



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



In the matter of:)	
)	
)	ISCR Case No. 11-01992
)	
Applicant for Security Clearance)	

Appearances

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

January 31, 2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant has paid \$3,200 on the more than \$18,000 in charged-off and collection accounts she had owed. It is her intent to obtain employment so that she can pay her remaining debts and make a better life for herself and her children. She has made progress on addressing her debts and has a job offer that would allow her to pay the remaining debt. Applicant has rebutted or mitigated 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

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.

Statement of Reasons (SOR) on May 31, 2011, detailing security concerns under Guideline F, Financial Considerations. On June 22, 2011, Applicant answered the SOR and requested a hearing. On July 22, 2011, I was assigned the case. On August 15, 2011, DOHA issued a Notice of Hearing for the hearing held on September 1, 2011.

At the hearing, the Government offered exhibits (Ex.) 1 through 5, which were admitted into evidence without objection. Applicant testified and submitted exhibits A through C, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. On September 13, 2011, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. D and E. On September 12, 2011, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she denied the debt in SOR ¶ 1.a (\$60), 1.p (\$3,000), and 1.u. (\$30) and admitted the remaining factual allegations in the SOR. Her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 34-year-old who has worked for a defense contractor since September 2010, and seeks to obtain a security clearance. (Ex. A) Applicant called no witnesses other than herself, and produced no work or character references. Her intent is to gain employment to be able to pay her debts and make a better life for herself and her children. (Tr. 23) She asserts she has been offered a \$148,000 job working for a contractor overseas for which she needs a clearance. (Tr. 27)

In August 1996, she joined the U.S. Army where she was a truck driver. (Tr. 23) In August 2001, after being injured from a fall from a truck, she went into the Army National Guard. (Tr. 23) She remained in the Army National Guard until 2004. She stated she received a zero disability rating. (Tr. 34) Her May 2011 Personal Financial Statement (PFS) lists a \$931 monthly payment entitled "VA Disability." (Ex. 5) However, the \$931 payment is not VA "disability" payment, but VA "entitlement" payment she receives for living expenses while attending school.

In October 1998, Applicant married. In 1998, she and her spouse purchased a home with \$563 monthly payments. (Ex. 4) In 2004, they separated when her spouse deployed to Iraq. In 2007, her spouse then filed for divorce. (Tr. 24) The home had air conditioning, plumbing, and structural problems. In 2005, her attempts for a short sale on the property being unsuccessful, her home went to foreclosure. (Ex. 4) She owes nothing further on this obligation and it was not listed as a debt of concern on the SOR.

Applicant has four children living with her ages 16, 13, 11, and 9. (Tr. 24, 26-27) She receives \$176 every two weeks for one child, \$276 monthly for each of two children, and \$390 per month for another child. (Tr. 24, Ex. 5) In 2009, she was awarded custody of her two children. Custody disputes following the granting of custody

have resulted in her having to return to court on numerous occasions. (Tr. 16, 22) She has incurred \$1,500 in attorney's fees each time she returns to court. Should Applicant obtain overseas employment, her children would reside with her mother. (Tr. 25) The custody arrangement requires her ex-spouse to pay for the travel of the two youngest children to his location, but she incurs the expense of their return trip. (Tr. 36)

In June 2010, Applicant went to a credit consulting firm seeking assistance with her past-due debts. She pays the company \$49 monthly for their assistance in having debts removed from her credit bureau reports (CBR). (Tr. 25) Each month she receives a new CBR. Every 30 days she is to call them, verify her debt status, and is informed which debts she needs to pay after the debts have been disputed. (Tr. 23, 41) She has not had any direct contact with her creditors since 2007. (Ex. 4) Her November 2010 CBR listed one account more than 120 days late, 21 collection accounts, and 32 accounts being "paid as agreed." (Ex. 2) Her April 2011 CBR lists a foreclosure, one collection account, one disputed account, and five charged-off accounts. (Ex. 3)

Applicant was a full-time student until June 2003, from July 2010 through September 2010, and is currently attending school (Ex. 4) She has two master's degrees, one in marriage and family therapy and the other in counseling psychology. (Tr. 22) As a student, her VA monthly entitlement is \$931. From August 2010 to September 2010, she was unemployed. She supports herself and her four children through a federal VA entitlement (\$931), child support (more than \$1,000), and student loans. (Exs. 4, 5, Tr. 39)

Applicant has received financial counseling from the state veterans' homeless prevention program and listens to financial programs on the radio. (Tr. 42) She maintains one credit card, which has a \$130 balance. (Tr. 38) She is current on her monthly \$341 payments on her 2003 Suburban. (Tr. 37, 38) She purchased the vehicle seven months before the hearing and owes \$9,000 on it. (Tr. 38)

Applicant listed all of her delinquent debts on her Electronic Questionnaires for Investigations Processing (e-QIP), dated September 22, 2010. (Ex. 1) As of May 2011, Applicant's monthly expenses, which included debt payment, exceeded her monthly income by approximately \$100. (Ex. 5) Since May 2011, she has paid one loan, which had a \$134 monthly payment. Her current net remainder is less than \$50. She has paid four of the SOR debts: a medical debt (SOR 1.a, \$60), a collection (SOR 1.b, \$90), a government overpayment (SOR 1.p, \$3,000), and pizza account (SOR 1.u, \$30). (Exs. 5, A, C, D) Her remaining delinquent debts, totaling approximately \$15,000, remain unpaid.

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 as agreed. Absent substantial evidence of 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 has 21 charged-off or collection accounts totaling more than \$15,000. 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.

Until 2007, Applicant was paying her debts as agreed. In 2004, six years after her marriage and the purchase of their home, Applicant and her spouse separated. The home had costly and numerous structural and other problems. Her funds were used to address these problems. In 2005, the home went to foreclosure when her attempts at a short sale were unsuccessful. Her financial problems were increased in 2007, when her spouse filed for divorce, by her unemployment in August and September 2010, and by being a full-time student. There is no CBR showing her credit status as of 2007, but her November 2010 CBR indicates she was paying as agreed on 60% of her accounts.

Applicant's current income is limited to approximately \$1,000 in monthly child support, \$931 VA entitlement for schooling, and the student loans she receives. On this income she is raising four children, ages 9 to 16. Her financial difficulties increase after the 2009 child custody order when she had to pay \$1,500 in attorney's fees related to the custody dispute. She was required to return to court a number of times related to the custody dispute. With her limited income she was able to reduce the \$18,500 delinquent debt listed in the SOR by approximately \$3,200. Having paid the four debts it is likely she will pay her remaining delinquent obligations when she has sufficient funds to do so.

Applicant has an offer of employment with an annual salary in excess of \$100,000, with which she should be able to easily repay her remaining debts. However, a promise to take remedial steps in the future does not constitute evidence of demonstrated reform and rehabilitation. See, e.g., ISCR Case No. 96-0544 at 5 (May 12, 1997) (a promise to take remedial action in future, however credible and sincere, is not evidence of actual rehabilitation).

Applicant has expressed a desire to pay her debts and shown some positive signs, such as the payment of four debts and being current on her car payment and daily living expenses. She is living within her means, satisfying debts, and meeting financial obligations.

The decision to grant or deny a security clearance must be based on past conduct and not speculation as to future hopes and desires, no matter how sincere those hopes and desires. Mitigation consists of progress in addressing past-due obligations and not mere promises to do so at some future date. Promises to pay in the future are not evidence of mitigation. However, her financial difficulties started in 2007, and by 2010 only 60% of her accounts were being paid as agreed. Her payment of \$3,200 on four of her debts is evidence of progress and does constitute mitigation.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has paid four of the twenty-five debts. The total amount of unpaid debt is more than \$15,000. She listens to financial advice on radio programs and is living within her means.

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 went delinquent in early 2007, following her separation from her spouse and his filing for divorce. Applicant's limited resources must be considered in evaluating if she has acted in a reasonable manner when dealing with those financial difficulties. Since 2007, she has experienced times of unemployment and other times when she was a full-time student. With her limited funds she has paid more than \$3,200 of the total delinquent debts of \$18,500.

Applicant has received financial counseling from the state veterans' homeless prevention program and listens to financial programs on the radio. She is managing her debts as best she can. She has a single credit card on which there is a \$130 balance. She is paying the living expenses for herself and her four children. When she needed a replacement vehicle, instead of purchasing a new vehicle she purchased a used one on which she owes \$9,000. She is current on her vehicle payments.

The issue is not simply whether all Applicant's debts have been paid – they have not – it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Applicant would like to pay her delinquent debt, has made payment on some of her delinquent accounts with the limited funds she has available. 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 has mitigated the security concerns arising from her financial considerations.

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 to 1.y: 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