



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 07-11263
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Pro Se

December 31, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (Financial Considerations), and Guideline E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted her Security Clearance Application (SF 86), on May 25, 2005. On May 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guidelines F (Financial Considerations), and E (Personal Conduct). 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 in writing on June 1, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on July 17, 2008. I received the case assignment on July 21, 2008. DOHA issued a notice of hearing on July 24, 2008, for a hearing on August 27, 2008. I convened the hearing as scheduled.

At the hearing, the government offered eight exhibits (Exhs 1-8) that were admitted in evidence without objection. Applicant submitted 22 exhibits (Exhs. A-V) that were admitted without objection. She testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on September 8, 2008. I granted Applicant's request to keep the record open until September 25, 2008, to submit additional evidence. On September 19, 2008, she submitted five additional exhibits (W 1-5). They were admitted without objection. At my request a current report on her finances was requested and supplied (Exh. X).

Findings of Fact

Applicant is a 45-year-old employee of a government contractor working as a computer data modeler in support of an Air Force program since May 16 2006.

In her Answer, Applicant admitted four and denied three financial allegations in the SOR relating to over \$ 35,000 in delinquent debts. She disputes one of the denied debts and avers that the other two have been paid. She admitted the single personal conduct allegation related to testing positive for cocaine in January 2005 from a use in December 2004.

Applicant's annual salary from her employment is approximately \$78,000. She has modest savings of over \$2,000. She received a bachelor's degree in computer science in 1986. After graduation she was employed by a major U.S. company until 1993. Between 1993 and 1997, she worked for several companies as an independent contractor traveling extensively in the U.S. She then held positions between 1997 and 2003 in data modeling and management and with two companies that paid her over \$80,000 per annum. She was terminated for absenteeism on July 24, 2003, and was unable to find work for 22 months until she obtained her present employment 2005.

Applicant's absenteeism was the result of a serious auto accident in the late 1990's, followed by a second more serious accident in 2001 that resulted in spinal surgery and extensive therapy (Exh. O). She was able to take two months of medical leave under the Family Medical Leave Act, but her employer did not provide any additional sick leave so she missed a significant number of work days. It was during this time that her husband left her with two daughters ages eight and three.

Applicant received unemployment compensation for some of the duration of her unemployment (Exh. P), but went into debt to support herself and her children. During this period she sold her home and made a profit of \$13,000 which partially supplemented her unemployment compensation. She now rents her home for \$1,200 per month.

Applicant is now a single mother with two daughters ages nine and fourteen. The father of her older daughter is her divorced husband. The father of the younger daughter is a former fiancé whom she did not marry. Applicant first married her husband in 1993 and was divorced in 1996. She married him again in 2000 and he moved out in 2002 after her second auto accident. He expressed a desire to adopt the second daughter but did not. However, he has a paternal interest in her since she has never known another father. He paid child support for his own daughter during the period between 1996 and 2000 but has not paid any child support for either girl since that time. However, he now voluntarily contributes health insurance through his employer for both children.

Applicant met with a credit repair service in September 2007 and engaged the company in January 2008 (Exh. R). However, she discovered that their charges were excessive and more than she could afford (Exhs. Q). She terminated the service after paying some fees but proceeded to resolve the debts on her own. She attempted negotiation with some of her creditors with success. She has paid or settled all but two of the debts alleged plus some that were not alleged (Exh. D, Tr. 30). The remaining debts are the two largest that were alleged (SOR ¶¶ 1. c., and e). Both of those creditors refused any settlement, compromise, or scheduled payments. Each insisted on payment of the full amount of the debts which she could not do. Applicant now has secured a bank loan for \$18,000 made with her father as co-signer (Exh. W 1). She is making monthly payments on this loan until final arrangements are made for funds to be disbursed to those creditors (Exhs. X 1 and 2). She has developed a budget showing sufficient income to pay her bills and the remaining two debts (Exh. W 2).

Applicant's delinquent debts as alleged on the SOR and their status are as follows:

1. SOR ¶ 1.a. Cable service debt of \$397. Paid in full (Exh. F) (Tr. 23).
2. SOR ¶ 1. b. Discover Card debt of \$2,139. Settled for \$1,083 (Exh. G) (Tr. 24).
3. SOR ¶ 1.c. USAA Savings Bank credit card debt of \$14,790 charged off but attempts to negotiate have been conducted since January 2008 and now subject to negotiated settlement of \$11,000 to be paid with new loan co-signed with Applicant's father.(Exh. H and W 1) (Tr. 24).
4. SOR ¶ 1.d. AT&T bill of \$585 was paid in full in January 2008. (Exh. I) (Tr. 26).
5. SOR ¶ 1.e. Chase Bank credit card debt of \$18,290 in collection. Attempts to negotiate have been conducted since February 2008 and now subject to negotiated settlement of \$8,000 to be paid with new loan co-signed with Applicant's father (Tr. 27) (Exh. J and W 1).
6. SOR ¶ 1.f. Target charge account of \$1,126. Had a settlement offer that was withdrawn but paid in full in June 2008 (Tr. 28) (Exh. K).

7. SOR ¶ 1.g. Applicant disputes this \$540 debt in correspondence with collection agency over four months without success (Tr. 29). It is still in dispute but she will resolve it if the dispute is unsuccessful.

Applicant's problems with her former husband has resulted in two civil allegations of unfitness. The first occurred in 2004 and the Child Protective Service (CPS) cleared her of culpability. The second occurred in January 2005 when she was given a hair follicle test that found traces of cocaine that she had used at a party in December 2004. She acknowledged this one time use. The CPS removed her daughters from her care and gave them to her former husband for two months at which time they were restored to her custody. She was employed several months later by her present employer who gives random drug tests to employees. She has never tested positive since then. This positive test for cocaine is the subject of the single allegation under Guideline E.

Applicant had no reason to believe that this one time drug experimentation was an indicator of a drug abuse problem that required drug treatment or counseling and did not have it. However, she has taken counseling for the stress issues in her life that has caused her to make some bad choices (Exh. W 5). She has received medical attention for these concerns and problems relating to work and stressors in her life (Exh. 7). She expressed remorse for her 2004 drug use and has learned a great lesson since it cost her the custody of her daughters for a short period.

Applicant is highly regarded by the senior government leader in the office where she works to support a government program. Also, she is regarded as trustworthy, conscientious, and reliable by fellow employees who have worked with her over the past three years. They admire her ability to be a successful single mother of two very active girls, and hold a responsible position with a government contractor in industry (Exhs. T, U, and V).

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 overarching 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 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.

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.

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(a), an “inability or unwillingness to satisfy debts is potentially disqualifying. Similarly under AG ¶ 19 (c), “a history of not meeting financial obligations may raise security concerns.” Applicant accumulated the delinquent debts cited in the SOR several

years ago and had not resolved them with her creditors. Thus, the evidence clearly raises these potentially disqualifying conditions.

The guideline also includes examples of mitigating conditions (MC) that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(e) the security concern may be mitigated when the individual has a reasonable basis to dispute the legitimacy of the past-due debt that 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. He disputed both debts through his credit repair service but later acknowledged their existence and has taken steps to pay or settle them.

Under AG ¶ 20.(a.), the disqualifying condition may be mitigated where 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. Most of Applicant's financial problems arose as a result of her divorce and unemployment for 22 months before her present employment in 2005. She has been working to resolve her accumulated delinquent debts. She paid or settled all of them except the two largest credit card debts. She attempted to settle them or pay them in installments but the creditors would not agree to anything except full one time payments. Through a loan co-signed by her father she is now capable and prepared to resolve those debts and pay off the bank loan in regular installments.

Evidence that 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 is a potentially mitigating condition under AG ¶ 20 (c). Applicant engaged a credit repair service but discovered that the charges were excessive and terminated the service. Then she proceeded to resolve the debts on her own. She has received professional counseling for the stressful issues in her life that has been part of the cause of the difficulties involved in this matter.

AG ¶ 20.(d) provides a mitigating condition where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. While it not necessary that all of the delinquent debts be resolved for mitigation to apply, it is necessary that a significant portion of the debts be settled or paid. I conclude that all of the above cited mitigating conditions are applicable.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, and unwillingness to comply with rules and regulations can raise questions about and an individual's reliability, trustworthiness and ability to protect classified information.

Conditions that could raise a security concern and be disqualifying include under AG ¶ 16 (c):

Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, lack of condor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

The guideline also provides certain mitigating conditions two of which are applicable to this matter. The first is under AG ¶ 17.(c) that the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgement. While any use of a harmful drug is not minor, here the use occurred four years ago and was a one-time incident which is not likely to recur. The MC applicable.

The second MC is under AG ¶ 17.(d) in that the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused the inappropriate behavior and such behavior is unlikely to recur. Applicant has acknowledged the behavior and taken steps to alleviate the circumstances that caused it by counseling with a women's therapy group to help her cope with some of the stressful issues in her life (Exh. W 5). She did not seek drug counseling because she believed the one time experimental use was not an indicator of a drug use or abuse. She admitted her positive test for use of cocaine in 2004, and the circumstances surrounding it on her SF 86 and in her answer and interrogatories. She has been candid about the marital difficulties she has had and her medical problems. The record is replete with information most of which she has voluntarily supplied. The MC is applicable. I see no likelihood that any similar conduct would recur or cause problems in the future.

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 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. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance at this time. I recognize her present expressed interest to resolve these financial issues to restore her credit rating and obtain a security clearance. The delinquent debts arose over several years both during and after her unemployment. She has had a good salary over the past three years with her present employer and has resolved the majority of the debts. She is now able to resolve the remaining two debts, and will do so.

Applicant was impressive in her testimony about her family, her employment, the difficult years of medical problems, and her unemployment. She is now well-employed in a firm that values her services. She is able to stay out of debt with her current budget. The incident with drugs occurred over four years ago. She is sincere in her regret that it happened. She has learned a valuable lesson and will never let it occur again. There is no reason that she should not be granted a security clearance.

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

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

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: 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. Access to classified information is granted.

CHARLES D. ABLARD
Administrative Judge