



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



In the matter of:)	
)	
)	ISCR Case No. 10-07416
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

October 17, 2011

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 11 collection and past-due accounts, which totaled approximately \$23,000. She has paid or is making monthly payments on the accounts except for two small accounts that together total approximately \$350. Applicant has rebutted or mitigated the security concerns under financial considerations. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department's (DoD) intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on May 2, 2011, detailing security concerns under Guideline F, financial considerations.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On June 1, 2011, Applicant answered the SOR and requested a hearing. On August 17, 2011, I was assigned the case. On August 17, 2011, DOHA issued a Notice of Hearing for the hearing held on August 31, 2011. At the hearing, the Government offered exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified on her own behalf and submitted exhibits A through I, which were admitted into evidence without objection. On September 9, 2011, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she admitted owing the medical debt listed at SOR ¶ 1.b and denied owing the remaining debts. I incorporate Applicant's admission to the SOR allegations. After a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 46-year-old computer software analyst who has worked for a defense contractor since November 2000, and seeks to maintain a security clearance. Her supervisor states Applicant has superior duty performance, is trustworthy, and performs every job expertly and on time. (Ex. J)

In 2009, Applicant and her husband divorced after a five-year marriage. (Tr. 24) A number of her medical bills were incurred when she changed health insurance companies and the new insurance company was slow in paying. (Ex. 3) When the divorce occurred, the majority of the household debts were in her name. (Tr. 16, 24) She continued to pay the \$1,300 monthly mortgage and the utilities on the house, which made it difficult for her to address her other debts. (Tr. 25) After the house was sold, she moved into a condominium her parents owned.

As of December 2010, Applicant's and her new husband's monthly net income was approximately \$4,500. Their monthly expenses were approximately \$3,800 with \$500 being paid monthly on debts. Their monthly net remainder was approximately \$200. (Ex. 4) She drives a 2004 Toyota Camry. (Tr. 31) She is current on her credit cards and utility bills. (Tr. 32) In Applicant's 1994 divorce, her ex-husband was ordered to pay child support for their two children, who are now teenagers. He has failed to do this and owes approximately \$72,000 in back child support. (Tr. 34)

In June 2010, when Applicant completed her Electronic Questionnaires for Investigations Processing (e-QIP), she indicated she had been in default on a loan; had debts turned over to a collection agency; had an account charged off, suspended, or cancelled for failing to pay as agreed; and that she had been more than 180 delinquent on a debt. She also listed ten accounts that were past due or delinquent. (Ex. 1)

She is making \$25 monthly payments on a hospital bill (SOR b, \$1,300). The status of the other SOR debts follows:

	Creditor	Amount	Current Status
a	Credit card collection account.	\$4,183	Paid. Creditor offered to settle this account for \$2,850, which Applicant accepted and paid. (Ex. A)
b	Medical Account.	\$1,650	Paying. Applicant pays \$25 monthly by automatic withdrawal on this debt. (Ex. B) She provided documents showing her monthly payments started in May 2011. (Ex. B, B-1, B-2)
c	Collection account for a medical service.	\$100	Paid. (Ex. C, Ex. D)
d	Collection account for a medical service.	\$80	Paid. (Ex. D)
e	Collection account for a medical service.	\$58	Paid. (Ex. D)
f	Department store charged-off account.	\$1,425	Paid. Applicant made \$166.33 monthly payments until the debt was paid. The account has a zero balance. (Ex. E)
g	Collection account for a medical service.	\$190	Paid. (Ex. F)
h	Medical account.	\$73	Paid. (Ex. G)
i	Medical account.	\$200	Applicant denies this debt. There is no listed creditor to contact. (Tr. 36)
j	Collection account for a medical service.	\$165	Applicant has been unable to locate this account. She contacted the collection agency and provided her social security number. The agency could find no debt in her name. (Tr. 28)
k	Collection account for a bank account.	\$6,651	Paid. Creditor offered to settle this account for \$2,660.47, which Applicant accepted and paid. (Ex. H)
l	Collection account for central air condition.	\$8,780	Paid. (Ex. I)
	Total debt listed in SOR	\$23,205	

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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems. Applicant had eleven charged-off or collection accounts totaling in excess of \$23,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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 is making monthly payments on one debt; cannot locate two additional accounts, which total approximately \$350; and has paid all the other SOR delinquent accounts. Under AG ¶ 20(a), Applicant's financial problems were contributed to by her 2009 divorce in which the majority of the debts were in her name. After she sold the house and moved into a condominium owned by her parents, she was able to address her past due obligations. Her ability to pay her debts was made more difficult because she has two teenagers and receives no child support, although her 2004 divorce decree awarded her child support. Since the delinquent accounts have now been addressed, they do not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced divorce along with the financial burden associated with it. She has acted responsibly in addressing her delinquent accounts. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), there are clear indications that the problem is being resolved or is under control. Applicant has paid eight of the eleven debts and has an agreement paying \$25 per month on another debt. She has made a good-faith effort to repay overdue creditors or otherwise resolve her debts. AG ¶ 20(c) and ¶ 20(d) apply. The two remaining debts together totaling less than \$400 do not raise concern about her current reliability, trustworthiness, or good judgment.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries, but were mainly for medical treatment and central air conditioning installed in a home she owned. She has only one outstanding debt on which she makes monthly payments. She is not living beyond her means, as evidenced by the 2004 Toyota automobile she owns, and she is current on her utility bills and credit card accounts.

Of course, the issue is not simply whether all Applicant's debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a–1.l: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge