



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-12584
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul Delaney, Esquire, Department Counsel
For Applicant: Pro Se

April 30, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on December 28, 2005. On December 21, 2007, 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 March 31, 2008. DOHA issued a notice of hearing on April 2, 2008, and I convened the hearing as scheduled on April 18, 2008. The government offered Exhibits (GE.) 1 through 6 which were received without objection. Applicant testified on her own behalf and submitted Exhibits A and B. Department Counsel had no objection to the submission. DOHA received the transcript of the hearing (Tr) on April 28, 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 March 7, 2008 Applicant admitted the factual allegations in ¶¶ 1.a and 1.c of the SOR, with explanations. At the hearing, Counsel conceded that the allegation in 1.b is not true and withdrew the allegation. 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 is one of seven children who was raised by her mother due to her father's early death. Applicant graduated from high school in 1973 and attended community college classes in 1974-1975 (Tr. 16).

Applicant married in 1979. She and her husband had three children (GE 1). During the marriage Applicant worked despite her health problems. The marriage was an unpleasant, difficult and abusive one for Applicant. She and her husband separated in approximately 1997-1998 after 20 years of marriage. Although Applicant tried to reconcile for the good of the family, they eventually divorced in 2001 (Tr. 64).

When Applicant and her husband separated, Applicant had custody of her three children. She did not receive any financial assistance or support from her ex-husband. Nor did she request any government assistance. She left the state and moved to her home town. However, Applicant could not find employment. In fact, she was unemployed for one year (1998-1999). She eventually found employment but it was part time until 2001(Tr. 25).

In 2001, Applicant gained full time employment as an admissions counselor. This position ended in October 2003. Applicant moved back to another state to find employment. In October 2003, she was offered employment. After she began the job, her sister became critically ill and was dying. Applicant was needed to help take care of her sister. Applicant lived with and cared for her sister for seven months (Tr. 23).

When Applicant was working in 2003, she believed she had health insurance. During a five day retreat for work she became ill and collapsed. She was taken to the hospital by ambulance. She presented her insurance information to the hospital. However, the insurance had not yet started. Applicant had coverage under COBRA but neglected to give the hospital that information. She did not receive any bills from the hospital (Tr. 33).

Applicant has health problems. She has a heart condition (Tr. 19).She has had recurring bouts with pneumonia since the age of two. Due to her medical problems, she could not work for a long time. She takes medication on a regular basis.

Applicant has been employed in her current position since July 2005. She is well regarded by her colleagues. She is making more money than she ever did before this employment. Her supervisor commends her and reports that Applicant has provided critical, timely assistance to her and the staff. Applicant performs at a high level and is personally responsible for many of the successful projects under the security directorate. She displays remarkable personal initiative, dedication, and a willingness to go far beyond what is expected to ensure the success of a mission. She is a person of high morals and unquestionable integrity. The Director of Security stated that without hesitation, he strongly recommends Applicant for continued employment in areas requiring personnel security clearances (AE A and B).

Applicant is proud and happy to serve in this position and serve the military. She was never well enough to have an opportunity to join the military and believes that she is now making a contribution to her country. She loves what she does and understands that her employer has total confidence in her (Tr. 19).

In January 2007, DSS interviewed Applicant concerning her financial difficulties.¹ She acknowledged that she had a hospital bill, but she was not aware of any judgment. Also, she was not aware of the \$10,088 bill for the second hospital because she had not received anything from them. Applicant had some health problems during her marriage. In fact, she was ill with pneumonia often and would incur medical or hospital bills.² There were daily necessities that needed to be paid for and the hospital bill was not a priority. However, she does have medical bills that have been paid in the past.

SOR ¶ 1.a is a judgment entered in 2001 in the amount of \$3,047, plus costs and attorneys' fees for a total debt of approximately \$3,673. Applicant does not recall being served. Applicant believes the bill is from a hospital visit in 1996 or 1997. She became ill and had to recuperate for a long period of time. Her ex-husband was not working at the time. She did not have enough income to pay the daily necessities for her family and pay the hospital bill at the same time. Applicant contacted the hospital at some point in the past. She could not remember the exact date. She did not have the amount of money they wanted for a monthly payment. Her wages were never garnished (Tr. 64). She sent them an email recently and is in the process of arranging a payment plan. (Tr. 28).

SOR ¶ 1.c is a medical bill in the amount of \$10,088. As discussed above, this bill was incurred when Applicant was on a work retreat and collapsed. She had chest pains and an ambulance was called. This was in late 2003 or 2004.³ Applicant did not

¹The SOR does not allege any Guideline E (Personal Conduct) allegation(s).

²The medical bills that occurred during her marriage should have been marital debts and not just the responsibility of Applicant. However, Applicant assumed responsibility for her medical bills.

³Assuming this debt occurred while Applicant was working in Florida, it is possible that it may be barred by the Statute of Limitations. This debt could fall under the 4-year limitation period (F.S. 95.11(3)(p)) and not be legally collectable.

receive a bill from the hospital. She learned of the debt when the DSS investigator spoke with her in 2007 (Tr. 29). After the interview, she discussed the \$10,000 medical collection account with an a financial agency. They wanted \$288 per month. She knew she could not commit to that monthly amount. After that, Applicant contacted the hospital directly. She has reached an agreement with the hospital collection recently. An amount of \$100 is to be debited from her checking account each month until her daughter graduates from college. At that time, Applicant will double the amount of payment (Tr. 53).

At the hearing, Counsel noted that the investigators discussed a number of different debts listed on the credit report (GE 4); (Tr. 38). Applicant has resolved some of those debts and they do not appear on her current credit report (GE 3). She acknowledged that she did not pay all of them and possibly that her sister had done so (Tr. 38).

Applicant's current monthly net income is approximately \$2,742. After monthly deductions and expenses, she has a net remainder of approximately \$500 a month (GE 2). She has a budget. She spends \$80 a month on prescriptions. She also factors in \$300 a month for miscellaneous expenses. This would cover an expense that would occur suddenly. She does not use credit cards. She lives a frugal life style. She has paid other medical bills over the years. She also has current medical bills that she is paying.⁴ She also noted on her personal financial statement that she had a \$500 medical bill to pay.

When Counsel asked Applicant about whether she takes vacations, Applicant was candid in her response that she sometimes goes with her sister. Her sister has a time share and this involves little or no expense for Applicant (Tr. 61).

Applicant has not received any financial counseling recently. She did contact a company that was recommended to her for debt consolidation. The company would help her restore her credit. She could not use their services, however, because, she did not have the money for their fee.

Applicant's daughter still resides with her. She is now a junior in college and Applicant pays for her books and other expenses. She does not pay for her tuition. Her two sons are also in college. She also helps them financially.

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

⁴Counsel introduced a recent judgment in the amount of \$250 that Applicant was not aware of from a hospital. This was admitted into the record. However, Applicant was not evasive about the fact that she has continuing medical bills.

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 debts⁶ is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations⁶ may raise security concerns. Applicant has two delinquent medical debts that total about \$13,700. She has not been able to pay them for a period of time. 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.⁶ Applicant's financial worries arose due to her ex-husband's unemployment, her illness, her marital separation, pending divorce, unemployment and underemployment. She is now earning a steady, full time income. The Applicant's problems have been ongoing, but she is now resolving them. Her family situation has changed because she is now divorced. This potentially mitigating condition applies in part.

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.⁶ As noted above, the financial problems arose from her separation, lower earnings and medical bills. She acted responsibly by working and living modestly during her underemployment. I find this potentially 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 control⁶ 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.⁶ Applicant has not received counseling recently, but she did contact several consolidation companies to help her resolve the delinquent debt. She is

now in a more financially sound situation. She will begin to pay the two hospital bills and will pay more when her daughter graduates from college. Also, she had no knowledge of the judgment for the first debt and had received nothing from the second hospital. The debt of \$10,088 may have been barred by the Statute of Limitations since it is probably more than 4 years old. However, it is noteworthy that Applicant chooses to repay this debt even though it may not have been legally enforceable. However, a payment on the debt has the potential to reinstate it, and to end a statute of limitations defense to collection. (F.S. 95.11(3)(p)). I conclude these potentially mitigating conditions apply in part.

The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. V. Lasch, 363 S.C. 169, 175-76, 609 S.E. 2d. 548, 552 (S.C.Ct. App. 2005) (internal quotation marks and citations omitted).

AG ¶ 20(e) applies where the evidence shows “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.” In this case, this does not 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) 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 is a hardworking single parent. She was in a marriage for 20 years and made a difficult decision to separate from her husband. They divorced in 2001. Her husband did not financially support their three children. She has health problems which sometimes impeded her ability to work. Applicant also had a period of unemployment and low paying positions that made it difficult for her to pay all her medical bills. Applicant also is the sole provider for her daughter who is a junior in college. She has finally found a good paying position. She has never made the income that she is making now. Her employer recommends her highly. Her colleagues believe she is a great asset to the company. She has struggled financially for a long period of time. She tried to seek help and contacted a credit consolidation company. She did not have the amount of money that they required for a monthly payment on her medical bill. She does not live beyond her means. She takes pride in her job and is described as trustworthy. Of course, the issue is not simply whether all her debts are paid but is whether her financial circumstances raise concerns about her fitness to hold a security clearance. Applicant is addressing her two delinquent medical debts. She reported her financial information during her security investigation. She has met her burden of proof in this case to overcome the government's case.

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
Subparagraph 1.b:	Withdrawn
Subparagraph 1.c:	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