



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-01445
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgrstrom, Esquire, Department Counsel
For Applicant: *Pro se*

February 27, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA), on April 21, 2006. On August 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant's undated answer to the SOR was received by DOHA on September 10, 2007. DOHA issued a notice of hearing on October 24, 2007 and the hearing was held on November 27, 2007. At the hearing, five exhibits (AE 1 through 5) were admitted in evidence without objection to support the government's case. Applicant's four exhibits (AE A through AE D) were received in evidence without objection. Applicant testified. On January 7, 2008, Applicant submitted 15 pages of additional

exhibits. Those exhibits,¹ identified in the first two pages of AE E, were also received in the record without objection. DOHA obtained receipt of the hearing transcript on December 7, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted the 11 allegations listed under the financial considerations guideline. She attributed the overdue debt to conditions beyond her control. Applicant is 34 years old, and has a 10-year-old daughter. She seeks a security clearance.

Applicant's financial problems in the early 2000s essentially parallel her job history (GE 1) when she moved back from State X to the local area in March 2000. The jobs were of short duration and Applicant had to occasionally work two jobs to make ends meet.

Following her completion of high school in 1991, Applicant enrolled in a local technical institute for vocational training. In 1993, she was awarded an associate technical degree in specialized drafting. Her first drafting job was outside the local area. After two years, she returned to the local area and performed contract drafting work for a temporary employment agency. After six months, she found full-time employment as a drafter from 1995 to 1999. In this four-year period of employment, she starting a relationship with her daughter's father. Though they never married, they built a house. Applicant gave birth to their daughter in 1997. Unfortunately, their relationship ended in 1999.

In July 1999, Applicant took a job in State X as a drafter. Though she testified she was employed at that location about 10 months, GE 1 indicates she ended the employment in March 2000, after only seven months. Applicant did not know anybody at this new location, and had difficulty handling the cost of living on a single parent's earnings. She also did not file her state income taxes. (SOR 1.a.) A lien was filed against Applicant in August 2003, and was satisfied in November 2007. (AE B) Applicant's explanation for not filing and paying her taxes was that her father had always prepared and filed her taxes. Her relocation to State X was the first time she was away from her father, so, she simply did not prepare and file them. She was unaware of the tax lien until she obtained a copy of her credit report in 2006. Since her failure to file taxes in 1999, she has learned how to file taxes and does every year.

In March 2000, Applicant moved back to the local area. She moved in with a friend (single mom) and earned some money as a live-in babysitter. She also began a computer job that lasted until September 2000. In November 2000, she moved in with

¹ The exhibits contains documentation supporting Applicant's efforts to reduce and/or resolve those debts listed in SOR 1.c., 1.d., 1.e., 1.i., and 1.l., as well as two debts not listed in the SOR. The exhibits also include information showing two payments in her debt consolidation plan.

her second boyfriend. Over the next several years, she recalled continual problems meeting the rent along with other bills.

She worked five jobs (in and out of her field)² before she found a drafting job at a regional university in September 2003. She was employed there until August 2006, when she began her current employment.

In 2003, Applicant purchased a house as investment property; she planned to rehabilitate the house before reselling. After six months however, she moved into the property. Having to pay a mortgage and other bills associated with raising a child without a second source of earnings, while driving 110 miles daily to and from work, exacerbated Applicant's already frail, financial situation, even though she was working two jobs occasionally. She recalled using her credit cards to pay for groceries as well as nonessential items.

Although the SOR lists 11 debts, SOR 1.f. is the same as SOR 1.j. (AE 1 G) The debts became delinquent between 1999 and April 2007.³ The total indebtedness is approximately \$14,040.00. Applicant has resolved the debts in SOR 1.a., and 1.c. Between October and December 2007, she was able to successfully restructure her mortgage. (SOR 1.e.) She has reduced the debt in SOR 1.l. to approximately 117.00. She still owes the debts identified in 1b., 1.g., and 1.i. In October 2007, Applicant placed the debts in SOR 1.d., 1.f., 1.h. and 1.k. in a 30-month, debt consolidation plan. She has made two payments of \$108.44 in the plan.

→ 1.a. As noted, this debt is a tax lien for \$3,246.77 filed in August 2003 for not paying income taxes. The lien was satisfied in November 2007.

→ 1.b. A delinquent medical account (\$225.00) was referred for collection in August 2004. Applicant is unaware of the origin of this account, but acknowledges that it does exist.

→ 1.c. The collection account (\$167.55), charged off in March 2005, was paid in full. Applicant received verification on December 21, 2007. (GE 2, AE N)

→ 1.d. This collection account (\$774.00), referred for collection in July 2005, has been included with four other debts in Applicant's consolidated debt plan. (AE C)

→ 1.e. The mortgage account showing a deficiency of \$1,347.00 as of May 10, 2007 (GE 3), is now current after Applicant requested in October 2007 that the mortgage terms be modified downward. (AE D) After paying a modification fee of \$500.00, and a late charge fee of approximately 204.00, Applicant's mortgage is now current. (AE O)

² She even worked as a parking attendant for a short time.

³ The debts in SOR 1.g. through 1.l, though still past due, do not appear to be as delinquent as the others.

→ 1.f. This past due account (\$5,835.00) has been included in Applicant's consolidated plan. This is the same account as in 1.j. (AE C, G)

→ 1.g. This account is past due, but only by \$24.00, not \$625.00, according to GE 3. The account is still unpaid.

→ 1.h. This delinquent account (\$501.00) is included in Applicant's consolidation plan. (AE C)

→ 1.i. This account (\$609.43) remains delinquent, although the account does not appear in GE 3.

→ 1. k. This account (\$462.79) is included in Applicant's consolidation plan. (AE C). Before entering this account in her debt plan, she had been making payments until February 2007.

→ 1.l. The SOR lists this account as overdue in the amount of \$1,500.00. Applicant had been making payments with the collection agency who purchased the debt. She paid \$200.00 to the collection agency in March 2007 (GE 2), and also a payment of \$216.67 (postdated check) on November 19, 2007 to be cashed on November 30, 2007. The payment of \$216.67 on November 30, 2007 brings Applicant's balance on SOR 1.l. to approximately \$117.00. (AE H)

In the last two years, Applicant has changed her spending habits. She has no credit cards as she understands how they drew her into financial trouble. She only purchases those items she and her daughter need. The death of her stepfather in early 2007, her estrangement from other familial members (no further information), as well as the end of her seven-year-long relationship with her boyfriend, made her feel overwhelmed for a short time. But, rather than wallow in her depression, the relationship issues quickly provided additional incentive for Applicant to get her financial house in order. With the help of regular therapy, Applicant is confident she will be able to resolve all remaining financial problems. She has received two pay increases since her hire, and, an arrangement with her daughter's father will allow her to be able to work much more overtime to help her expedite plans of resolving the debt.

Though she has had no formal financial counseling, she has spent productive time on the internet educating herself about various financial tools, such as the value of credit reports and budgeting. She obtained her first credit report in September 2007. Since she enrolled in the debt settlement/consolidation plans, she has been trying to implement a budget, but is having problems getting underway because of the lack of money.

Three present and former coworkers provided character statements about Applicant. The site manager has known Applicant since August 2006, and enjoys her team-player attitude. The production manager considers Applicant a real professional. A former coworker at her previous job praised Applicant's common sense in getting jobs

done properly. Three friends for varying lengths of time value Applicant's honesty and dedication.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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.

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 as to 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Financial Considerations (FC)

Failure to live within one's means, and inability to pay bills on time places the individual debtor at risk of committing illegal acts to generate funds.

Analysis

On August 13, 2007 (date the SOR), Applicant had 10 delinquent debts totaling more than \$14,000.00. She accumulated these debts over the last four years. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) applies due to Applicant's inability, not unwillingness, to pay those debts as they became due. FC DC 19.c. (*a history of not meeting financial obligations*) also applies based on the progression of debts falling delinquent in August 2004 and thereafter. FC DC 19.g. (*failure to file annual Federal, state, or local tax returns as required or the fraudulent filing of the same*) applies because of Applicant's failure to file and pay state income taxes for the 1999 tax year.

The first four mitigating conditions (MC) under the FC guideline may apply to overcome the adverse financial evidence. FC MC 20.a. (*the behavior happened so long ago, was so infrequent, or occurred under the such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) must be removed from consideration as the record shows there were debts falling delinquent as recent as April 2007.

FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) has limited application. The record reflects the passing of Applicant's stepfather in early 2007 is the only traumatic and unanticipated event beyond her control that could have caused or exacerbated Applicant's financial bad times. However, the overdue debt that Applicant compiled between 1999 and her father's death is not reconciled completely by matters beyond her control.

FC MC 20. b. cannot apply to Applicant's 1999 tax lien. Everyone is obligated to file tax returns and pay taxes. The fact that Applicant was in State X, and could not have her father prepare her taxes does not mitigate her poor judgment in simply ignoring her tax obligation.

The accumulation of Applicant's remaining past due debt from August 2004 to April 2007 receives some mitigation under FC MC 20.b. During the period from March 2000 until Applicant landed her current employment in August 2006, she had difficulty finding stable employment in her field, as is evidenced by the six jobs she had during the period. She even worked for a time as a parking attendant. Aggravating her underemployment and unemployment problems was her ill-advised purchase of the investment property in 2003. Paying a mortgage on only one income, while raising a child and driving 110 miles to and from work every day from July 2003 to August 2006, deserves some mitigation under FC MC 20.b.

FC MC 20.c. (*the person has received or is receiving counseling for the problem and/or there are clear indications the problem is being resolved or is under control*) has limited application to the facts as Applicant has spent time on the internet learning about a credit report. She is trying to incorporate a budget into her financial practices. She enrolled in a debt consolidation plan. The fact she has resolved several debts, brought other debts to a current status, and placed other debts in a repayment plan, establishes persuasive evidence of a clear indication she is getting the debts under control. The SOR debts in 1.a. and 1.c. have been paid, and the debts in 1.d., 1.f., 1.h., and 1.k. are in the debt plan.

FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to support the conclusion Applicant is getting her finances under control. Having weighed and balanced the entire record with Applicant's favorable credibility, she has convinced me she is committed to finishing the job she launched in December 2006 when she paid off two unlisted debts. All subparagraphs under the FC guideline are found in Applicant's favor.

Whole Person Concept (WPC)

I have weighed the circumstances of this case under the general factors of the whole person concept. The comments from Applicant's supervisors indicate that she is a competent employee. By eliminating her credit cards, by only purchasing items she and her daughter need, and by seeking internet help to improve her financial practices, she has made the positive behavioral changes necessary to regain control over her finances. I believe her resolution of most of the debts in the SOR, which she began even before she received the SOR, has been a cathartic process, dramatically improving her financial habits as well as her self-esteem. The FC guideline is found in her favor.

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 (Financial Considerations, Guideline F): 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

Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.l.	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. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge