



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



In the matter of:)
)
) ISCR Case No. 07-08673
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul Delaney, Esquire, Department Counsel
For Applicant: *Pro Se*

August 11, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s good faith efforts to repay creditors established sufficient financial responsibility to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is granted.

Statement of the Case

On February 27, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Standard Form (SF) 86.¹ On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her,² pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

¹ GE 1.

² GE 1 is the source for the facts in the remainder of this paragraph unless stated otherwise.

Program (Directive), dated January 2, 1992, as amended, modified and revised.³ The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR on December 3, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on February 6, 2008. DOHA issued a notice of hearing on February 14, 2008. The hearing was convened as scheduled on March 5, 2008. The government offered exhibits (GE) 1 through 6, which were admitted without objection (Tr. 20). Applicant testified on her own behalf, and presented 15 exhibits, marked AE 1 through 15, which were received without objection. DOHA received the transcript of the hearing (Tr.) on March 14, 2008.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, and 1.l with explanations. She denied SOR ¶¶ 1.b, and 1.f through 1.k. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 25 years old. She has never married and does not have any children. She has no police record, and there is no evidence she has used or trafficked in illegal. She attended college from 2000 to 2004, and received a Bachelor of Arts degree. While in college, she worked part-time and summer jobs to pay for her expenses. Since graduating from college in July 2004, she has worked for two different Government contractors providing administrative support to Government agencies. She has worked for her current employer since September 2006. Because of her good performance, she was selected to do the training and development for all new contractor specialists (Tr. 7, 36-37). She has been attending cosmetology school since December 2007 and plans to graduate during the later part of 2009 (Tr. 105).

Financial Considerations

Applicant's background investigation addressed her financial situation and included the review of her e-QIP, her response to DOHA interrogatories (GE 2), and four credit bureau reports (CBRs) from 2004 (GEs 5 & 6), 2006 (GE 4), and 2007 (GE 3). The SOR alleges 12 delinquent/charged off accounts totaling approximately

³ On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

\$25,000. Only two of the alleged debts are supported by the government's evidence because some debts were duplicated and three did not belong to Applicant.

The Government conceded SOR ¶¶ 1.a, 1.d, 1.e, and 1.l allege the same delinquent debt (Tr. 43). SOR ¶¶ 1.d, 1.e, and 1.l were consolidated under SOR ¶ 1.a. Applicant initially included SOR ¶ 1.a in a debt management agreement she established in 2005 to pay her delinquent debts. When she found out the debt was related to telephone services provided by a company she never had an account with, she disputed the account (Tr. 48).

SOR ¶ 1.b is Applicant's debt. She co-signed a car note for her mother and her mother defaulted on the payments (Tr. 49). In early 2007, Applicant contacted the creditor and agreed to pay \$200 a month. She has been honoring her payment schedule. From May 2007 to February 2008, she paid approximately \$1,800 (AE 11, at 11-23).

The delinquent debts alleged in SOR ¶¶ 1.c, 1.f, and 1.h belonged to Applicant's twin sister and not to Applicant (Tr. 78-79). See AE 11 at 4 (debt settled and paid off by her sister), and AE 7.

SOR ¶ 1.g concerns a car Applicant purchased around 1999-2000, which was totaled in an accident. Applicant retained an attorney to file suit on her behalf. She credibly testified her attorney advised her not to make any payments on the car note pending the resolution of her suit. Ultimately, the suit was settled for a small amount of money which Applicant used to fund her debt management agreement payments (Tr. 66-71). Around August 2007, Applicant established a payment plan with the creditor of SOR ¶ 1.g. She has been honoring her payment schedule. From August 2007 to February 2008, she paid approximately \$700 towards this debt (AE 11, at 23-29).

Concerning SOR ¶¶ 1.i, 1.j, and 1.k, Applicant credibly testified SOR ¶¶ 1.i and 1.k were two different delinquent debts she had which were in collection by the same agency. In 2003, the collection agency consolidated the debts into SOR ¶ 1.j, and obtained a judgment against her. Applicant included the judgment in her debt management agreement and paid it off. The Government conceded the debt alleged in SOR ¶ 1.j was paid (Tr. 88).

Applicant acquired most of her delinquent/charged off debts when she was young and immature -- around the later part of high school and during college. She testified her parents promised to pay for some of her college expenses and they failed to do so because of their divorce. In 2005, she realized the extent of her debt, and was concerned about the adverse consequences of having bad credit. Applicant made lifestyle changes to correct her credit problems which included entering into a debt counseling program, monitoring her expenses, and the use of credit.

In May 2005, she sought financial counseling/assistance to pay her debts and entered into a debt management agreement contract with a company (AE 12-14). She

successfully completed her debt management agreement contract in April 2007. She paid most of her debts with the exception of the two debts remaining in the SOR which were not included in the program. She received financial counseling as part of the debt management payment process.

Applicant has been living by herself since October 2007. She has a yearly salary of around \$55,000, and is well regarded by her employer. She takes roommates to help her pay the rent (\$1,045). Her monthly take home pay is around \$3,500. She seems to have the financial means necessary to pay for her day-to-day living expenses and to continue paying for her old debts. She only carries one credit card (with a low balance) which she uses for emergencies. Applicant expressed sincere remorse for her past financial indiscretions. She credibly testified she has learned her lesson, and promised to avoid future financial problems.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions 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 controlling adjudicative goal is a fair, impartial and common sense 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"⁴

⁴ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁵

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 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." See *also* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern 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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations."

⁵ "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Applicant's history of delinquent debt is documented in her credit reports, her SOR response, and her response to interrogatories. She acquired numerous debts which became delinquent. Two of these debts were outstanding as of the hearing date. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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.

In 2005, after realizing the extent of her debts, Applicant took good faith steps to correct her financial problems by establishing a debt payment program, receiving financial counseling, and making financially responsible lifestyle changes. In 2007, she successfully completed her debt payment program. That same year, she established payment plans with other creditors not included in her initial debt payment program and has continued her financially responsible behavior by honoring her payment obligations. Although she has missed some monthly payments, considering the evidence as a whole, I find that she has acted in good faith in her efforts to repay creditors. I also find that, although she is not debt free, Applicant has shown clear indications that her financial problem is being resolved or is under control. Based on my evaluation of the record evidence as a whole, I conclude AG ¶ 20(e) fully applies and AG ¶ 20(d) partially applies because she did not act more aggressively sooner to resolve her debts.

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 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.

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. AG ¶ 2(c).

Applicant's record of good employment weighs in her favor. There is no evidence of any security violation. Aside from her delinquent debts (which are a civil, non-criminal issue), she is a law-abiding citizen. She acquired most of her bad debts while in high school and college – likely because of her young age and lack of maturity. I believe Applicant has matured as demonstrated by her successful completion of the debt management program, as well as honoring the payment agreements she established in 2007. I also believe Applicant has learned the importance of having financial responsibility and her past questionable financial behavior is not likely to recur.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to 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, Guideline F:	FOR APPLICANT
Subparagraphs 1.a and 1.i:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is granted.

Juan J. Rivera
Administrative Judge