



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



In the matter of:)
)
) ISCR Case No. 10-03747
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

September 29, 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 December 22, 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 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 findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated February 11, 2011, 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 February 17, 2011.

Applicant answered the SOR on March 28, 2011. She admitted seven allegations (1.a, 1.b, 1.c, 1.d, 1.i, 1.j, and 1.k), and denied five allegations (1.e, 1.f, 1.g, 1.h, and 1.l). She provided explanations for her answers. Department Counsel was prepared to proceed on June 13, 2011, and the case was assigned to me on July 25, 2011. DOHA issued a Notice of Hearing on August 3, 2011, scheduling a hearing for August 22, 2011. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified on her behalf and offered four exhibits that I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A through D. I left the record open for Applicant to submit additional documents. Applicant timely submitted ten additional documents which I marked and admitted to the record as App. Ex. E through N. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 6, Memorandum, dated September 8, 2011) DOHA received the transcript of the hearing (Tr.) on September 7, 2011.

Procedural Issues

Applicant received the Notice of Hearing on August 8, 2011. She discussed the hearing date with Department Counsel on August 3, 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 August 22, 2011, and she had sufficient time to prepare. She waived the 15-day notice requirement. (Tr. 5-6)

Findings of Fact

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

Applicant is a 49-year-old college graduate employed as a technical writer for a defense contractor since October 2009. She married in 1982 and divorced in 1989. She married again in 1992 and divorced in 1995. She has two children who are grown. She has continued to go to school and is taking courses for her master's degree. Applicant's annual salary is \$52,000. Her personal financial statement shows monthly income of \$3,494.50, with monthly expenses of \$3,302.59, leaving her \$191.91 monthly in discretionary funds. (Tr. 11-14; Gov. Ex. 1, e-QIP, dated December 22, 2009; Gov. Ex. 2, Response to Interrogatory, dated July 23, 2010; Gov. Ex. 3, Response to Interrogatory, dated July 23, 2010)

Credit reports (Gov. Ex. 4, dated January 1, 2010, and Gov. Ex. 5, dated October 5, 2010), and Applicant's response to an interrogatory (Gov. Ex.32, dated July 23, 2010) show the following delinquent debts for Applicant: a medical debt for \$83 (SOR 1.a); a cable debt in collection for \$79 (SOR 1.b); a telephone debt in collection for \$195 (SOR

1.c); an apartment rental debt in collection for \$1,995 (SOR 1.d); a collection account for \$40 (SOR 1.e); a state tax lien for \$1,323 (SOR 1.f); a telephone debt in collection for \$742 (SOR 1.g); a car repossession debt for \$11,149 (SOR 1.h); a credit card debt in collection for \$1,031 (SOR 1.i); a utility debt charged off for \$199 (SOR 1.j); a credit card debt charged off for \$650 (SOR 1.k); and a credit card debt in collection for \$195 (SOR 1.l). The total amount of the debt listed on the SOR is approximately \$17,000. The debts are for medical bills, utility bills, cell phone bills, and credit cards. The largest debt is for car repossession. Applicant also mentioned other debts not on the SOR to include a federal tax debt and student loans.

Applicant was financially stable until she was laid off from her position with a trucking company in March 2009. She received a \$7,000 settlement and used some of the funds for living expenses and some to pay bills. She was unemployed until October 2009 when she was hired by her present employer. (Tr. 11-13) Applicant is the sole heir for her mother's estate. Her mother's house has been sold and will be closed shortly. She expects to realize approximately \$40,000 from the sale. This will enable her to pay all debts and buy a house. (Tr. 38-39)

Applicant paid in full the medical debt at SOR 1.a. (Tr. 27-28; App. Ex. G, Applicant's Statement, dated September 8, 2011; App. Ex. N, Payment, dated August 22, 2011)

Applicant indicated she paid the \$79 cable bill at SOR 1.b in full. She was unable to provide a receipt but did provide a receipt confirmation number. (Tr. 28-29; App. Ex. G, Applicant's Statement, dated September 8, 2011)

Applicant paid in full the cable debt at SOR 1.c. (Tr. 29; App. Ex. G, Applicant's Statement, dated September 8, 2011; App. Ex. K, Account Statement, dated August 30, 2011)

The debt at SOR 1.d is for the early termination of a lease. Applicant disputes the amount of the debt. She contacted the apartment complex but they were unable to locate her file. They cannot set up a payment plan for her or accept her payments. (Tr. 29-30; App. Ex. G, Applicant's Statement, dated September 8, 2011)

Applicant paid the \$40 credit account at SOR 1.e in full. (Tr. 30-31; App. Ex. C, Statement dated February 22, 2011)

Applicant has state tax liens for tax years 2006 and 2007 at SOR 1.f. She has been making payments on the lien and it is now paid in full. (Tr. 31-32; App. Ex. E, Statement dated March 22, 2011; App. Ex. G, Applicant's Statement, dated September 8, 2011; App. Ex. I, Receipt, dated September 7, 2011)

Applicant paid her Verizon collection account at SOR 1.g. She has been paying \$75 every two weeks on the account. She was not able to provide a copy of the paid in

full statement but she did provide a receipt number for her final payment. (Tr. 31-32; App. Ex. G, Applicant's Statement, dated September 8, 2011)

The debt at SOR 1.h is for a car repossession. Applicant purchased a car for her children when they were living at home. She made payments until she was laid off in March 2009. When she could no longer make the payments, she voluntarily turned in the car for repossession. She has a settlement agreement to pay \$3,436.12 on the debt. She made a \$1,700 payment and has the final payment of \$1,736.12 due on September 30, 2012. (Tr. 32-33; App. Ex. G, Applicant's Statement dated September 8, 2012)

Applicant settled the \$1,031 debt at SOR 1.i for \$775.24. She made the first payment of \$389.72 on September 7, 2011. She has a final payment of \$389.74 due on September 25, 2011. (Tr. 33-34; App. Ex. G, Applicant's statement, dated September 8, 2011; App. Ex. L, Receipt and Statement, dated September 7, 2011)

Applicant paid in full the utility debt of \$199 at SOR 1.j. She was unable to provide a receipt but did provide a receipt number. (Tr. 34-35; App. Ex. G, Applicant's Statement, dated September 8, 2011)

The bank debt at SOR 1.k is for an overdrawn account. Applicant paid half of the account and has another payment remaining to bring the debt into balance. She still maintains an account with the bank. (Tr. 35-36; App. Ex. G, Applicant's Statement, dated September 8, 2011; App. Ex. H Statement, dated September 8, 2011)

Applicant paid the collection account for a bank at SOR 1.l in full. (Tr. 37-38; App. Ex. D, Statement, dated December 2, 2010)

Applicant has paid other debts not listed on the SOR. She paid a past due cable bill. She paid another apartment rental debt. She has not received a receipt back from the landlord. (Gov. Ex. 2, Response to Interrogatory, dated July 23, 2010 at 3; App. Ex. G, Applicant's Statement, dated September 8, 2011) Applicant has continued to pay a debt to the Internal Revenue Service for taxes due from tax years 2006 and 2007. Her debt is now less than \$2,000. (App. Ex. M, \$750 Postal Receipt, dated August 29, 2011) Her student loans are in forbearance since she is attending school. (App. Ex. J, letter, dated August 25, 2011)

Applicant's supervisor wrote that he has known Applicant for approximately two years. She is dependable, trustworthy, and hard working. She demonstrates the utmost in integrity. He has no reservations recommending her for access to classified information. (App. Ex. A, letter, dated August 8, 2011) Applicant received a Certificate of Appreciation from a Marine Corps command for her work for them on a special project. (App. Ex. B, Certificate, dated July 31, 2011)

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 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 when she was laid off from her job and was unemployed for over six months. These were conditions beyond her control. She is not likely to incur additional debts since she is employed and living within her means.

Applicant acted responsibly towards her debt. She contacted her creditors and arranged settlement agreements with some and payment arrangements with others. She has paid or is paying most of her financial obligations. She is current with her present bills. She has a plan to pay the remaining debts. Applicant acted responsibly under the circumstances by paying or making arrangements to pay her 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). Applicant has not presented any information to substantiate that she sought or received debt counseling, But 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 eight of the SOR debts in full. She is making payments on a three other SOR debts and will have them paid in the next few months. She is unable to pay one other debt because the creditor's records do not show adequate information to accept her payments. She also presented information to show she has paid or is paying other debts not listed on the SOR. Applicant's payment of most of her debts provides significant and credible information to establish a meaningful track record of debt payment. Her actions are reasonable and prudent under her 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 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.

