



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



In the matter of:)	
)	
)	ISCR Case No. 10-10349
)	
Applicant for Security Clearance)	

Appearances

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

10/25/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant had three unresolved debts, which totaled in excess of \$23,000. She is making monthly payments on each of the debts. Applicant has rebutted or mitigated the financial considerations security concerns. 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 8, 2012, 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 May 31, 2012, Applicant answered the SOR and requested a hearing. On July 30, 2012, I was assigned the case. On September 4, 2012, DOHA issued a Notice of Hearing for the hearing held on September 19, 2012.

At the hearing, the Government offered exhibits (Ex.) 1 through 9, which were admitted into evidence without objection. Applicant testified on her own behalf, as did one additional witness. Applicant submitted Ex. A through H, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. On September 25, 2012, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex.I-1 through I-6. On September 25, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she admitted all of the factual allegations in the SOR, and her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 56-year-old senior industrial security representative (Ex. I-6) who has worked for a defense contractor since January 1980, and seeks to maintain a top secret security clearance. (Tr. 54) Her current annual salary is \$75,042. (Ex. 3) She wants to address all of her unpaid obligations. She believes in paying her bills. (Tr. 68) She has paid off four additional credit card accounts not reflected on the SOR. (Ex. 7) Applicant attended a company sponsored financial seminar. (Tr. 33)

Applicant's co-workers, supervisors, and friends state: Applicant is kind, dedicated, hardworking, loyal, trustworthy, and dedicated to completing all tasks and assignments. (Ex. F) A friend and co-worker stated Applicant had great moral character. (Tr. 65)

In 1995, Applicant and her husband filed for Chapter 7 bankruptcy protection when her then husband lost his job. He was unemployed for 11 months. (Ex. 8, Tr. 29) They had five children living with them at the time. (Tr. 28) When he obtained a job, it was at half of his previous salary. In September 1995, their debts were discharged. The bankruptcy had listed \$143,000 in assets and \$180,000 in liabilities. (Ex. 9) The secured debt representing two vehicles, an equity loan, and the mortgage totaled more than \$163,000. There was \$16,000 in unsecured debt consisting mostly of credit card accounts and two lines of credit. (Ex. 9) At the time of the bankruptcy, Applicant's two vehicles were both at least seven years old. (Tr. 33) In March 1998, they filed for divorce.

In March 2008, Applicant moved from the coast to the mid-west with her boyfriend of ten years. He had moved in 2007. (Tr. 56) In July 2008, shortly after her arrival, the relationship ended. Prior to the breakup, she had a credit score of 800. As of May 2012, her credit score had declined to 590. (Ex. G)

In April 2010, Applicant contacted a debt management counseling service to help her settle her debts. The service told her to stop paying her creditors and make payment to them. (Tr. 38) In June 2010, the service told her it would take a year to settle her accounts. Applicant indicated that was too long and the company refunded her \$600, which was a portion of what she had paid. (Ex. 4, Tr. 60) The debt management service was then terminated.

In July 2010, Applicant self-reported being more than 180 days delinquent on four credit cards. (Ex. 7) Applicant receives \$1,170 in rent for her condo located at her prior location on which there is a monthly mortgage of \$1,134. (Ex. 4) She had purchased the condo for \$149,000, but its fair market value had fallen to \$84,000. (Ex. 4)

In May 2012, Applicant had applied for a personal loan, but that consolidation loan was turned down. (Ex. G) Also in May 2012, her request for a hardship loan from her 401(k) retirement plan was also turned down. (Ex. H) She is ineligible for a loan from her 401(k) plan until April 2013. (Tr. 30, 32) As of July 2010, the value of her 401(k) plan was \$67,000. (Ex. 4)

Applicant is currently making \$50 payments on a department store account (SOR 1.b, \$15,085) for the purchase of appliances. The account has been charged off. In March 2011, she started making payments on this debt and has continued with monthly payments. (Tr. 29) In August 2012, she made a \$50 payment (Ex. I-5) which reduced the balance to \$14,985.² (Ex. I-5)

Applicant pays the debt listed in SOR 1.c (\$3,418) by a \$150 monthly, automatically debit from her checking account. (Ex. D) Between October 2011 and August 2012, she made 12 payments. (Ex. C-1, Ex. I-3, Tr. 31) Her current balance is \$2,968. (Ex. I.1)

Applicant currently makes \$50 monthly payments to the debt listed in SOR 1.d (\$4,457). The debt resulted from the purchase of a computer. She has made seven payments starting in February, 2011. (Ex. C-2) With her August 2012 payment, the balance has been reduced to \$4,131. (Ex. I-1, I-2) She was involved in a vehicle accident, which damaged her 15-year-old vehicle so that she required a different vehicle. (Tr. 61) She is current on her \$428 monthly car payments. (Tr. 62) Her payments on this account were interrupted following her auto accident when she started making car payments.

Applicant puts \$267 weekly into her savings account. (Tr. 43) She is not getting any calls or letters from creditors demanding payment. (Tr. 63)

² The balances on Applicant's accounts have declined as much as the payments she had made partly because of the interest accumulating on the accounts and partly because the SOR balances reflect a credit bureau report (Ex. 5) dated after she was already making payments.

A summary of Applicant's bankruptcy and three accounts and the current status of each follow:

	Creditor	Amount	Current Status
A	1995 Chapter 7 bankruptcy filed .	Assets \$143,000 liabilities \$180,000	She filed for bankruptcy protection because her then husband lost his job.
B	Charged-off department store account.	\$15,135	Paying. Applicant pays \$50 monthly on this debt. Current balance is \$14,985. (Ex. 2, 3, E, I-1, I-4, I-5)
C	Charged-off department store account.	\$3,993	Paying. Applicant pays \$150 monthly on this debt. Current balance is \$2,968. (Ex. 2, 3, C-1, D, I-1, I-3)
D	Charged-off department store account.	\$4,482	Paying. Applicant pays \$50 monthly on this debt. Current balance is \$4,131. (Ex. 2, 3, C-2, E, I-1, I-2)
	Total debt listed in SOR	\$23,610	

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. In 1995, Applicant had to resort to bankruptcy protection. She had three unresolved debts totaling more than \$23,000, which she is now resolving. AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

The following six 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;

(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; and

(f) the affluence resulted from a legal source of income.

In 1995, 17 years ago, Applicant sought bankruptcy protection (SOR 1.a) when her husband lost his job. The majority of their liability was the home. Their two vehicles were both at least seven years old at the time of the bankruptcy. It does not appear they were living beyond their means. There is nothing about that bankruptcy that raises current security concerns.

Applicant has three debts on which she is making payments. In March 2011, she started repaying the department store debt (SOR 1.b) and currently makes \$50 monthly payments. In October 2011, she started addressing another department store debt (SOR 1. c). She currently has \$150 automatically debited from her checking account each month to pay this debt. Starting in February 2011, she began addressing the

remaining debt (SOR 1.d) resulting from a computer purchase. She currently makes \$50 monthly payments on the debt.

Under AG ¶ 20(a), Applicant had only three unresolved debts, which is a small number of debts. She is now addressing that debt and the circumstances that led to her debt are unlikely to recur. These three debts do not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

Applicant's finances were affected when she left her home and moved to a new state to be with her boyfriend of ten years. She anticipated marriage, but the relationship ended shortly after her move. She had anticipated sharing household and monthly obligations, but, instead, had to pay all of her living expenses without support of her boyfriend. This was an unexpected event, largely beyond her control. She is paying the debts indicating she is acting responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant attended a company sponsored financial seminar and there are clear indications her financial problems are being resolved. AG ¶ 20(c) applies. She has been making payment on the three debts for more than a year and will continue to make her monthly payments. AG ¶ 20(d) applies. AG ¶ 20(e) and AG ¶ 20(f) do not apply because Applicant is not contesting any of the three debts and affluence was not alleged or raised by the evidence.

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. Applicant is not living beyond her means. She has stated a desire to repay her debts coupled with more than a year's history of repayment. She has demonstrated that she has established a plan to resolve her delinquent debt and has taken significant action to implement that plan. Having made monthly payments over such an extended period of time I am confident she will continue doing so until the accounts have been resolved. She has established a "meaningful track record," which includes evidence of actual debt reduction through payment of her debts.

The issue is not simply whether all her debts are being 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.d:	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