



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



In the matter of:)
)
) ISCR Case: 11-12609
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

05/31/2012

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is granted.

On May 26, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 15, 2012, 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on March 9, 2012, and requested that the case be decided on the written record in lieu of a hearing. On March 21, 2012, Department Counsel prepared a File of Relevant Material (FORM) containing eight Items; and

mailed Applicant a complete copy on March 26, 2012. Applicant received the FORM on April 4, 2012, and had 30 days from its receipt to file objections and submit additional information. Applicant timely submitted exhibits that I later marked as Items A and B and admitted into the record without objection from Department Counsel. On May 3, 2012, DOHA assigned the case to me.

Findings of Fact

In her response, Applicant admitted the allegations contained in Paragraphs 1. b, 1.f, 1.g, 1.h, 1.i, 1.j, 1.l, 1.n, 1.p, and 1.q. of the SOR. She denied the remaining allegations. Some of those denials are based on Applicant's position that she paid or is paying them, and some because they are duplicates.

Applicant is a 45-year-old single woman. She has two adult children, ages 26 and 23. She earned an associate's degree in the late 2000's. In May 2011 she started a position as a help desk coordinator for a defense contractor. She was unemployed from October 2010 until she obtained her position. From June 2006 until October 2010 she worked for a telephone company. From January 2004 to August 2006 she worked for the Department of Defense (DoD). She held a security clearance during her previous employment with DoD. (Item 4.)

After completing her e-QIP in May 2011, Applicant met with a government investigator to discuss her delinquent debts in August 2011. During that interview, she acknowledged her debts and explained that they began accumulating in 2005 when her work hours were reduced. Subsequently, her former boyfriend refused to pay debts that they incurred together. She indicated that she would pay them when she had sufficient income. (Item 5 at 8.)

Based on credit bureau reports (CBR) dated April 2004, June 2011, and January 2012, the SOR alleged 17 delinquent debts totaling \$14,297. Applicant's history of financial problems began sometime in 2002 according to the April 2004 CBR. The debts listed in the SOR accumulated between 2005 and 2009. The status of each of the 17 debts is as follows:

Three debts are paid: (1) ¶ 1.k (\$59); (2) ¶ 1.m (\$187); and (3) ¶ 1.o (\$87). They total \$278.

Six debts totaling \$3,380 are included in a monthly debt repayment plan that Applicant began on October 24, 2011: (4) ¶ 1.g (\$477); (5) ¶ 1.h (\$175); (6) ¶ 1.i (\$781); (7) ¶ 1.l (\$1,002); (8) ¶ 1.n (\$350); and (9) ¶ 1.p (\$595). Applicant has made monthly payments of between \$99 and \$150 toward the debts. (Item 3 at 5-7.) The debts are being resolved.

Three SOR-listed judgments total \$6,107 and are owed to the same apartment creditor: (10) ¶ 1.a (\$1,517); (11) ¶ 1.b (\$1,071); and (12) ¶ 1.c (\$3,519). Per Applicant's contact with the creditor, the outstanding balance

is \$1,956.¹ It appears that two judgments may be duplicates. She paid \$100 toward the debt on January 4, 2012. (Item 5 at 3, 15, 16.) She started to resolve the debt.

Three SOR-listed judgments total \$3,778 and are owed to another apartment creditor: (13) ¶ 1.d (\$682); (14) ¶ 1.e (\$1,314); and (15) ¶ 1.f (\$1,780). Per Applicant's contact with the creditor, the outstanding balance is \$1,780.² It appears that two judgments may be duplicates. She paid \$100 on the debt on January 4, 2012. (Item 5 at 17.) She started to resolve the debt.

The 2008 tax lien, (16) ¶ 1.q (\$395), is unresolved and noted on an Internal Revenue Service (IRS) transcript issued to Applicant in January 2012. (Item 5 at 25.)

One debt, (17) ¶ 1.j (\$361), owed to a cable company remains unresolved.

At this time, Applicant resolved \$6,425 of the SOR total. After investigating the six alleged judgments, she learned that the balance owed to both apartment creditors totals \$3,736; not \$9,885. In January 2012 she made a \$100 payment to each creditor. She paid \$278 to resolve three debts. She executed a \$3,380 repayment plan to resolve six debts. She is slowly resolving \$7,852 of delinquent debt. She has yet to resolve a \$395 tax bill for 2008 and a \$361 debt owed to a cable company. She earns \$13 per hour and lives with a relative. In January 2012 her net monthly income was \$1,620. Her budget listed only \$150 in expenses, and did not include payments into the repayment plan or on the judgments, which appear to total about \$350. (Item 5 at 14.) Other than financial problems, the file does not contain derogatory information. (Item 4.)

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 conditions and mitigating conditions, which are to be 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

¹ Although one credit bureau reports three judgments for different amounts, information from the creditor documents an amount owed as \$1,956. Said document is given greater weight than the credit reports.

² Although one credit bureau reports three judgments for different amounts, information from the creditor documents an amount owed as \$1,780. Said document is given greater weight than the credit reports.

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.

Directive ¶ E3.1.14 requires the Government to 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.” Section 7 of Executive Order 10865 provides that adverse 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.”

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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is 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 has been unable or unwilling to satisfy SOR-listed debts that began accumulating in 2005 and continue into the present. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation. AG ¶ 20 sets out three conditions that could mitigate the financial security concerns raised in this case.

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant presented evidence that the accumulation of delinquent debt resulted after a long period of reduced work hours and unemployment, and her former boyfriend's refusal to pay his share of their combined debt. Those were conditions beyond her control. However, other than the fact that she accumulated less than \$8,000 in delinquencies despite these problems, she did not provide sufficient evidence documenting that she attempted to responsibly manage her debts while they were accumulating. Hence, AG ¶ 20(b) has limited application.

Applicant established some mitigation under AG ¶ 20(c). She did not submit evidence that she received credit or financial counseling, but she provided proof that she began resolving six debts totaling \$3,380 in October 2011 through a repayment plan. After contacting the creditors for the judgments listed on the SOR and determining that the balances were substantially less than alleged in the SOR, in January 2012 she made a \$100 payment to both creditors on the \$1,956 and \$1,780 accounts. Her actions to date indicate that her financial problems are beginning to come under control and support a limited application AG ¶ 20(c). The payments to three creditors and payments into a repayment plan to resolve six debts demonstrate a good-faith effort to pay or resolve debts. AG ¶ 20(d) has some application.

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) 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. Applicant is 43-year-old woman, who has worked for a defense contractor since May 2011. She previously worked for DoD from January 2004 until August 2006 and held a security clearance. At this point she has reduced the amount of delinquent debt listed in the SOR from \$14,297 to \$7,872. She paid \$278 to resolve three debts and started a repayment plan to pay six debts totaling \$3,380 in October 2011, before the February 2012 SOR issued. Recently, she researched six judgments noted in the SOR and learned that the combined balance owed to both creditors is \$3,736 and not \$9,885. She is aware of her outstanding 2008 tax debt. The \$361 debt is also unresolved. There is sufficient evidence to conclude that she will continue resolving her debts.

Overall, the record evidence does not create doubt as to Applicant's present 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.q:	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