



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-09562
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esquire, Department Counsel

For Applicant: *Pro Se*

July 15, 2008

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a Standard Form 86 (SF-86) security clearance application on October 29, 2006. On February 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) stating 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 revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective for SORs issued after September 1, 2006.

In a response notarized on March 18, 2008, Applicant admitted five of six allegations raised regarding five delinquent accounts; she denied the sixth allegation only with regard to the balance cited. The case was assigned to me on April 29, 2008. Department Counsel and Applicant agreed to a May 28, 2008, hearing date and a Notice of Hearing was issued on May 13, 2008.

The hearing took place as scheduled. Department Counsel submitted six exhibits (Ex.), which were accepted into the record as Exs. 1-6 without objection. Applicant submitted nine exhibits, accepted as Exs. A-I without objection. Applicant gave testimony and no witnesses were called. The transcript (Tr.) was received on June 5, 2008. Four additional documents were received from Applicant on June 6, 2008, and accepted into the record as Exs. J-M. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

Findings of Fact

Applicant is a 24-year-old casualty specialist working for a defense contractor. She has worked for that employer since October 2004. Prior to that, she was a student intern with a Federal agency. She is currently on a break from college, where she has completed her freshman year of studies toward an education major. She is a single mother and the sole support of a six-year-old son.

In February 2001, Applicant was hired as a student clerk for a Federal agency. Working approximately 20 hours per week, she earned about \$800 a month. The following year, in February 2002, she gave birth to her son. The two lived with her parents and young brother to reduce costs. Due to the child's birth, Appellant decided to defer her plans to continue in college.

The child suffered from severe asthma in his first years, necessitating many doctor and hospital visits and resulting in many medical bills. Applicant's internship did not provide her with health insurance, so only Medicaid helped pay for the child's medical care. As the child grew older and his asthma grew less threatening, Applicant's mother's health started to decline. Applicant became her primary care-giver and helps oversee her brother while her father works. She has twice been hospitalized for months at a time, setting Applicant back in terms of her work load and her ability to pay off bills. Her mother's first illness occurred shortly after Applicant returned to college in 2003.

Applicant quit school to care for her mother. She left school, however, after the cut-off date for receiving a refund on her semester's tuition. Her subsequent withdrawal from school accelerated the due date on her student loans and she was soon in default on those loans. Those payments joined others she could not afford when she was forced to quit her part-time job to care for her family.

By mid-2004, Applicant's son's asthma had improved and her mother's health was better. She accepted her current job in October 2004. With a steady job, Applicant began to address her many extraneous debts. She tried to pay her current obligations first, then pay off her delinquent debts from oldest to most recent. Many were relatively minor medical accounts. Her student loans were an obstacle because the balance was overwhelming and demanded it be addressed through an organized plan. Applicant

now recognizes she should have approached the debts differently.¹ By the time she received the SOR in early 2008, however, she was making progress on those old obligations. At issue in the SOR are six obligations.

1) **COLLECTION ACTION FOR \$548** – *Balance cited in SOR paid* – This balance was placed for collection in April 2003. The collection agent noted in the SOR was succeeded by a subsequent collection agent. On May 23, 2008, the latter agent was authorized to withdraw \$581.14 from Applicant’s bank account.² The withdrawal cleared and was posted on Applicant’s bank statement on May 27, 2008.³

2) **MEDICAL DEBT FOR \$80** – *Balance cited in SOR paid* – This balance for allegedly failing to keep a medical appointment was initially disputed by Applicant, who maintains she gave adequate cancellation notice.⁴ It was placed in collection in approximately May 2005. Applicant settled the matter with a payment of \$83.80 to a local medical practitioner. Despite the Government’s use of a particular credit reporting bureau that irregularly provides complete account data, the weight of the evidence supports that this account is the one at issue in the SOR.

3) **MEDICAL DEBT FOR \$429** – *Balance cited in SOR paid* – This balance represents a number of charges related to Applicant’s son’s 2007 emergency hospital care. It was paid along with a number of other charges, so Applicant does not have a receipt of payment. She demonstrated, however, that her most recent credit report from May 2008 indicates that the account has been paid.⁵

4) **MEDICAL DEBT FOR \$117** – *Balance cited in SOR paid* – This balance was placed for collection in September 2005 with a date of last activity in January 2006. Applicant previously paid this emergency care bill, but failed to keep a receipt. She disputed its inclusion on her credit report. The Government’s April 10, 2008, does not list the account. The entry was apparently deleted.⁶ Inasmuch as only a little more than two years passed between the date the account was opened and the date of last activity before it was removed, it was not deleted as stale. Therefore, it is not unreasonable to conclude that the account was previously satisfied.

¹ Tr. 49.

² See Ex. B (Payment to current debt collector on account cited in SOR allegation 1.a.).

³ Ex. C (Proof of payment by debit on May 27, 2008).

⁴ Tr. 31.

⁵ Ex. E (Credit report, dated May 28, 2008, showing all the major credit reporting bureaus now reflect this account as paid).

⁶ Ex. 4 (Credit report, dated April 10, 2008); *compare* Ex. 3 (Credit report, dated November 11, 2007) and Ex. 2 (Credit report, dated November 18, 2006).

5) **MEDICAL DEBT FOR \$93** – *Balance cited in SOR paid* – This balance was placed for collection in November 2005 with a specific collection agency. Applicant showed she paid that agency \$192.54 for service provided in April 2005 on April 18, 2008, with a receipt of payment and evidence that payment has thus far been reflected on two of the three major credit reporting bureaus.⁷

6) **STUDENT LOANS FOR \$16,737** – *In repayment* – Applicant denied the allegation regarding these two loans, but only with regard to the total balance represented. She admits the student loans became delinquent. She intended to return to school after her baby was born and assumed the loan proceeds could be deferred. As previously noted, however, she was forced to drop out of school shortly after she recommenced her program to care for her mother. She departed after the last day to drop a class with a refund of tuition, so the proceeds went to the school and the obligation was created for Applicant. To remedy the situation, she joined the lender's rehabilitation program.

Under that program she paid an initial percentage of her total balance (\$886) to get into the program and had to pay \$152 per month for nine months.⁸ After nine months of timely payment, the lender checks that these payments were timely made, reestablishes the loans, designates the loans as current, and makes one eligible to continue receiving student loans.⁹ Applicant has complied with the terms of that agreement. She authorized timely withdrawals from her checking account to pay her monthly payments and her last payment was due June 26, 2008.¹⁰ As of May 17, 2008, the balance was reduced to \$16,310.35.¹¹

Today, Applicant is doing well financially. She addressed the above-cited delinquent debts in a quick and decisive manner without hardship. She has a few other past debts which were not noted in the SOR that are subject to a reasonable debt consolidation plan.¹² She continues to be timely on all current obligations. She lives frugally at home with her parents, where she contributes to the household by paying utilities, cable, and groceries. She anticipates continuing with her care of her parents and staying with them for the time being.¹³ She enjoys her simple lifestyle, her family,

⁷ Ex. F (Credit network receipt, dated April 18, 2008) and Ex. E (Credit report, dated May 28, 2008, showing two of the three major credit reporting bureaus now reflect this account as paid).

⁸ See Tr. 33-34; Ex. I (Agreement confirmation, dated September 28, 2007); Ex. G (Authorization to withdraw funds automatically, dated May 17, 2008); Ex. H (Payment schedule).

⁹ Tr. 34.

¹⁰ *Id.*

¹¹ Ex. G., *supra*, note 6.

¹² Tr. 36-37; Ex. L (Repayment of one extraneous obligation) and Ex. M (Repayment plan disbursements). Some of these debts are medical and related to her son; they have since been paid. Tr. 44-45.

¹³ Tr. 50.

and her work.¹⁴ Her only other regular bills are for car insurance and her car note. She has received financial counseling, now understands a budget, and is in a better position to handle her own finances and handle her current salary. Her net remainder each month is now in the surplus due to increased salary and debt elimination. After all expenses, she has about \$250 per month in excess funds. From that amount, some money is set aside for her son's future. She contributes to a 401(k) through direct deduction. She hopes to return to college in the fall of 2008 through grants.¹⁵ A return to college would revert her now current student loans to deferred status.¹⁶

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 over-arching adjudicative goal is a fair, impartial and common sense decision. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹⁷ The burden of proof is something less than a preponderance of evidence.¹⁸ The ultimate burden of persuasion is on the applicant.¹⁹

¹⁴ *Id.*

¹⁵ Tr. 52.

¹⁶ Tr. 53.

¹⁷ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²¹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²² It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F, failure or an 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.²³ The Regulation sets out several potentially disqualifying conditions under this guideline.

Between the time Applicant became a single, teenage mother in 2002 and the time she started her current work in 2005, she provided financial, emotional, and

²⁰ *Id.*

²¹ *Id.*

²² Executive Order 10865 § 7.

²³ Revised Adjudicative Guideline (AG) ¶ 18.

physical care for her son and mother as they endured a series of illnesses. In the process, work hours were missed, obligations incurred, and debts became delinquent. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(c) (*a history of not meeting financial obligations*) and FC DC AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) apply. With such conditions raised, the burden shifts to Appellant to overcome the case against her and mitigate security concerns.

When Applicant found herself a single mother at age 18, it impacted both her collegiate studies and her employment as a student intern. Her hours away from home had to be reduced and her income was impacted. Her son's severe asthma required extraordinary medical attention, then her mother's sudden illnesses demanded her personal and financial assistance. Indeed, the confluence of those two illnesses forced her to withdraw from college after the last date to receive a tuition refund, thus obligating her in full for the cost of a school year she would not complete. Given this chain of unforeseeable events within a relatively brief period and the economic repercussions its posed, Financial Considerations Mitigating Condition (FC MC) 2, AG ¶ 20(b) (*the conditions that resulted in the behavior 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*) applies.

All of the debts at issue arose from her son's early childhood asthma and the family illnesses that would force her to withdraw from school after the last date to withdraw without sacrificing her student loan tuition disbursement in 2003-2004. The financial repercussions were mostly the result of ill health and ill timing beyond her control and unlikely to recur. She cannot be faulted for making sure her son and her mother received appropriate medical care or her personal attendance during a period of health crisis. Given these factors, Financial Considerations Mitigating Condition (FC MC) 1, 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*) applies. Once she discovered the existence and extent of her delinquent obligations, she began addressing them. Given the extensive medical care her son required, the amount that went delinquent and is at issue here (about \$600) is relatively minor, appears to have gone unpaid due to oversight, and has since been paid. She successfully proceeded to rehabilitate her student loans as a major step toward rectifying her financial situation and resuming her studies this autumn. While such action may have been taken to retain her security clearance eligibility, as suggested by Government counsel, the evidence indicates that there were other, equally valid reasons for her addressing that approximately \$16,000 sum. Regardless, all the accounts at issue have been addressed. FC MC 4, AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

When Applicant first encountered financial problems, she was a teenager, a new mother with only a high school diploma. Her initial approach to her debts was somewhat haphazard. She has since received financial counseling and, based on her testimony, Applicant now demonstrates a superior understanding of her own finances. She has

also demonstrated that all but one of the debts cited has been satisfied. As for the remaining obligation, it is in repayment. Therefore, FC MC 3, AG ¶ 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*) applies. In light of all the facts presented and the persuasive applicability of these mitigating conditions, I conclude Appellant has mitigated financial considerations security concern.

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) 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 public trust position must be an overall common sense 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, as well as the "whole person" factors. Applicant is a credible young woman. She gave forthright testimony regarding her family and her personal growth from student intern to professional working mother. She had the acuity to balance her work with her parental obligations while also assisting her parents. She learned to enjoy a simple lifestyle while rising in the business world. She has received financial counseling, developed a budget, addressed the accounts at issue, and demonstrated how she has handled some other extraneous debts in a mature manner.

Applicant has paid the delinquent medical bills cited. Although the student loans balances are still outstanding, the facts giving rise to their acceleration are unique. Moreover, they are now in repayment. Thus rehabilitated, Applicant has honored her obligation and opened a way for her to return to college with financial assistance. To quote Government counsel, "Applicant has certainly provided a tremendous amount of mitigating evidence here relating to situations outside of her control as well as her efforts to repay those debts."²⁴

Finally, the Government expressed reservations regarding the order in which these debts were addressed and questioned Applicant's principal motive for addressing

²⁴ Tr. 47. Counsel continued by noting: "the only remaining concern . . . is the order in which these debts were addressed and it was after the SOR was issued and whether or not it was a true effort to become current with debts or rather an effort to just obtain a security clearance." Tr. 47-48.

these obligations was simply to obtain a security clearance. First, Applicant concedes she did not initially approach her debts in the most organized fashion. To fortify what she then lacked in financial savvy, however, Applicant received financial counseling on her own initiative that set her on course for addressing her debts in a proper manner. Today, she has an understanding of her finances and of credit. Second, while rehabilitation of her student loans at this time might help mitigate financial security concerns, there is no basis that she did so simply to obtain a security clearance. Rather, her main motivation for addressing the loans at this time seems to be her desire to return to finish college. Third, through her credible testimony and actions, Applicant has demonstrated that she has matured into a responsible young woman with demonstrated priorities and a sense of obligation with regard to her finances. With security concerns mitigated and these reservations addressed, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance 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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge