



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



In the matter of:)	
)	
)	ISCR Case No. 11-03285
)	
Applicant for Security Clearance)	

Appearances

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

September 28, 2011

Decision

HEINY, Claude R., Administrative Judge:

Applicant has addressed all but one of her delinquent debts and is attempting to find assistance in addressing that final debt. 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 June 1, 2011, detailing security concerns under Guideline F, financial considerations. On June 20, 2011, Applicant answered the SOR

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.

and requested a hearing. On August 1, 2011, I was assigned the case. On August 15, 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 G, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. On September 15, 2011, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. H through Ex. M. On September 9, 2011, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR she admitted the debts listed in SOR 1.a, 1.h, 1.i, and 1.j. She denied owing the remaining debts. Her admissions are incorporated herein. After a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 26-year-old administrative assistant who has worked for a defense contractor since September 2010, and seeks to obtain a security clearance. Applicant's supervisor states she has diligent work habits, superior interpersonal skills, excellent leadership skills, and is well liked and respected. (Ex. G)

In 2000 or 2001, Applicant—then age 16—obtained her first job. (Ex. 4) From 2003 until 2010, when Applicant obtained her current job, she had a number of part-time and full-time jobs while attending college. When she was not in school, she worked full time. (Ex. 4)

In 2003, Applicant obtained \$12,000 in student loans when she enrolled at one university. She also had part-time jobs and summer employment to help her pay for college. (Tr. 44) In May 2005, she obtained her bachelor's degree from that university. (Ex. 1) She was the first person in her immediate family to graduate from college. (Tr. 46) Between August 2008 and December 2008, she incurred additional student loans when she enrolled in another university. She stated she had made one or two \$40 payments on her student loans before losing track of them. Applicant has now consolidated five student loans that total approximately \$17,000. (Ex. A) She now pays \$84 monthly on the promissory note, but that amount is increasing to \$164. (Tr. 24)

Following college graduation, Applicant worked two jobs, but one job entailed a 30-to-40 minute commute and the cost of transportation became too great. (Tr. 38) With her current job she is addressing her debts. In 2009, Applicant accumulated a number of debts when she moved from one state to another. She moved to improve her employment opportunities. (Tr. 37) Prior to reviewing her October 2010 credit bureau report (CBR), she was unaware of a number of her current creditors.

Applicant's yearly income is approximately \$45,000. (Tr. 24) As of April 2011, her net monthly income was approximately \$3,300. (Ex. 5, Ex. K) Her monthly expenses were \$2,300 and her monthly debt payment was \$360, which left her with a monthly net remainder of more than \$600. (Ex. 5)

Applicant is current on her \$318 monthly automobile loan for her 2004 Mazda automobile. (Tr. 32) She has \$79 bi-weekly contributed to her company's savings plan, which is now more than \$1,400. (Ex. K) She also contributes \$25 monthly to an IRA, which now has a balance of approximately \$1,300. (Ex. L) She has talked with a money management company. She discussed being financially responsible, living within her means, and saving for emergencies. (Tr. 33) The sole remaining debt she needs to address is the Sallie Mae student loan. Since the money management company could not help her with that debt, she is no longer with the company. (Tr. 34) She is attempting to find assistance in addressing this debt. She has watched financial shows on television and gone online to read about financial planning. (Tr. 42)

A summary of Applicant's delinquent accounts and their current status follows:

	Creditor	Amount	Current Status
a.	Charged-off account for a credit card account.	\$820	Paying. She is making \$25 monthly payments on this debt and has done so for four or five months. (Ex. 5, Ex. I, Ex. J, Tr. 26, 27)
b.	Student loan collection account.	\$7,613	The five student loans have been consolidated into a single promissory note on which she makes monthly payments. (Ex. A, Tr. 24) The note is in good standing. (Tr. 47)
c.	Student loan collection account.	\$7,109	Student loans have been consolidated into a single debt. See b. above.
d.	Student loan collection account.	\$4,523	Student loans have been consolidated into a single debt. See b. above.
e.	Student loan collection account.	\$3,296	Student loans have been consolidated into a single debt. See b. above.
f.	Student loan collection account.	\$693	Student loans have been consolidated into a single debt. See b. above.
g.	The Sallie student loan did not qualify for consolidation with her other student loans.	\$8,241	In March 2011, Applicant made a \$25 payment on this debt. (Ex. 5) She is still attempting to address this debt. (Tr. 29)

	Creditor	Amount	Current Status
h.	Department store charged-off credit card account.	\$933	Paying. Applicant made five monthly payments on this debt. (Ex. 5, Tr. 29) She was unable to pay a lump-sum settlement offer. (Tr. 41)
i	Credit card collection account.	\$1,895	Paying. Applicant has made six monthly payments of \$25 on this debt. (Ex. 5, Ex. H, Ex. M)
j	Collection account.	\$448	Paid. Applicant accepted and paid a \$235 settlement offer. (Ex. 5, Tr. 30)
k	Collection account.	\$2,652	Paying. Since April 2011, Applicant has made five \$30 monthly payments on this debt. (Ex. H, Ex. M)
	Total debt listed in SOR	\$38,223	

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 his 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 11 collection accounts or charged-off accounts that totaled in excess of \$38,000. Five of the collection accounts and one charged-off account were for student loans, which

represented 82 percent of her total delinquent debt. 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.

All but one of Applicant's collection accounts or charged-off accounts have been addressed. She is still attempting to address her Sallie Mae student loan (\$8,241). Her other five student loans have been consolidated into a single obligation on which she makes monthly payments. She accepted and paid a settlement offer on one collection account (SOR 1.j, \$448) and has been making monthly payments on the remaining obligations for the past five or six months.

Under AG ¶ 20(a), 82 percent of the debt related to student loans. Applicant has completed college and has started to repay her loans. Shortly after graduation, she was working two jobs. With her current job she is addressing the majority of her past-due obligations. Additional student loans for college will not recur and since she is addressing the majority of her student loan obligation, her debts do not cast doubt on her current reliability, trustworthiness, or good judgment. The mitigating condition in AG ¶ 20(a) applies.

The mitigating condition in AG ¶ 20(b) has limited application. Following college graduation, Applicant was able to find only minimally paying jobs. With her current job

she is now addressing her debts. This shows she is acting responsibly under the circumstances.

Applicant has gone online seeking financial counseling and viewed financial planning programs. She is putting money into her company's savings plan and has additional money going to a retirement account. She is addressing all but one of her debts. The mitigating condition in AG ¶ 20(c) applies. She has received counseling and there are clear indications that the problem is being resolved or is under control.

Applicant paid one debt and for the past five or six months she has been making monthly payments on four additional debts. She has made payments for a sufficient time that it is likely she will continue with these payments until the debts are fully paid. She is also repaying the majority of her student loans. The mitigating condition in AG ¶ 20(d) applies. She has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has yet to address the final student loan, which did not qualify for consolidation with her other student loans. She wants to pay this debt. An applicant is not required, as a matter of law, to establish that she has paid off each and every debt listed in the SOR. Nor is there a requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for the payment of such debts one at a time.

How Applicant is addressing her other debts must be evaluated in determining the likelihood she will follow through on her assertion that she will pay the final debt. In evaluating financial consideration cases, the concept of "meaningful track record" includes evidence of actual debt reduction through payment of debts. Applicant must demonstrate that she has established a plan to resolve her financial problems and taken significant actions to implement that plan. Because she has done so with ten of the eleven debts and has made a sufficient number of monthly payments, it is likely she will also address the remaining Sallie Mae student loan. The sole remaining debt to be addressed does not raise concerns 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 types that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The SOR debts were not incurred on luxuries, but the majority was spent for student loans. Applicant went to college and incurred debts. Following graduation she was able to obtain only low-paying jobs. Approximately a year ago, she obtained her current job and has since been addressing her debts. Applicant is not living beyond her means. She drives a 2004 Mazda automobile. The size of her credit card debt, which she is now addressing, does not give rise to a security concern.

The issue is not simply whether all her 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 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—1.k: 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