



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



In the matter of:

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)	ISCR Case No. 11-08646
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

04/10/2013

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant provided adequate information to mitigate security concerns under Guideline F. Eligibility for access to classified information is granted.

Statement of the Case

On March 18, 2011, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for her employment as a truck driver with a defense contractor. (Item 5) She was denied an interim security clearance on March 31, 2011. (Item 10) Applicant was interviewed by a security investigator on May 10, 2011, and verified the accuracy of the interview summary on July 8, 2012. (Item 6) On August 31, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006.

Applicant received the SOR on September 18, 2012 (Item 3). Applicant answered the SOR on October 1, 2012, admitting the five allegations under Guideline F with explanation. She elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on January 31, 2013. Applicant received a complete file of relevant material (FORM) on February 11, 2013, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. She provided additional information in response to the FORM on March 5, 2013. Department Counsel had no objection to consideration of the additional information in response to the FORM. (Memorandum, dated March 12, 2013) The case was assigned to me on April 8, 2013.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 37 years old and has been employed as a truck driver, teaming with her second husband since March 2007. She attended college from September 1995 until December 1998, and earned an associate's degree. She first married in June 2002 and divorced in March 2003. She married her second and present husband in January 2008. They have no children. In response to questions from the security investigator, Applicant noted that her monthly pay varies but usually averages about \$12,000. Her monthly expenses are approximately \$7,400. (Item 5, e-QIP, dated March 18, 2011; Subject Interview, dated May 10, 2011, at 2)

Credit reports (Item 7, dated April 15, 2011; Item 8, dated June 5, 2012; Item 9, dated January 25, 2013) show the following delinquent debt for Applicant: \$28,280 for a credit card account in collection (SOR 1.a); \$4,800 for a credit card account in collection (SOR 1.b); \$11,957 for a credit card account in collection (SOR 1.c); \$8,731 for a credit card account in collection (SOR 1.d); and \$8,844 for a credit card account in collection (SOR 1.e). The total of the SOR delinquent debt is approximately \$35,194. In response to financial interrogatories, Applicant also noted two additional delinquent debts of \$2,600 for tax year 2010 income tax, and \$1,047 for 2011 property taxes. (Item 6 at 15)¹

Applicant told the security investigator that she had financial difficulty starting in 2007 because the economy was bad and she and her husband did not get enough work

¹ These two debts are not alleged as security concerns. The Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3. Consideration of the two non-SOR delinquent debt in this decision is strictly limited to these five circumstances.

from their employer. She had to make decisions on which debts to pay, and she decided to make her house payments rather than credit card payments. She acknowledged the SOR debts and said her intention was to pay the debts and she was working to establish payment plans. Once their truck was paid off in September 2011, she would have approximately \$3,000 additional each month to use for debt payments. Once she resolved her financial problems, she intends to stay current with her bills. (Item 6, at 2-3)

In response to financial interrogatories from the Defense Office of Hearings and Appeals (DOHA), Applicant stated that she intended to settle and pay her delinquent debts. She included in her response information that she settled and paid a \$6,200 judgment on a credit card delinquent debt in June 2012. (SOR 1.d) She also reiterated her intent to reach settlement agreements on her other delinquent debts. (Response to Interrogatories, dated July 8, 2012 (Item 6))

In response to the SOR, Applicant restated that her plan was to pay each of her delinquent debts in turn. Once she paid one of the debts, she would work to settle and pay the next debt. She noted that their truck was paid off in October 2011, and she has been reducing her indebtedness approximately \$1,000 monthly. She has kept her other obligations current. She anticipates paying all of her delinquent debts in 24 months. (Item 4, Response to SOR, dated October 1, 2012)

In response to the FORM, Applicant provided current information on the status of her delinquent debts. She stated that she has attempted to reach a settlement agreement with the creditor for the credit card debt at SOR 1.a. She has not been able to reach an agreement but is still attempting to reach an agreement. It is the only credit card debt she has not paid off.

Applicant called the creditor listed for the debt at SOR 1.b. This creditor is the same creditor for the debt at SOR 1.d. The creditor informed Applicant that they do not have a debt listed for her in the amount of \$4,800. Applicant presented information that she settled the \$8,371 debt at SOR 1.d with the creditor for \$6,200. She presented information to show the debt was paid and satisfied on June 19, 2012. (Response to FORM, Payment Information and Paid-in-full Letter)

Applicant presented information that she settled the debt at SOR 1.c with the collection agency for one-time payment of \$4,400. She made the payment and paid the debt on February 28, 2013. Her response to the FORM was due in early March 2013 and she responded to the FORM on March 5, 2013. She had not yet received information from the collection agency that the debt was paid in full. She did provide a phone number to contact the collection agency for verification of payment. (Response to FORM, date March 5, 2013)

The delinquent debt at SOR 1.e is now \$14,995. It was purchased by a collection agency from the original creditor. Applicant settled the account with the collection agency for \$7,500, payable in six monthly installments of \$1,250. The payments were

made and the debt was satisfied in December 2012. (Response to FORM, dated October 5, 2013, Paid-in-full Letter, dated March 6, 2013)

In her response to the FORM, Applicant included a receipt for payment for the 2011 property taxes paid on November 26, 2012. Applicant has an agreement with the Internal Revenue Service (IRS) for monthly payments of \$200 on the taxes owed for tax year 2010. Applicant included an IRS account transcript to show payments made and reduction of the amount of debt to \$1,094.92. Applicant also noted that in the previous 18 months, she and her husband made over \$23,000 in debt payments. (Response to FORM dated March 5, 2013, IRS Transcript, dated March 6, 2013)

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 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 for obtaining 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.

Analysis

Financial Considerations

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, thereby raising 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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in her obligations to protect 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 terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts listed in credit reports and admitted by Applicant raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). The delinquent debts show a history of not meeting financial obligations and an inability, not unwillingness, to satisfy debt.

I considered Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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); and FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions apply in part.

Applicant's financial problems started in 2007 when the economy started to falter and Applicant and her husband did not receive enough work for their trucking business from their employer. For the last few years, Applicant has received sufficient business and has been able to reduce her delinquent debt. While Applicant can experience the same lack of business in the future, she has shown that she can manage her funds so that her delinquent debt problems are unlikely to recur. The business economy that led to her delinquent debts was beyond her control. Applicant has sufficient income to pay

her past financial obligations, and she presented sufficient information to support responsible management of her finances. She acted responsibly towards her finances and her financial problems are under control.

I considered FC MC ¶ 20(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). Applicant presented no information to indicate she sought or received credit counseling. However, there are indications that her financial problems are being resolved and are under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan.

Applicant has shown a "meaningful track record" of debt payment, including evidence of a plan to pay debts and actual debt reduction through payment of some of her debts. As early in the security clearance process as her interview with a security investigator, Applicant noted her intent to pay the debts one at a time. She reiterated this plan in response to interrogatories and then in response to the SOR. Applicant followed through with her proposed plan. By the time she responded to the FORM, Applicant settled, paid, or resolved all of the delinquent debts listed in the SOR except two. Applicant presented information on her attempts to contact the two remaining creditors and resolve the debts or negotiate payment plans. She presented information to show payment of the property taxes and that she has a plan with the IRS to pay the federal tax debt. Applicant in the last 18 months has paid over \$23,000 towards her delinquent debts.

Based on this information, Applicant established a meaningful track record for paying her delinquent debts. Applicant presented sufficient evidence to show payment of three of the SOR debts, and reasonable attempts to contact the creditors to resolve the two remaining debts. Applicant lacks documentation for one debt that she paid, but I find her statement concerning this debt credible because of the information she presented on payment of the remaining debts together with contact information for the creditor. In addition, I considered Applicant's information on payment of her property taxes and income taxes as further proof of her good-faith intent to pay her debts. Applicant has sufficient income to pay her debts. Based on Applicant's plan to resolve her debts, together with actual debt payments and attempts to contact creditors and resolve her remaining debts, I find that Applicant established she has acted responsibly

towards her debts. Applicant presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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. Applicant established a meaningful track record of paying delinquent debts. She has two delinquent debts to pay as soon as she can reach an agreement with the creditors. She is working with one of these creditors to be sure she owes a debt to them. She presented information on payment of debts not listed in the SOR. She provided sufficient credible documentary information to show she acted reasonably and responsibly to address her delinquent debts and resolve her financial problems. She established a credible plan to resolve and pay all of her delinquent debts. Applicant demonstrated responsible management of her finances and a consistent record of actions to resolve financial issues. Her responsible management of her financial obligations indicates she will be concerned and or act responsibly in handling classified information. Overall, the record evidence leaves me without questions and doubts about Applicant's judgment, reliability, and trustworthiness. She established her suitability for access to classified information. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial situation. Eligibility for access to classified information is granted.

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:- 1.e: 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 access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge