



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



In the matter of:)
)
XXXXXXXXXXXX, XXXX) ISCR Case No. 11-03176
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

February 9, 2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (Financial Considerations). Clearance is granted.

Statement of the Case

On July 29, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on October 12, 2011. Department Counsel was prepared to proceed on November 17, 2011. The case was assigned to me on

November 29, 2011. DOHA issued a notice of hearing on December 2, 2011, scheduling the hearing for December 13, 2011. The hearing was held as scheduled.

At the hearing, the Government offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through E, which were received into evidence without objection.

I held the record open until December 23, 2011, to afford the Applicant the opportunity to submit additional documents on her behalf. Applicant submitted AE F, which was received into evidence without objection. DOHA received the hearing transcript (Tr.) on December 21, 2011. The record closed on December 23, 2011.

Findings of Fact

Applicant admitted all of the SOR allegations, with explanations. Her answers are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact. I found Applicant's testimony to be credible.

Background Information

Applicant is a 40-year-old material manager, who has worked for a defense contractor since April 2007. She is a first-time applicant for a security clearance and seeks a clearance to enhance her current company position. (Tr. 22-24, GE 1.)

Applicant was awarded a Bachelor of Science degree in business administration in December 2003. She was subsequently awarded a Master of Business Administration in December 2009. (Tr. 11, 22-23, GE 1.) Applicant was previously married in March 1994. She and her husband separated in 2005 and divorced in September 2009. Applicant remarried in April 2011. She has custody of her three children from her first marriage – a 17-year-old daughter, a 14-year-old son, and a 6-year-old daughter. (Tr. 20, 24, GE 1.) Applicant's current husband is employed as a floor technician in a retirement community and earns \$10 per hour. (Tr. 40.)

Financial Considerations

Applicant's background investigation addressed her financial situation and included the review of her July 2010 e-QIP, her July 2011 DOHA Interrogatories; as well as her August 2010 and August 2011 credit reports. (GE 1 – 4.) Applicant's SOR alleges 17 separate debts of which eight are unpaid medical co-pays and the remaining nine debts are consumer debts, for a total of approximately \$23,000. (SOR ¶¶ 1a – 1q.)

Applicant's financial problems stem from her separation and divorce from her first husband. During her separation, she was receiving \$1,500 in monthly child

support from her husband, which combined with her income was “enough for me to be able to support my three children.” (Tr. 18.) However, around the time of their divorce Applicant’s former husband lost his job. At their divorce hearing, Applicant’s former husband testified he was unemployed and Applicant’s monthly child support was reduced to “about \$400” a month. Shortly after the divorce hearing, Applicant’s former husband secured a high-paying job that required him to deploy to Iraq. Applicant diligently pursued an increase in child support, but was unable to locate her former husband because he was overseas and failed to provide her with a physical address. After trying self-help options to increase her child support, Applicant retained an attorney. In September 2011, Applicant brought her former husband to court and her child support was increased to \$1,762.52 with a retroactive arrearage of \$30,397.96. Her former husband was further ordered to pay \$353 per month towards the arrearage until the arrearage was paid in full. Child support payments are to be made through wage garnishment. At the time of their September 2011 court hearing, Applicant’s net income was \$3,156.23 and her former husband’s net income was \$5,591.24. (Tr. 17-20, 27-28, GE 1, AE B.)

Although Applicant’s income stream has been reinstated, the income shortfall she experienced while her former husband evaded his support obligations directly led to her current financial difficulties. Before September 2009, Applicant was current on her bills. From 2009 to 2011, Applicant found herself in a “survival mode” as she attempted to meet the needs of her three children on her limited income. (Tr. 11-12.)

Applicant fully acknowledged her debts and accepted responsibility for them. To address her debts, Applicant sought financial counseling through a credit counseling company (CCC). The CCC set up a debt consolidation plan (DCP) for Applicant in October 2011. Applicant’s DCP includes all of her SOR debts. Her monthly payments are approximately \$523 per month. Although Applicant did not have the money to pay her creditors, she remained in contact with them throughout this process. (Tr. 13, 24-26, 35, AE F.)

Applicant currently earns approximately \$43,000 per year. (Tr. 33.) With her mother’s help, she is able to own her own home. Applicant’s personal financial statement reflects that she is living a modest lifestyle and living within her means. (Tr. 32-34, SOR answer, GE 2.)

In conclusion, Applicant has addressed each and every debt alleged. All of her SOR debts are enrolled in a debt consolidation plan. She is able to make her monthly payments pursuant to that plan as well as remaining current on her other monthly expenses.

Character Evidence

Applicant submitted a work-related reference letter from her supervisor, who has known her for four years. Her supervisor spoke of her high level of personal

integrity and dedication to “doing things right.” He considers Applicant to be a valuable employee, who is making a contribution to their company. (AE A.)

Applicant submitted her work performance evaluations spanning a three-year period from 2009 to 2011. These evaluations reflect sustained above average work performance. It is clear that Applicant has a documented record of service in the defense contractor industry and is a valued employee. (AE C – E.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 the applicant may deliberately or inadvertently fail to protect or 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.

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 as to 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

AG ¶ 18 articulates the security concern 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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by her admissions and the evidence presented. She accumulated approximately \$27,000 in consumer debt and medical co-pays. These debts have been in various states of delinquency for several years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. Her debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, she receives partial credit under AG ¶ 20(a) because the debt occurred under circumstances that are unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or good judgment.

Applicant merits full credit under AG ¶ 20(b) because her separation, divorce, and reduction in child support were circumstances beyond her control, and she acted responsibly under the circumstances. Even though she did not have the funds for full repayment, she remained in contact with his creditors and has taken reasonable steps to resolve her debts.¹

AG ¶ 20(c) is fully applicable because Applicant sought financial counseling and her problems are being resolved and are under control. She has produced evidence that reflects she is living within her means and has regained financial responsibility. There are clear indications that her financial problems are being resolved. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).² Applicant is paying all of her SOR debts. She is following the advice of

¹"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether she maintained contact with her creditors and attempted to negotiate partial payments to keep his debts current.

²The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

her CCC and is repaying her creditors consistent with her debt consolidation plan. Given her financial situation, Applicant has done all that can reasonably be expected of her. AG ¶ 20(e) is not applicable insofar as Applicant has not contested the validity of any debt alleged.

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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's record of service as a defense contract employee and the obstacles she overcame in caring for her three minor children under adverse circumstances weigh heavily in her favor. She is a law-abiding citizen and a productive member of society. She is current on her day-to-day expenses, lives within her means, and her SOR debts have been and are being addressed in a meaningful and thoughtful manner. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

As noted by her supervisor and performance evaluations, she is making a significant contribution to the national defense. Her company fully supports her and recommends her for a security clearance. Due to circumstances beyond her control, her debts became delinquent. Despite Applicant's recent financial setback, it is clear from her actions that she is on the road to a full financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's employment record, the responsibility shown as a mother, her years of financial responsibility before falling into debt, her plan for financial recovery and substantial steps she has taken to resolve her financial situation, her potential for future service as a defense contractor, her reference letter and performance evaluations, and her testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude she has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated or overcome the Government's case. For the reasons stated, I conclude she is eligible for 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 1a to 1q:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

Robert J. Tuider
Administrative Judge