



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



In the matter of:)	
)	
)	ISCR Case No. 07-08890
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

March 26, 2008

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on November 18, 2007, and requested a hearing. The case was assigned to me on January 2, 2008, and was scheduled for hearing on January 28, 2008. A hearing was held on January 28, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of four exhibits; Applicant relied on one witness (herself) and 13 exhibits.

The transcript (R.T.) was received on February 4, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

Procedural Rulings and Evidentiary Issues

At the outset of the hearing, Applicant confirmed her waiver of the 15-day written notice requirement in the Additional Procedural Guidance of the Directive. The 15-day written notice requirement was, accordingly, waived.

Before the close of the hearing, Appellant requested leave to supplement the record with documentation of her payments of several of her medical and consumer creditors and confirmation of her employment status. For good cause shown, Applicant was granted 10 days to supplement the record. Within the time permitted, Applicant supplemented the record with documented payments and payment acknowledgments. Her post-hearing exhibits were admitted and considered.

Summary of Pleadings

Under Guideline F, Applicant accumulated six debts exceeding \$11,000.00. Under Guideline E, she allegedly understated her debts over 180 days delinquent and omitted debts over 90 days delinquent in completing a security clearance application in November 2006. In her response, Applicant admitted each of the allegations covering debts without explanation, but denied falsifying her security clearance application.

Findings of Fact

Applicant is a 53-year-old custodian for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant married in November 1999 and has two daughters (ages 25 and 27) by a man who is not her husband (R.T., at 40-41). The youngest daughter lives with Applicant. Because this daughter is currently between jobs, Applicant provides her financial support. Applicant separated in 2005 and divorced him in August 2006. Her ex-spouse provides no financial support of any kind or form.

Applicant lost her job in 2003 and was unemployed for about eight months (R.T., at 38). She experienced serious medical issues (a blood condition) in March 2006 (before her divorce was final), and was hospitalized for five days (R.T., at 39). Without any medical insurance of her own, and legally separated from her husband, Applicant incurred major medical bills. Her estranged husband declined to pay not only Applicant's medical bills (creditors 1.d and 1.f), but her consumer credit card and furniture accounts as well (creditors 1.a, 1.b and 1.e). As a result, these accounts became delinquent. Altogether, Applicant's listed delinquent accounts exceed

\$11,000.00. These listed debts include her listed past due medical debt (creditor 1.d), which currently approximates \$16,241.45 (R.T., at 62-64).

Applicant has sought no formal counseling regarding her finances. She estimates she nets \$1,381.00 from the two jobs she currently holds, and estimates her monthly expenses (inclusive of her car payment, rent, insurance, food and utilities, gas and church tithing) total approximately \$1,495.00 (see ex. 2; R.T., at 99). This leaves a monthly negative remainder of around \$114.00. She assures, though, that she is paying her bills every month, and will find the way to satisfy her agreed monthly payments on her old debts with the resources she currently has available (R.T., at 99-100).

Based on Applicant's latest employment verification (see ex. T), she grosses around \$1,561.00 just from her janitorial services work with her defense contractor, and with her additional employment can be expected to produce a higher gross monthly income. Because she did not provide any updated budget that reflects her combined income and expenses, though, it remains a little unclear how she will be able to manage her current monthly expenses and the additional debt payments she has committed to.

Applicant is able to document her payment arrangements with several listed creditors. She corroborates her \$50.00 monthly payment arrangement with creditor 1.a with \$50.00 payments for the months of November and December 2007 (see exs. A and N; R.T., at 43-50). She has a settlement agreement, too, with creditor 1.b (see exs. B and O; R.T., at 54-55) and creditor 1.d (see exs. D and P). She had agreed to monthly payments on this debt of \$25.00 a month, beginning in September 2007. Under her new payment arrangements she is required to make \$100.00 monthly payments (R.T., at 64-68). This payment arrangement represents a considerable increase over the modest agreement (*i.e.*, \$25.00 a month) she previously arranged with the creditor back in August 2007.

While Applicant could not initially identify creditor 1.f (R.T., at 70-72), she later made contact with the creditor and identified it as one of her medical debts. Subsequently, she entered into a payment arrangement with the creditor on a currently stated balance of \$1,941.68. Her payment arrangements call for her to make small \$20.00 monthly payments on this debt (see ex. Q). She documents making the scheduled initial monthly payment on this debt in February 2008 (ex. Q).

Applicant has paid off the remaining debts covered in the SOR. She documents satisfaction of her creditor 1.c debt with a letter from the creditor's customer service in January 2008 (see exs. C and R). She paid the remaining balance owed (\$560.96) on a furniture account (creditor 1.e) and received a letter from the creditor's collection agent in February 2008, confirming payment in full of the account (see ex. S)

Applicant is highly regarded by her co-workers and friends, who describe her as a very trustworthy, dependable, and responsible worker (see ex. M). She is characterized as a person of faith with strong moral ethics. Friends who have known

her for many years value her for her integrity and honesty, and consistent placement of the needs of her children and grandchildren above her own (ex. M).

Asked to complete a security clearance application (e-qip) in November 2006, Applicant answered yes to question 28A (inquiring about debts over 180 days delinquent) and listed her creditor 1.b debt. However, she omitted the remaining five debts listed in the SOR. Responding to question 28B (asking about debts over 90 days delinquent) of the same e-qip, she answered in the negative (ex. 1). She assures she included her delinquent debts when answering the handwritten security clearance application initially provided her and attributes her understated debts covered by question 28A and fully omitted debts covered by question 28B, respectively, to confusion and mistake in filling out the electronic questionnaire (R.T., at 87-89). At the time she first applied for her current job, she was not told she needed a clearance and had no reason to conceal her debts (R.T., at 89).

Several months after completing her e-qip, Applicant was interviewed by an agent from OPM. When asked by the interviewing agent, she provided full and complete answers to the investigator without any apparent prompting (R.T., at 109-110). Considering Applicant's overall reputation for honesty and prompt, voluntary corrections when asked in her scheduled interview, her explanations may be accepted as both plausible and credible. Inferences warrant that Applicant's initial omissions were not deliberate, and not made with any intent to intentionally mislead the Government.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

Personal Conduct

The Concern: “Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.”

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing on the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take into account cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is a janitorial services employee for a defense contractor who accumulated a number of delinquent debts (both medical and consumer-related) over a

four-year period spanning 2003 to 2006. Considered together, and without resolution, they raise security significant concerns. Of initial security concern, too, are Applicant's omissions of delinquent debts in the security clearance application she completed.

Applicant's finances

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information" and place the person "at risk of having to engage in illegal acts to generate funds." Applicant's accumulation of delinquent debts and her past inability to address these identified delinquent debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a) "inability or unwillingness to satisfy debts" and DC 19(c), "a history of not meeting financial obligations."

Applicant's debts are attributable in part to income shortages following her loss of employment in 2003 and her ensuing separation in 2005. With no support from her estranged spouse to address their joint debts that were created during the marriage, and no health insurance to cover her hospitalization in 2006, she incurred a significant medical debt, which she is still struggling to satisfy. As a single parent of two daughters (now adults) with no prior or current financial support from the biological father, she has had to work two jobs just to defray the costs of her necessities. With a monthly negative remainder, she has encountered considerable difficulties in addressing her old debts. Just the same, she has managed to pay off several of her listed debts (creditors 1.c and 1.e) and has worked out minimum payment arrangements with her remaining creditors. She assures she will be able to maintain her payment compliance with the terms of the various payment plans she has completed with her creditors.

Given Applicant's exhibited extenuating circumstances associated with her sudden loss of marital income in 2003, her ensuing divorce, the lack of any financial support from either her estranged spouse or biological father of her two daughters, and the limited resources that have been available to her to address her old debts, Applicant may rely on MC 20 (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," of the Guidelines for financial considerations. Extenuating circumstances continue to adversely impact Applicant in her current efforts to resolve her accumulated debts.

Mitigation credit is also available to Applicant based on her demonstrated extenuating circumstances, credible proofs of payment, age of the debts, and further evidence she has her current repayment plans under control with the resources available to her. Resolution and repayment of these somewhat aged debts at issue are

covered by three of the mitigating conditions for financial considerations. MC 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” has applicability, while not dispositive. And both MC ©), “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” and MC (d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” have some applicability as well.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

To be sure, the Appeal Board has expressed reservations against “eleventh hour” resolutions of financial problems in the place of timely remedial actions. See ISCR Case No. 01-21030 (App. Bd. May 7, 2004). But Applicant’s debt accumulations in her situation were substantially extenuated and have been followed by demonstrated good-faith efforts to repay her debts when she has been able to do so.

So, using a whole person assessment that takes into account all of the facts and circumstances surrounding Applicant’s debt accumulations, her documented steps taken to resolve them, and the responsibility and trustworthiness she is credited with in her work, church, and personal life as a struggling single parent, Applicant mitigates security concerns related to her proven debt delinquencies. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through f of the SOR.

Applicant’s debt omissions in her e-qip

Posing potential security concerns, too, are Applicant’s documented understated and omitted delinquent debts in the e-qip she completed in November 2006. Her omissions of pertinent debts in the questions she answered (questions 28A and 28B) are, however, attributable to her mistaken reading of the questions in the electronic version of the application she earlier completed in handwritten form.

From a whole person perspective, Applicant presents as an essentially honest applicant who has an outstanding reputation for honesty and trustworthiness among her friends and coworkers. She is of record, too, in promptly and voluntarily acknowledging all of her covered debts when first asked about them in her initial OPM interview. Applicant’s overall reputation for honesty and trustworthiness and prompt good-faith acknowledgment of her debts when asked about them help to reinforce the

credibility of her claims she simply misread the pertinent questions in her e-qip without any intention to falsify her answers.

Both Applicant's accepted explanations and prompt, good faith corrections of the omissions in her ensuing OPM interview enable her to take advantage of two of the mitigating conditions available under Guideline E: MC 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts and MC 17(f), "the information was unsubstantiated or from a source of questionable reliability." Based on both her own explanations, her overall reputation for credibility, and her prompt, good-faith efforts to correct the omissions in her e-qip, Applicant is able to successfully refute the allegations of falsification in the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Sub-paras. 1.a through 1.f: FOR APPLICANT

GUIDELINE E: (PERSONAL CONDUCT): FOR APPLICANT

Sub-paras. 2.a and 2.b: FOR APPLICANT

Conclusions

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 Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge