



In the matter of:)
)
) ISCR Case No. 07-12012
)
)
 Applicant for Security Clearance)

For Government: Braden M. Murphy, Esquire, Department Counsel
 For Applicant: *Pro Se*

May 30, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

On April 26, 2006, Applicant submitted her Security Clearance Application (e-QIP). On November 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F (Financial Considerations) and Guideline 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 February 7, 2008, and requested a hearing before an administrative judge. On March 11, 2008, DOHA assigned the case

to me. A Notice of Hearing was issued on April 9, 2008, and the case was heard on April 30, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified and offered Exhibits (AE) A through L into evidence without objection. At the conclusion of the hearing, I left the record open until May 15, 2008, to give Applicant an opportunity to submit additional information. On May 12, 2008, Applicant submitted an exhibit that was marked AE M and admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on May 9, 2008.

Findings of Fact

In her Answer to the SOR, Applicant denied the allegations contained in ¶¶ 1.a and 2.a of the SOR.

Applicant is a 51-year old widow. She has two daughters, ages 15 and 19. In October 1975, she enlisted in the U.S. Army. In August 1978, she married her first husband. She was honorably discharged in October 1978, at which time she was a sergeant (E-5) in the military police. While in the Army, she held a Top Secret security clearance. She and her first husband divorced in January 1980. (GE 1). In 1982, she graduated from college with a bachelor's degree in criminal justice. In 1984, she earned a master's degree in higher education and student affairs. After she married her second husband in 1983, she remained at home most of the time to take care of her family. In 1998, her husband died.

After her husband's death, Applicant began experiencing financial problems. He was the primary source of family income and managed the family's finances. Subsequently, her primary source of income was social security benefits for her and her children, then ages 5 and 8, and monies she received from an inheritance. She admitted that she "lost control" of her finances after his death. (Tr. 9). In 1999, she had emergency surgery, resulting in additional emotional and financial burdens. (Tr. 20).

In 2001, Applicant started a cell phone business. The business did not work out, and she closed it soon thereafter. As a result of that endeavor, she incurred additional financial obligations. (Tr. 35).

In 2003, Applicant was hospitalized for two months, at which time she did not have insurance because she was unable to pay the premiums. Her financial condition gradually worsened, as she was unable to manage her bills for several months, and her debts continued to accumulate. (Tr. 23).

In 2005, Applicant spoke to a bankruptcy lawyer regarding her financial problems. He advised her to ignore her bills in anticipation of filing for bankruptcy, which she did. (Tr. 23). Later, she decided not to engage that lawyer to represent her in a bankruptcy due to the amount of his legal fees, and instead asked one of her friends to assist her. In May 2007, she filed a Chapter 7 Petition for Bankruptcy. (Tr. 24). According to the filing, she preserved her home from a foreclosure, which decreased

the amount of money initially listed in the Petition for foreclosure by about \$162,000, and resulted in a discharge of about \$65,000 in debts. Approximately one-half of that amount related to medical bills not covered by insurance. (Tr. 72-73).

Applicant has essentially been unemployed since she married her second husband until April 2006, when she began a part-time position as a security officer with her current employer, a federal contractor. (Tr. 51). At the time she started working, she completed an e-QIP and was subsequently granted an Interim Secret clearance. Currently, she has a monthly income of \$900 from her employment and \$2,600 in social security benefits, giving her a total monthly income of \$3,500. Her monthly expenses are \$3,200, leaving approximately \$350 a month for other expenses. (AE M). Her social security benefits will end in December 2008. Her employer recently requested that she begin full-time employment, which she would like to do. (*Id.*, Tr. 79).

Applicant is very aware of her financial situation. She no longer uses credit cards and meets with someone to help resolve any outstanding credit issues. (Tr. 77). She owes the Internal Revenue Service \$11,000 for outstanding taxes, which will be reduced to \$6,000 after her 2007 tax refund of \$5,000 is applied to the taxes. She does not have any other delinquent bills and has attempted to stay current with her obligations since the bankruptcy. (Tr. 64-65).

Section 27 of the e-QIP inquires into one's financial record. In response to Question 27(c), Applicant disclosed that she had a lien filed against her property for an unpaid homeowner's association fee. In response to Question 27(d) that asks "In the last 7 years, have you had any judgments against you that have not been paid," she answered "no."¹ The SOR alleged that Applicant intentionally failed to disclose four unpaid judgments in the April 2006 e-QIP. She denied those allegations and stated she did not attempt to deceive the Government. (Tr. 68).

SOR ¶ 2.a (i) alleged that Applicant intentionally failed to disclose an April 16, 2002 judgment. This debt arose from her failed business venture and was resolved on October 3, 2002. (AE G).

SOR ¶ 2.a (ii) alleged that Applicant intentionally failed to disclose a February 2004 judgment. This \$2,960 debt was owed to a bank for a car she leased for a couple years and later was repossessed when she was unable to make payments. Applicant did not monitor this bill because her bankruptcy lawyer advised her to ignore all bills on the basis that they would be included in the bankruptcy she contemplated filing. (Tr. 46). Although she was aware of the bill at the time she completed the e-QIP, she did not know it had become a judgment and believed her lawyer was managing the matter. (Tr. 56-58).

¹ Under Section 28: Your Financial Difficulties, Applicant disclosed that she had delinquent debts more than 90 and 180 days as a result of identity theft. (GE 1).

SOR ¶ 2.a (iii) alleged that Applicant intentionally failed to disclose an August 2005 judgment. This \$973 debt was owed to a credit union for a debt related to a babysitter who used her credit card without authorization. After receiving notice of this judgment, Applicant telephoned the company and explained the situation. Based on her conversation with the creditor, she believed the matter was resolved and did not know it remained on her report until recently. (Tr. 28).

SOR ¶ 2.a (iv) alleged that Applicant intentionally failed to disclose an October 2003 judgment for \$413. This was not Applicant's debt and was dismissed by the court in December 2003. (AE H).

Based on Applicant's demeanor during the hearing and the disclosure of other adverse information in her e-QIP, I find her explanations for not disclosing the above judgments credible.

Despite Applicant's past difficulties, she is committed to her job and managing her finances responsibly. Her team leader recently complimented her for conscientious work and participation in a team project. (AE B).

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 commonsense 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 to obtain a favorable security decision. 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.”

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.

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 accrued a significant amount of delinquent debt after her husband’s death in 1998, which she was unable to manage until she discharged it in 2007 through a bankruptcy. The evidence is sufficient to raise these two potentially disqualifying conditions,

After the Government produced substantial evidence of those disqualifications, the burden shifted to Applicant to produce evidence and mitigate the security concerns. The guideline includes six conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated when “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. Applicant’s financial worries arose

around 1998 and continued into 2007. Because the problems were ongoing for various reasons and lasted for almost nine years, this condition cannot apply.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant’s debts began accumulating as a result of her husband’s death in 1998, and continued for a number of years, as she re-arranged her life and finances. Those circumstances were beyond her control. She presented some evidence indicating that she attempted to manage debts for a period of time before her attorney advised her to allow them to accumulate. I find this potentially mitigating condition has partial application in this case.

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 potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant did not present evidence that she obtained formal credit counseling; however, she is meeting with someone who will help her to resolve her financial issues. She submitted a copy of her budget, which demonstrates that despite her limited budget, her financial obligations are under control. In May 2007, Applicant filed a Chapter 7 bankruptcy and discharged approximately \$65,000 of debt, and managed to prevent a foreclosure on her residence. That action resolved many outstanding obligations. I conclude these mitigating conditions have some application.

No other mitigating conditions are applicable.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, 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.

The Government alleged in SOR ¶ 2(a) that Applicant falsified her April 2006 e-QIP by failing to disclose four unpaid judgments, raising a potential disqualification under AG ¶ 16(a), which reads “the deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.” Applicant denied those allegations.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

At the time Applicant completed the e-QIP in April 2006, the judgment alleged in SOR ¶ 2.(i) was paid and the judgment alleged in ¶ 2.a (iv) was dismissed. Hence, she was not required to disclose either one of them. Given her truthful disclosures about a lien under Section 27 and delinquent debts under Section 28, I find her explanations for failing to disclose two unpaid judgments plausible. The omission of the information was possibly negligent, but not intentional. Hence, the evidence does not establish deliberate falsification and this Guideline is found in her favor.

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). They include the following:

- (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 include an overall commonsense 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. Applicant is an intelligent, hardworking 51-year-old woman, who served her country for two years in military and held a Top-Secret clearance. She subsequently earned two college degrees, one in criminal justice and another in higher education. Unfortunately, her husband of 15 years died in 1998, leaving her with two small children and insufficient funds. After his death, her life spiraled downward, as she attempted to manage her finances and raise her children. Within the past two years, she began restructuring her life and appears motivated to responsibly manage her finances. She credibly acknowledged her past financial problems and expressed a desire to achieve and maintain financial solvency.

There is no evidence in her background to indicate that her financial problems may create a security risk. Based on her awareness of the effect that financial issues could have on her employment and the steps she has taken to manage her bills, I find it is unlikely that similar issues will recur, especially when she obtains full-time employment and increases her income.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all of the above reasons, I conclude Applicant mitigated the security concerns arising under financial considerations.

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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a.(i) through (iv):	For Applicant

Conclusion

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

SHARI DAM
Administrative Judge