



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



In the matter of:)
)
 -----¹) ISCR Case No. 07-12184
 SSN: -----)
)
 Applicant for Security Clearance)

Appearances

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

July 25, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on May 17, 2006. On March 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 requested a hearing before an Administrative Judge. I received the case assignment on May 20, 2008. DOHA issued a notice of hearing on May 30, 2008, and I convened the hearing as scheduled on June 19, 2008. The government offered Exhibits (GE) 1 through 7 which were received without objection. Applicant testified on

¹Applicant remarried in July 2007. She no longer used the name that initially appeared on file.

her own behalf. She also submitted Exhibits (AE) A through K. Department Counsel had no objection to the exhibits. DOHA received the transcript of the hearing (Tr) on June 27, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, dated April 14, 2008, Applicant admitted the factual allegations in ¶ 1.a of the SOR. Applicant provided additional information to support her request for eligibility for a security clearance.

Applicant is a 53-year-old employee of a defense contractor. Applicant graduated from college in 1977 (AE) and received a Master's degree in 1980. Applicant completed her Ph.D. in July 2007 (AE K). Applicant has been employed in her current position since 2003 (GE 2).

Applicant married in 1980. That marriage ended in divorce in February 2007. She has two grown children from that marriage (GE 1). She served in the U.S. Army from 1977 until 1988.

Applicant's first husband retired from the Army in 1992. After he retired, he did not find steady employment. He had various offers but he did not believe that they were suitable for him. He is a finishing carpenter but decided not to use those skills to find a job. Eventually, he stopped looking for any permanent employment (Tr. 16). Applicant's husband did some short term projects for a period of time. Applicant was basically the sole provider for the family.

Applicant and her husband received marital counseling. The marital problems stemmed from Applicant's husband's financial irresponsibility and his careless attitude. He was also verbally abusive to Applicant and the children. She wanted to remain in the marriage for the sake of her children. Applicant at one time had three part-time positions in addition to her graduate course work. Applicant's husband was diagnosed with cancer in 1998. He was given one to five years to live. It was about that time in 1999 that Applicant planned to separate from her husband. However, due to his illness and treatments, she felt obligated to stay in the marriage (Tr. 19). Her husband survived the cancer and is still living.

Applicant could not find employment after she left the service in 1988. She was unemployed for a time in 1989-1990. She was basically self-employed from 1992 until 2003 (Tr. 36) During this time her husband was taking care of the financial affairs and administrative details. Although Applicant was quite capable of dealing with the financial matters, she was distracted due to the tension in the marriage and the many hours she was working, caring for her children and going to school. Neither Applicant nor her husband worked as an employee. Thus, they were required to file estimated taxes as small business/ self-employed. Some years the federal taxes were filed and other years they were not. They hired a CPA to help them in 2004. Applicant believed that the CPA

was working with her husband and the Internal Revenue Service (IRS) to resolve any tax issues. In April 2006, the IRS filed a lien against Applicant and her husband for the tax years 1996, 1997, 1999 and 2002. Applicant paid all her bills and accounts while in the marriage. The credit report confirms that she always paid as agreed on her accounts (GE 3). She could not pay all the tax due until the marital home would be sold.

Applicant and her first husband finally divorced in February 2007 (AE A). Applicant's husband agreed to vacate the family home, but when he refused to leave, a contempt order was imposed (Tr 27). Applicant was then able to sell the home property (AE C) on the 29th of May 2008. An installment agreement with the IRS was initiated in November 2007.

SOR ¶ 1.a is a federal tax lien for \$23,926.70. This is the amount that Applicant and her husband owed to the Internal Revenue Service. The lien was filed in April 2006.

At the hearing, Applicant explained that when she started working for her current employer she increased the tax deduction and put in an additional \$13,000. She separated her money from her first husband's money in 1999. She owed approximately \$10,000 of the total \$49,000 tax amount that was due for tax years 1996, 1997, 1999 and 2000. She has paid all the state taxes. She paid off the lien to the IRS after the marital home was sold in May 2008 (AE E).

Applicant's current monthly net income is approximately \$10,680. This includes her second husband's income and retirement. After monthly deductions and expenses, she has a net remainder of approximately \$4,100 a month (AE J). She has paid all credit card debt. She and her second husband, who she married very recently, now hold steady positions. They have no difficulty in tracking expenses and paying taxes. They are both diligent. Applicant is frugal with her spending. She is driving a 1994 vehicle. They have a budget and are saving income. She is in the best financial shape she has ever been in.

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 common sense decision. According to AG ¶ 2, 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 had delinquent taxes for the years 1996, 1997, 1999 and 2000. In April 2006 the IRS filed a federal tax lien against Applicant and her husband. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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.” Applicant’s financial problems were in great part a result of her husband’s irresponsible behavior. She is now divorced. She is remarried and earning a steady, full-time income. She is in a sound financial situation. This potentially mitigating condition applies.

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.” As noted above, Applicant admitted that her small business/self-employed status, the illness of her husband in 1998, medical expenses, and his lack of gainful employment contributed to the situation which resulted in the tax lien. Now she earns a salary and is remarried. She and her husband are diligent in their fiscal responsibilities. This mitigating condition applies.

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 has paid the state and Federal taxes. The lien is released. The obligation has been fully satisfied. I conclude these potentially mitigating conditions apply.

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. Applicant served in the military for almost eleven years. She and her husband married while in the military. Applicant is highly educated. She has never shirked her family obligations.

Applicant’s husband retired from the military in 1992. He had difficulty transitioning to the civilian work world. He would not take positions that were available. He worked at some short term projects but did not add to the family income. He was diagnosed with cancer in 1998. He was not expected to live. Applicant decided to remain in the marriage at that time despite the growing marital tensions.

Applicant’s husband was handling the financial matters after his retirement. Applicant had no idea that he was ignoring things. When she learned about the tax situation, she did not have sufficient income to pay all the taxes for the years in question.

The April 2006 lien was satisfied in May 2008 when Applicant and her husband sold the marital home. Since Applicant is now divorced and remarried, she is no longer subject to the problems that arose in her marriage. She has always paid her bills and various accounts. She has not lived in an extravagant manner. She has been in her current employment since 2003. She is in a sound financial condition.

Overall, the record evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from 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

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.

NOREEN A. LYNCH
Administrative Judge