



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



In the matter of:)	
)	
)	ISCR Case No. 12-00852
)	
Applicant for Security Clearance)	

Appearances

For Government: Christopher N. Morin, Esq., Department Counsel
Richard A. Stephens, Esq., Department Counsel

For Applicant: *Pro se*

11/27/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s financial delinquencies were caused by a number of external factors, including, among other things, employment instability and medical expenses. As Applicant’s career prospects began improving in 2006, her salary increased, enabling her to address her delinquencies. Currently, she has contacted nearly all of her creditors, either satisfying them entirely, arranging payment plans, or disputing them. Although the amount outstanding remains significant, I am confident that she will continue to satisfy her delinquencies, given her efforts thus far. Clearance is granted.

Statement of the Case

On May 4, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 14, 2012. She admitted subparagraphs 1.b through 1.f, 1.i, 1.q, 1.u through 1.nn, and 1.pp through 1.uu. She denied subparagraphs 1.a, 1.g, 1.h, 1.j, 1.k, 1.n, 1.o, 1.p, 1.r through 1.t, and 1.oo. She neither admitted nor denied subparagraphs 1.l and 1.m.

The case was assigned to me on August 1, 2012. A notice of hearing was issued on September 24, 2012, scheduling the case for October 22, 2012. I held the hearing as scheduled and received five Government exhibits, marked as Government Exhibits (GE) 1 through 5, and 31 Applicant exhibits (AE) marked as AE A through EE. Also, I considered the testimony of Applicant and seven witnesses. After the hearing, I left the record open, at Applicant's request, for her to submit additional exhibits. Within the time allotted, she submitted six additional exhibits that I incorporated into the record. (AE FF-KK) DOHA received the transcript (Tr.) on November 1, 2012.

Procedural Rulings

At the hearing, Department Counsel moved to withdraw SOR subparagraphs 1.a, 1.h, 1.n, and 1.tt. (Tr. 8) I granted the motion. Also, Department Counsel moved to amend SOR subparagraph 1.w, "You are indebted to Creditor X for a debt that is in collection in the approximate amount of 1205," by striking "1205" and replacing it with "\$105." I granted the motion.

Findings of Fact

Applicant is a 43-year-old single woman with one child, age 12. Applicant has a bachelor's degree in applied mathematics, earned in 1991, and a master's degree in curriculum and instruction, earned in 1998. Applicant has been enrolled in school intermittently since 2007, working toward a doctorate. (GE 4 at 6) Applicant anticipates finishing the program by 2013. Her field of study is unknown from the record.

After graduating from college, Applicant worked as a secondary school teacher in various school districts through approximately 2006. Since then, she has worked in the field of adult education and curriculum development. (Tr. 30) Since 2010, she has worked for an agency that provides business system organization services to federal government agencies. (Tr. 29) Specifically, her employer is helping agencies synchronize their network systems. Because of the scope and complexity of this endeavor, employees such as Applicant assist in developing training programs for agency employees to facilitate the process. (Tr. 25)

Applicant is highly respected by her employer, her clients, and her peers. According to a federal government project manager, Applicant "was one of the best people [they] had," who went "above and beyond" to accomplish her tasks. (Tr. 25)

According to another client, Applicant is one of the top 10 to 20 percent of the contractors working on the project. (Tr. 32)

In 2000, Applicant's daughter was born. (Tr. 68) Applicant has always been a single mother, and the child's father has paid child support inconsistently over the years. (GE 4 at 14) In 2001, Applicant failed a teacher's licensing examination. (Tr. 69) Consequently, she had to resign from her position and accept a teaching position in another county that paid \$12,000 less in annual income. (GE I)

Applicant gradually became disillusioned with teaching. In June 2003, she left her teaching position to explore other career options. Her efforts were unsuccessful. In February 2004, after approximately six months of working in menial part-time jobs, Applicant returned to teaching. (GE 4 at 8) She took a position focusing on troubled youth. In November 2004, Applicant quit her job after being physically assaulted by a student. (GE 4 at 6) She was unemployed for the next nine months.

During the period Applicant was unemployed, her daughter was sexually assaulted. Applicant then began accruing counseling bills that she could not afford to pay. (GE 4 at 14)

The multiple episodes of misfortune that befell Applicant between 2003 and 2005 compelled her, by August 2005, to relocate to another state. (GE I at 2) The cost of living in the state where Applicant moved was much higher than the state from where she relocated. Her finances, already strained by the nine-month period of unemployment in 2005, began to completely deteriorate.

Applicant's financial problems worsened shortly after moving when she injured her back. Overwhelmed by the higher cost of living and the maintenance costs of a decrepit used car that she had purchased before moving, Applicant was unable to make the medical insurance co-payments. (Tr. 68)

By January 2006, Applicant had exhausted her savings and could not afford to pay her rent. One month later, she was evicted from her apartment. (Tr. 108) Subsequently, she and her daughter spent the next 18 months living in either her car or a homeless shelter. (GE 4 at 14) She supported herself with credit cards.

In June 2006, Applicant began working for an information technology company, earning an annual salary of \$50,000, approximately \$8,000 higher than her previous job's salary. (GE 4 at 14) Applicant was still unable, however, to leave the homeless shelter. Moreover, while living in the homeless shelter, her daughter became ill and was subsequently diagnosed with an inflamed colon and neuropathy.¹ (Tr. 73) Consequently, Applicant had to earmark some of her income she had been saving to move into an apartment toward her daughter's medical expenses. (Tr. 70-74)

¹Neuropathy is a chronic condition. Its symptoms include arm and leg weakness. (AE X at 9)

In 2007, Applicant took a job as an instructional designer. (GE 1 at 3) Her annual salary increased by approximately \$15,000. This increase enabled her to move out of the homeless shelter by June 2007. (GE 4 at 14)

By 2010, Applicant was earning approximately \$30,000 more per year than she was earning when she first relocated. This enabled her to make a concerted effort to address her financial delinquencies, which had by then accrued to approximately \$57,000. Applicant retained a credit counseling company to help her organize her finances. (AE S)

Approximately \$35,500 of Applicant's delinquencies consists of a student loan debt, as listed in SOR subparagraph 1.i. In September 2012, Applicant contacted the creditor and applied for a forbearance. The application was accepted, and the account will be in forbearance until April 2013. (AE M)

Nineteen of Applicant's debts, as listed in SOR subparagraphs 1.u to 1.mm, constitute parking and vehicle registration infractions. Applicant accrued them when she was living in the homeless shelter. During this time, she could not afford to register her automobile which would have enabled her to park it legally. Consequently, she accrued multiple tickets, totalling \$2,815. In June 2012, Applicant borrowed money from her 401(k) and used it to satisfy this debt in its entirety. (AE P)

The status of Applicant's remaining debts is as follows:

Debt	Amount	Description and Status	Evidence
1.b.	\$10,697	Car repossessed in 2005. Agreement reached in October 2010 to satisfy with \$250 monthly increments. Current on payments.	AE A, GE 2 at 2; GE 3 at 1.
1.c.	\$575	Utility. Not yet satisfied.	Tr. 83.
1.d.	\$235	Medical bill. Not yet satisfied.	Tr. 84.
1.e.	\$1,039	Credit card. \$125 monthly payments since May 2012.	Tr. 84; AE K.
1.f.	\$738	Credit card. \$125 payments since June 2012.	Tr. 84; AE L.

1.g.	\$1,097	Unknown. Applicant denies, stating she had not yet moved to the area where the bill was allegedly accrued. Filed fraud report with local police office. Creditor investigated the account, then closed it, resolving in Applicant's favor.	Answer at 18; AE HH.
1.j.	\$316	Phone account. Applicant successfully disputed.	AE N.
1.k.	\$261	Credit card. Paid as of October 2012.	AE O.
1.l.	\$352	Credit card. Applicant has paid down this debt to \$223.	Tr. 104.
1.m.	\$223	Duplicate of subparagraph 1.l.	Tr. 104.
1.o.	\$1,436	Delinquent rent. Applicant successfully disputed this bill. (She had satisfied the debt in September 2008.)	Answer at 41.
1.p.	\$3,164	Delinquent rent. Provided evidence that she settled and satisfied it.	Answer at 43.
1.q.	\$193	Grocery store club membership. Paid.	Tr. 108.
1.r.	\$147	Music service. Paid.	Answer at 44.
1.s.	\$415	Fee related to 2006 eviction. Not yet satisfied.	Tr. 110.
1.t.	\$743	Credit card. Not yet satisfied.	Tr. 110.
1.nn.	\$165	Not yet satisfied.	Tr. 112.
1.oo.	\$448	Phone bill. Disputed. Verified by creditor. Applicant will make payment arrangements.	Tr. 114.
1.pp.	\$1,370	Medical bill. Not yet satisfied.	Tr. 115.
1.qq.	\$980	This bill predates relocation. Does not know identity of original creditor. Collection agency does not know either, and refused to accept payment.	Tr. 116.
1.rr	\$300	Duplicate of SOR subparagraph 1.k.	Tr. 117.

1.ss.	\$265	Payday loan. Satisfied October 20, 2010.	AE Q.
1.uu.	\$288	Cable television. Paid.	Tr. 120.

Since August 2010, Applicant has also satisfied debts owed to three creditors, which were not listed on the SOR, collectively in the amount of approximately \$1,200. (AE U) Applicant has a debt repayment plan that she uses to track her debt reduction progress. According to her plan, all of her delinquent debt will be eliminated by December 2014. (AE AA at 2-3)

Currently, Applicant earns \$86,000 per year. (Tr. 123) She maintains a budget, and has approximately \$300 of monthly discretionary income. (AE AA at 2; Tr. 163) She has \$8,922 invested in her retirement account. (AE GG)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant’s history of financial delinquencies and her longstanding struggles

to make ends meet trigger the application of AG ¶¶ 19(a) “inability or unwillingness to satisfy debts,” 19(c) “a history of not meeting financial obligations.”

The following 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 first began to struggle financially in 2001 after she had to take a job that paid \$12,000 less than her previous job. However, she did not leave the better-paying job because of circumstances beyond her control. Instead, she left it because she could not pass a competency test that was required to maintain it.

Similarly, Applicant voluntarily left the teaching profession in 2003. Therefore, her subsequent inability to find a well-paying job for the first six months after leaving the profession also cannot be characterized as a circumstance beyond her control.

Conversely, after returning to the teaching profession, Applicant, in 2004, was compelled to leave a job after being physically assaulted by a student. Over the next three years, her daughter was sexually assaulted, and later was diagnosed with two serious medical conditions (unrelated to the sexual assault), and Applicant suffered a serious, at times debilitating, injury. On balance, I conclude that circumstances beyond Applicant’s control significantly contributed to her financial difficulties.

As Applicant’s salary began gradually increasing over the years, she began to address her delinquent finances. Currently, her most significant delinquency, the student loan totalling \$35,500, is in forbearance. Of the remaining \$22,000 of debt,

Applicant has satisfied approximately \$7,500 of delinquencies in their entirety, and is paying three creditors, whom she collectively owes approximately \$12,500, through monthly payments. Also, she has successfully disputed debts totalling approximately \$2,849.

Applicant maintains a budget and is meticulously adhering to it. I conclude that all of the mitigating conditions apply.

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 the 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.

Applicant's financial hardship was not caused by irresponsible spending. Instead, it was caused by career setbacks, periods of unemployment, medical problems, and family crises. Since 2006, Applicant has rebuilt her life and her career, getting progressively higher-paying jobs and gradually satisfying her debts. Currently, she is a highly-respected employee at the company where she works. Given that she was homeless as recently as June 2007, her progress, both professionally and with debt reduction, has been remarkable. Under these circumstances, I conclude that Applicant has mitigated the security concerns.

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:	WITHDRAWN
Subparagraphs 1.b -1.g:	For Applicant
Subparagraph 1.h:	WITHDRAWN

Subparagraphs 1.l - 1.m:	For Applicant
Subparagraph 1.n:	WITHDRAWN
Subparagraphs 1.o - 1.ss:	For Applicant
Subparagraph 1.tt:	WITHDRAWN
Subparagraph 1.uu:	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.

MARC E. CURRY
Administrative Judge