



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 11-03600
)
)
Applicant for Security Clearance)

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

06/26/2012

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On July 6, 2010, Applicant submitted an electronic Questionnaire for Investigations Processing Investigation Request (e-QIP). On December 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (Answer) on February 10, 2012, and requested a hearing before an administrative judge. On March 15, 2012, DOHA

assigned the case to me. On March 23, 2012, DOHA issued a Notice of Hearing, setting the case for April 17, 2012. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence without objection. Applicant testified and called one witness. She offered Applicant Exhibits (AE) A through G into evidence without objection. The record remained open until May 15, 2012, in order to provide her time to submit additional documents. DOHA received the hearing transcript on April 30, 2012. Applicant subsequently requested more time to submit documents. Department Counsel had no objection, and the record remained open until May 25, 2012. Applicant timely submitted AE H through P, which were also admitted without objection and the record closed as scheduled.

Findings of Fact

In her Answer to the SOR, Applicant admitted all allegations, except ¶¶ 1.a, 1.c, 1.d, 1.e, 1.h, 1.i, 1.m, and 1.u. On the record, she denied 1.aa, 1.bb, 1.cc, and 1.dd, as her written answers to those allegations were unclear. (Tr. 20-21.) All admissions are incorporated herein.

Applicant is 39 years old and divorced. She has two children with her former husband, ages 17 and 20. She anticipates receiving an associate's degree from a local college in CIS Network Management next summer. She earned some college credits via online courses through her previous employer's tuition reimbursement program.

Applicant's former husband serves in the U.S. Army. While they were stationed in a western European country from 1992 to 1997, she worked for the Federal Government and held a clearance. After returning to the United States, she and her children lived with her in-laws and her husband apparently remained deployed. She obtained a position with a car service company and then with a dental clinic.

In July 2000 Applicant started a position with an automobile manufacturer. In October 2000 she learned that her husband had divorced her by filing a Petition for Dissolution in another state. At the same time he stopped paying child support. (Tr. 43.) She subsequently filed for child support through the Army and began receiving \$350 per month about six months later. Those allotments were sporadic over the years. At one point, her ex-husband kidnapped the children and took them to another state for eight months. (Tr. 49.)

Applicant worked at the automobile plant until January 2006 when the company laid her off, along with a massive number of other employees. In August 2006 she was rehired and worked until June 2008. She then started a temporary position with a company earning \$14 per hour. She stayed with that company until September 2008. In October 2008 she received \$32,000 net as a buyout from the automobile company and used those funds to pay her debts, including a student loan. Despite the company's assurances to the contrary, she lost her medical insurance and was not permitted to apply for unemployment. (Tr. 50-52.) Sometime during this period of time, she was

hospitalized for a period of time. She was unemployed from September 2008 until August 2009. (GE 1.) She also used the buyout money for living expenses. (Tr. 39.)

In August 2009 Applicant started working for a non-profit organization. In July 2010 she found a better position with her current employer, as a document scanning processor. Applicant attributed her financial problems to the periods of unemployment and lack of consistent child support over the years. (Tr. 54-56; GE 1; AE A.)

Based on credit bureau reports dated 2010, 2011, and 2012, the SOR alleged that between 2003 and 2011, Applicant accumulated thirty delinquent debts totaling \$526,919. (GE 2, 3, 4, 5.) The largest debt is listed as a \$494,809 judgment owed to AT&T. A summary of the status of all debts is as follows:

5 Debts Paid:

1. (b) The \$61 medical debt owed to NCO Financial was paid on 3/18/12. (AE I.)
2. (f) The \$81 medical debt owed to AccelCredit was paid on 3/23/12. (AE F.)
3. (i) The \$138 telephone debt owed to Alliance One was paid on 3/23/12. (AE F.)
4. (q) The \$113 medical debt owed to Nationwide Recovery/Dayton Children was paid with three payments between March and April 2012. (AE F.)
5. (t) The \$36 library debt owed was paid on 3/18/12. (AE F.)

Total Paid: \$429.

2 Debts are Duplicate Listings:

6. (w) Applicant contacted AT&T regarding the \$184 debt. The creditor told her it is included in the debt listed in 1.aa for \$2,078. It is a duplicate debt. (Tr. 90.)

7. (x) The \$409 debt owed to Credit Protection for an account with Time Warner is included in the accounts listed in 1.c through 1.e. It is not listed on any credit bureau report admitted into the record. Those reports list three debts owed to this creditor, not four. (Tr. 92; GE 4, 5, 6.) It is also a duplicate listing.

Total Duplicates: \$593.

11 Debts Disputed/Deleted:

8. (a) The \$494,809 debt is recorded as being owed to Asset Acceptance/AT&T for a judgment entered in January 2006. On March 14, 2012, Applicant filed a dispute with the credit reporting agency. She submitted a copy of the January 4, 2006 Judgment

Order which indicated that that the total judgment was \$2,078. The Order recorded a debt of \$1,118.74 on Count I; \$464.86 on Count II; and \$494.45 on Count III. (AE D-2.) The amount of this allegation is incorrect and should be \$2,078 as alleged in Paragraph 1.aa. (Tr. 64.) She successfully disputed this debt.

9. (c) On March 13, 2012, Applicant disputed the \$612 debt owed to FCC-Columbus/Time Warner. She stated she was the victim of identity theft and never lived in the city noted in the creditor's record. She filed a police report regarding the debt on October 19, 2011. It was deleted from her credit record in April 2012. (AE D-1, D-4, E-1.)

10. (d) On March 13, 2012, Applicant disputed the \$23 debt owed to FCC-Columbus/Time Warner debt for the reasons stated above. It was deleted from her credit record in April 2012. (AE D-1, D-4, E.)

11. (e) On March 13, 2012, Applicant disputed the \$327 debt owed to FCC-Columbus/Time Warner debt for the reasons stated above. It was deleted from her credit record in April 2012. (AE D-1, D-4, E.)

12. (h) On March 13, 2012, Applicant disputed the Washington Cred/ER Solutions/ Convergent/ American Electric Power debt of \$513. She stated she was the victim of identity theft and never lived in the city noted in the debt's record. She filed a police report regarding the debt on October 19, 2011. It was deleted from her credit record in April 2012. (AE D-1, D-4, E-1.)

13. (r) On March 14, 2012, Applicant disputed the \$101 debt owed to National Credit Solution on the basis of identity theft. The outcome of the dispute remained pending as of April 16, 2012. (AE A, D-1.)

14. (s) On March 14, 2012, Applicant disputed the \$39 debt owed to RJM ACQ. The debt was deleted from her credit record in April 2012. (AE D-1, D-3.)

15. (u) On March 13, 2012, Applicant disputed the \$3,591 debt owed to Federal ADJUS/Bray. She stated she was the victim of identity theft and never lived in the city noted in the debt's record. She filed a police report regarding the debt on October 19, 2011. It was deleted from her credit record in April 2012. (AE D-1, D-3, E-1.)

16. (cc) Applicant disputed the \$558 judgment owed to Antonio S. She filed a police report alleging that debt is the result of identity theft and strongly asserted it is not her debt. (Tr. 107, AE A, E-2.)

17. (dd) Applicant disputed the \$1,500 judgment owed to Antonio S. She filed a police report alleging that debt is the result of identity theft and strongly asserted it is not her debt. (Tr. 107, AE A, E-2.)

18. (bb) Applicant is disputing and investigating the \$2,999 judgment owed to Rainbow Rental, because she denies that she lived at said location. She believes it is the result of identity theft. It is being investigated through the court. (Tr. 101, AE E-2.)

Total Disputed: \$5,158

Total Disputed & Deleted: \$499,914

12 Debts Unresolved:

19. (g) The \$1,297 debt owed to National Credit/Normandy Club apartment complex is unresolved. Applicant plans to pay it after she resolves the smaller debts. (Tr. 72.)

20. (j) The \$986 debt owed to University of Phoenix is unresolved. Applicant made a \$50 payment on the account on May 25, 2012. (AE A, O.)

21. (k) The \$6,307 debt owed to Palisades Collection arose from an unresolved automobile repossession. (Tr. 76, AE A, O.)

22. (l) The \$4,511 debt owed to Universal 1 CU is unresolved. Applicant loaned money from this account to a friend who failed to repay her. He subsequently went to jail for writing bad checks. She realizes that she is responsible for the debt. (Tr. 79.)

23. (m) The \$115 debt owed to Universal 1 CU is unresolved. It, too, is the consequence of loaning money to her friend. He paid her with a bad check that she deposited into her account and then wrote checks. She made a \$50 payment on the debt on May 25, 2012. (Tr. 79, AE A, O.)

24. (n) The \$3,894 debt owed to CNAC for another deficiency in the balance on an automobile repossession is unresolved. She intends to pay it. (Tr. 81, AE A, G.)

25. (o) The \$317 medical debt owed to IMPAC COLL is unresolved. Applicant has the money set aside to pay it and is waiting for the creditor to give her the correct account number. (Tr. 82, AE A.)

26. (p) The \$305 debt owed to COM SERV GRP/Check Smart is unresolved. Applicant does not recognize the debt, but intends to pay it. (Tr. 83, AE A.)

27. (v) The \$680 debt owed to AIS Services/Payday Loan is unresolved. It is Applicant's former boyfriend's debt that was lent in her name. She intends to pay it. (Tr. 89, AE A, G.)

28. (y) The \$250 debt owed to Wright Patterson Credit Union is unresolved. Applicant will contact the creditor and then pay it. (Tr. 93, AE A, O.)

29. (z) The \$85 debt owed to a city is unpaid. Applicant has contacted the city to determine the nature of the debt. She intends to pay it. (Tr. 93, 97.)

30. (aa) The \$2,078 judgment owed to Asset Acceptance for the AT&T bill is unpaid. It is referenced in 1.a and includes the duplicate debt in 1.w. (Tr. 99.)

Total Unresolved: \$20,825.

In summary Applicant paid and resolved seven debts. She successfully disputed eight debts. She disputed three debts on the basis of identity fraud. The outcome of those disputes is not documented. Applicant recognizes that she is responsible for twelve unpaid or unresolved debts. She has resolved or addressed \$506,094 of the \$526,919 delinquent debts listed in the SOR. Her plan is to pay smaller debts, then begin paying medium-size debts, and subsequently address the largest debts. (Tr. 72.)

Applicant's annual salary is \$35,000. (Tr. 29.) Her net monthly income as of October 2011 was \$2,307. Her monthly expenses were \$2,119 and payments on debts \$480, leaving a \$292 deficit. (GE 2.) In November 2011 she began a second job with a home health care company. She works 20 hours per week and earns \$8.40 per hour, which is approximately \$672 per month before taxes. Her second job should cover that shortage and leave additional money for debt repayments. Her older son lives with her and her younger son now lives with her former husband, who recently returned from a deployment to Afghanistan.

Applicant called one witness. He is a former neighbor and former supervisor at her current employer. He is a principal systems engineer and program manager. She worked for him from July 2010 until she transferred to a position with a subcontractor of the company. He is aware of Applicant's financial problems, but does not know many specifics. He found her to be a good employee and responsible mother. He does not have reservations about her handling classified information and thinks her attention to detail and rules would be an advantage in her position. (Tr. 121-131.)

Applicant submitted four letters of recommendation. Her supervisor for the past two years stated that Applicant is an "outstanding" worker. This supervisor has managed major projects for the Air Force for over 20 years, and places Applicant "in the upper level of the people I have managed and supervised." (AE B-1.) A retired detective sergeant, who has known Applicant professionally for two years, is aware of the identity theft problem in her life. He commented on the diligent work that she has done to resolve her personal and financial problems. (AE B-2.) The chief historian for the Air Force department where Applicant works wrote a letter. He has worked with her since July 2010, and "found her to be extremely reliable and dependable work (sic)." (AE B-3.) The President/CEO of the company for which Applicant works stated that Applicant "can be trusted to keep our nation's secrets without compromise. I highly recommend her for a clearance." (AE B-4.)

Applicant testified candidly about her financial situation. She presented her case in an organized manner, documenting her attempts to resolve the delinquent debts. She admitted that she should have started addressing the debts sooner, but did not have the money to do so as a single parent. In November 2011 she obtained a second job to help pay them. She is “trying to rebuild” her life. (Tr. 144.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

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 notes two disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts ; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts between 2003 and 2011 that she was unable to financially resolve. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns:

- (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.

Applicant's financial problems are multiple, ongoing over the past nine years, and only recently addressed. Hence, AG ¶ 20(a) does not apply. Some of her delinquent debts arose as a result of periods of unemployment, underemployment and a lack of consistent child support, which were circumstances beyond her control. Because she did not present evidence that she attempted to responsibly manage those debts while they were accruing, only a partial application of AG ¶ 20(b) is warranted.

Applicant presented evidence to support a limited application of AG ¶ 20(c). She has not participated in credit or financial counseling, or established a detailed long term budget to address the unresolved debts. However, her research and investigation into the debts to date indicate that she is slowly gaining control over her finances. Applicant paid five debts and resolved two debts, demonstrating a good-faith effort to resolve those debts and supporting the application of AG ¶ 20(d). She successfully disputed eight debts, including the large \$494,809 judgment, and awaits the outcome of three other debts she disputed. AG ¶ 20(e) applies. There is no evidence to support the application of AG ¶ 20(f).

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). They include the following:

(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) 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 include 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 facts and circumstances surrounding this case. Applicant is a 39-year-old woman, who was divorced in 2000 and became the primary provider for two children. Since then, she has experienced periods of unemployment and underemployment. In July 2010 she began working for her current employer. In November 2011 she started a part-time position to supplement her income and resolve delinquent debts. Her supervisors and a colleague attest to her hard work and ability to responsibly manage classified information. Her employer's president does not consider her a security risk. Given Applicant's work to date on the delinquent debts and employer's awareness of her financial problems, similar issues are unlikely to recur.

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 demonstrates 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 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.¹

Applicant has addressed 18 of the 30 SOR-listed debts and reduced the amount of outstanding debt from \$526,919 to \$20,825, which is owed to 12 creditors. She acknowledges her responsibility to pay or resolve that amount. Her plan is to continue addressing the smaller debts first, and then move to the medium-size debts, leaving the largest debts for last. Her delinquent debts no longer pose a security concern.

¹ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the Financial Considerations guideline.

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 1.a through 1.dd: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge