



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



In the matter of:)
)
) ISCR Case No. 07-02792
)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esq., Department Counsel
For Applicant: *Pro Se*

April 29, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

On September 24, 2008, 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on November 7, 2008. She did not state whether she wanted a hearing before an administrative judge or the case decided on the written record in lieu of a hearing. The case was scheduled for a hearing, during which Applicant specifically stated that she wanted a hearing. The case was assigned to

another administrative judge on March 4, 2009, and reassigned to me on March 11, 2009. DOHA issued a notice of hearing on March 17, 2009, and the hearing was convened as scheduled on April 7, 2009. The Government offered Exhibits (GE) 1 through 8, which were received without objection. The Government also offered a demonstrative exhibit which was marked Hearing Exhibit (HE) I. Applicant testified on her own behalf, and submitted Exhibits (AE) A through E, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted four pages of documents, which were marked AE F through H, and admitted without objection. Department Counsel's memorandum is marked HE II. DOHA received the transcript of the hearing (Tr.) on April 15, 2009.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. She has worked in the defense industry for more than 22 years and has maintained a security clearance throughout her employment. She has a Bachelor of Science degree awarded in 1986. She has been married for more than 20 years. She has two children, ages 16 and 13.¹

Applicant has had financial problems for a number of years, and some of her debts became delinquent. She owed the Internal Revenue Service for taxes due from about 2000. With interest and penalties, her tax debt was more \$25,000. Funds were withheld from her paycheck for several years and the debt was paid in 2005. She is now current on her taxes. Her husband was unemployed from September 2003 through December 2003, and again from September 2008 through January 2009.²

Applicant contracted with a credit repair company in about 2006 or 2007 to address "discrepancies on her credit report." Several items were deleted from her credit report. She was told that she did not have to pay any of the debts that were no longer on her credit report. She contracted with a different credit counseling company in November 2008. This company reinforced the position that she did not have to pay any debts that were not on her credit report.³

The SOR alleges four delinquent debts totaling \$18,090. Applicant admitted to SOR ¶ 1.b, and denied the remaining three allegations. The debts were denied because they no longer appeared on Applicant's credit report. Individual debts are addressed below.

In her response to the SOR, Applicant denied SOR ¶ 1.a, which alleged a delinquent debt of \$9,498. Applicant denied the debt because her credit counseling

¹ Tr. at 26, 30-33, 48.

² Tr. at 21-23; GE 1-5, 8. The IRS debt was not alleged as a basis for the denial of Applicant's security clearance in the SOR and will not be used for disqualification purposes. The debt and Applicant's payment of the debt will be used in assessing Applicant's total financial picture; in the application of mitigating conditions; and in evaluating the "whole person."

³ Tr. at 22, 24, 28, 36, 45; Applicant's response to SOR; GE 2-7; AE A, B, E, H.

company told her that she was no longer responsible for the debt because it was not listed on her credit report. She stated that this debt represented the deficiency owed on her car loan after the car was voluntarily repossessed. She did not deny that she incurred the debt. She was informed at the hearing that there could be security concerns even if the debt does not appear on her credit report. She testified that she would take steps to pay her debts, even if they were not listed on her credit report. She contacted the collection company that currently holds the debt after the hearing. She made arrangements to pay \$77 per month on the debt.⁴

Applicant admitted that she owed the delinquent debt of \$7,499 to a collection company on behalf of a credit card company, as alleged in SOR ¶ 1.b. She has a payment plan through her credit counseling company to pay the debt. Payments are deposited with the credit counseling company which disburses the funds to the creditor. She made a deposit of \$289 in December 2008, followed by monthly deposits of \$192 in January, February, and March 2009.⁵

SOR ¶ 1.c alleges a debt of \$606 owed to a collection company. The original creditor was a department store. Applicant denied the debt because it was no longer listed on her credit report. She did not deny that she incurred the debt. She contacted the creditor after the hearing and agreed to pay \$50 per month, beginning on April 30, 2009.⁶

Applicant denied owing the \$487 debt alleged in SOR ¶ 1.d. This debt was a car loan on a car that was repossessed. The monthly payment on the loan was \$487. The debt appears on the credit reports of April 28, 2006 and March 5, 2007. Both credit reports reflect that the debt was transferred and had a zero balance. The debt is not listed on the later credit reports in evidence. This debt appears to be a duplicate of the debt alleged in SOR ¶ 1.a.⁷

Applicant's financial situation is not perfect, but it is improving. She earns a good salary and her husband is working a temporary job. She is about two months behind on her mortgage, but the mortgage company is working with her to bring it current, and has not threatened foreclosure.⁸

Applicant submitted a letter from her supervisor. He has known and worked with her for seven years. He wrote that her character is above reproach; she is totally trustworthy; and never fails to complete every obligation. She has been a very active volunteer for the Girl Scouts for ten years. A senior member of that organization wrote a

⁴ Tr. at 24-26, 33-38, 44-45; Applicant's response to SOR; GE 2-7; AE A, B, G.

⁵ Tr. at 38-40; Applicant's response to SOR; GE 2-7; AE E, H.

⁶ Tr. at 25, 40-42; Applicant's response to SOR; GE 2-7; AE A, B, G.

⁷ Tr. at 42-43; Applicant's response to SOR; GE 2-7; AE A, B.

⁸ Tr. at 53-55.

letter on Applicant's behalf. She praised Applicant as a leader and role model who is "positive, enthusiastic, and always willing to help the individuals she serves reach their full potential."⁹

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 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, administrative judges apply the guidelines 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. 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.

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 the 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 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.

⁹ AE C, D.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations 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 still owes three of the debts alleged in the SOR. She is in the process of addressing her financial issues, but they are not yet resolved. AG ¶ 20(a) is not applicable at this time. Her financial issues are at least partially related to her husband's unemployment and underemployment. These qualify as conditions that were outside her control. To be fully applicable, there must be a causal connection between the unavoidable conditions and the financial problems. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant had financial problems before her husband's unemployment. She acted responsibly toward the IRS by paying that debt. She only recently began to act responsibly by setting up payment plans for her other debts. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling through the credit counseling company. Her largest debt of more than \$25,000 to the IRS was not alleged in the SOR because it was paid before the SOR was issued. She credibly testified that now that she is fully aware of her responsibilities, she intends to pay her remaining delinquent debts. In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board discussed an applicant's burden of proof under these mitigating factors:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually

paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

I find that there are clear indications that Applicant's financial problems are being resolved and are under control, and that she has made a good-faith effort to repay her creditors. AG ¶ 20(c) is applicable. AG ¶ 20(d) is partially applicable. She does not yet rate full credit under mitigating condition AG ¶ 20(d) because of the delay in addressing the debts that fell off her credit report.

AG ¶ 20(e) is applicable to the SOR ¶ 1.d debt, because it is a duplicate of the debt alleged in SOR ¶ 1.a.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance 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. I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has been employed in the defense industry and maintained a security clearance for more than 20 years. She is very highly regarded by her employer and as a volunteer in her community. She has suffered financial difficulties for a number of years. She had a very large IRS debt. It took a number of years, but the debt was paid and she is current on her taxes. Her husband had periods of unemployment and underemployment. She entered into a payment plan to repay one of her delinquent debts. She followed the advice of the professionals and did not pay the debts that were no longer listed on her credit report. She now understands the ramifications of that advice and entered into payment agreements with her remaining two creditors.

Applicant's finances are not perfect. She paid a very large debt to the IRS, but still has debts to pay. However, she credibly testified that she intends to pay her delinquent debts. As noted above, the Appeal Board has held that an applicant is not required to establish that she has paid every debt listed in the SOR. All that is required is that an applicant must demonstrate that she has "established a plan to resolve [her] financial problems and taken significant actions to implement that plan."¹⁰ I find that she has established a plan to resolve her financial problems and has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations 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-1.d:	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.

Edward W. Loughran
Administrative Judge

¹⁰ ADP Case No. 06-18900 at 4 (App. Bd. Jun. 6, 2008).