \$10,836 debt at SOR 1.g.

Applicant's former husband did not have a good credit rating, so all of their marital debts were placed on her credit cards. Whenever her husband needed something for himself or in his business as a truck driver, the debts were placed on her credit card. Her husband stopped helping her pay the debts he placed on her credit cards. Until that time, her credit rating was excellent. Without his help, she was unable to pay the debts he accumulated. They filed bankruptcy and the debts were discharged. After the bankruptcy discharge, they separated. Since the bankruptcy, Applicant's credit has been good. She has been able to purchase a house in 2004 and maintained it for six years without any outstanding bills. She continues to pay her personal medical bills. (Tr. 25-26; App. Ex. D, Receipts for medical payments, various dates) Applicant sought debt counseling, but the counselor wanted significant money up front that Applicant thought she could use better to pay her present and past financial obligations (Tr. 19-23, 54-57; Gov. Ex. 6, Bankruptcy documents, dated February 24, 2000; Gov. Ex. 7, Applicant's Statement, dated March 22, 2001)

Applicant received a \$58,000 settlement from an automobile accident in 2005. She paid the \$28,000 medical debts from the accident. She used another \$19,000 for required repairs to her house to include a new roof, windows, and drainage system to alleviate mold and mildew issues on her house. (Tr. 36-38; App. Ex. F, Receipts for work performed, various dates) She used \$9,000 to purchase a trailer for another daughter who was pregnant. She kept \$2,000 in savings.

The eight SOR debts all resulted from medical treatment for her daughter. Her present employer provided health insurance when she started working with them in 2000. However, she was unable to have her health insurance cover her daughter who had a pre-existing diabetes medical problem. Her former husband was required to pay child support to assist with medical debts, but he did not. All of the medical debts for her daughter were her responsibility until her daughter turned 18 years of age. (Tr. 38-42) Applicant plans paying the smallest bills first. (Tr. 22-24)

Applicant paid the \$152 medical debt at SOR 1.a in full. (Tr. 24-25; App. Ex. A, Credit Report notes, dated August 2, 2010; App. Ex. C, bill, dated November 14, 2010; App. Ex. E, Response to SOR, dated February 12, 2011; App. Ex. I, Cancelled check, dated December 6, 2010; App. Ex. J, Cancelled check, dated January 13, 2011) She paid in full the \$69 medical debt for her daughter at SOR 1.c. (Tr. 27-29; App. Ex. A, Annotated credit report, dated August 2, 2010; App. Ex. E, Response to SOR, dated February 12, 2011; App. Ex. L, Receipt, dated August 30, 2010) She paid the \$40 medical debt in full at SOR 1.d. (Tr. 29; App. Ex. H, Cancelled check, dated October 30, 2010)

The next debt Applicant plans to pay is the \$408 debt at SOR 1.b. (Tr. 33-34) She made a \$100 payment on this debt. (App. Ex. K, cancelled check, dated May 6,

2011) Applicant is unsure of the origin of the \$40 debt at SOR 1.e but believes it is for her daughter's medical care. She has not made any attempts to learn about the debt or made any payments on the debt. (Tr. 29-30) She believes that the debt at SOR 1.f is for blood work on her daughter. She has not inquired about the debt but will pay it after paying her other smaller debts. (Tr. 30-32) She knows the large debt at SOR 1.g is for her daughter's hospitalization. She will pay that debt when she can. She has not made any payments on the \$178 medical debt at SOR 1.i. (Tr. 32-34)

Applicant has been commended by her employer for her duty performance. She has also completed required training for her job. (App. Ex. G, 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. Applicant's delinquent debts established by credit reports and Applicant's admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant's testimony concerning her finances was candid and forthright. She provided financial information of her attempts to resolve her financial obligations.

I considered Financial Considerations Mitigating Conditions 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 apply. Applicant incurred delinquent debt because of her daughter's medical treatment. She was unable to obtain medical insurance for her daughter because of her pre-existing diabetic condition. Her former husband did not provide child support as required. The full responsibility for her daughter's medical care was on Applicant. These were conditions beyond her control. She is not likely to incur additional medical debt for her daughter because she is no longer responsible for her daughter's care since the daughter is now over 18 years old.

Applicant acted responsibly towards her debt. She pays her personal bills and is current with all of them. She used funds from an accident settlement to pay her medical debts from the accident, make necessary repairs to her house, and purchase a trailer for a pregnant daughter. All of her debts pertain to her daughter's medical treatment. She paid three of her daughter's medical debts listed in the SOR. She has a plan to pay the remaining debts starting with the lowest. Applicant acted responsibly under the circumstances by paying her daughter's medical debts and using her other funds to pay her needed expenses and keep her personal debts current.

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). Applicant initially sought assistance from a debt counselor, but determined it would be better not to pay the debt counselor's upfront fee but use her funds to pay her debts. I give her credit under this mitigating condition for seeking debt counseling, but acting wisely to use her funds to pay the debts rather than to pay for additional counseling. She acted responsibly and presented information that her debt problems are being resolved.

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. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. 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.

Applicant paid three SOR debts in full. She is making payments on a fourth debt according to her plan of paying her smallest debts first. Applicant's actions in paying some of her debts and having a plan to resolving her remaining delinquent debts provide significant and credible information to establish a meaningful track record of debt payment. Her actions are reasonable and prudent under Applicant's financial circumstances and show honesty and an adherence to her financial duties and obligations. She established her good-faith efforts to repay her creditors and resolve debt. Her reasonable and responsible efforts to resolve her financial problems indicate that her past delinquent debts do not now reflect adversely on her trustworthiness, honesty, and good judgment. She has mitigated security concerns based on financial considerations.

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 Applicant's duty performance, her training, and that she has been commended for her work performance. The bankruptcy action filed in 2000 is no longer a security concern. Bankruptcy is a legal and permissible means to resolve financial problems. Applicant's former husband used her credit cards to purchase items and then refused to assist her in paying the debts. The bankruptcy was the only means she had to resolve the debts. The debts were discharged in bankruptcy over ten years ago.

I considered that Applicant's present financial problems arose from conditions beyond her control. All of her SOR debts were incurred for treatment of her daughter's medical condition. She could not obtain health insurance for her daughter because of a pre-existing medical condition. Her husband failed to provide her child support as required which would have assisted her with payment of the medical bills. She established a "meaningful track record" of payment of her delinquent debts. She paid three SOR debts in full and has made payments on a fourth debt. Her plan is to pay the debts, paying the lowest amount first. Her present bills are all paid as agreed. Applicant's actions to pay her past financial obligations and resolve her debts while maintaining a good current financial status indicates she will be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations, and she should be granted 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 - 1.i: 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.

THOMAS M. CREAN
Administrative Judge