



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



In the matter of:)	
)	
)	ISCR Case No. 07-12759
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esq., Department Counsel
For Applicant: *Pro se*

March 31, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Financial Considerations. Clearance is granted.

Statement of the Case

Applicant submitted her Security Clearance Application (e-QIP), on May 23, 2007. On November 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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 answered the SOR in writing on December 19, 2007, and requested a hearing before an Administrative Judge. DOHA received the response on December 21, 2007. Department Counsel was prepared to proceed on January 22, 2008, and I received the case assignment on January 28, 2008. DOHA issued a notice of hearing on February 5, 2008, scheduling the hearing for February 27, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 and 2, which were received without objection. Applicant did not offer any exhibits during her hearing, but did testify on her own behalf. Post-hearing, Department Counsel notified me by letter dated February 27, 2008 that the SOR case number and other documents in the case file was incorrect. He provided me with the correct case number and requested that I amend/correct the case number. Tr. 9-10, 53-55, Exhibit (Ex.) I.

I held the record open until March 7, 2008 to afford the Applicant the opportunity to submit documents on her behalf. Applicant timely submitted AE A through J without objection, which were forwarded to me by Department Counsel by letter dated March 7, 2008 (Ex. II). DOHA received the transcript of the hearing (Tr.) on March 7, 2008. The record closed on March 7, 2008.

Findings of Fact

Applicant admitted the two SOR allegations with explanation. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 37-year-old senior human resources specialist, who has worked for a Government contractor since May 2007. GE 1, AE A. She is a first-time applicant for a security clearance. Tr. 44-45.

Applicant graduated from high school in June 1988, and has completed approximately 45 hours of college credit. Tr. 42.-43 Applicant is the single mother of a 14-year-old son, and in 1999 became solely responsible for his support. Tr. 22-23.

Applicant's background investigation addressed her financial situation and included the review of her security clearance application, and Response to her DOHA Financial Interrogatories of October 2007. GE 1, GE 2.

Applicant's SOR identified two separate line items to include a chapter 7 bankruptcy filed in December 2005, followed by a discharge in April 2006; and a 2006 federal income tax debt arrearage in the amount of \$8,322. SOR ¶¶ 1.a. and 1.b.

Applicant's financial problems began after she became a single parent without child support. She began accumulating high interest debts and as time went on, her debt became unmanageable on her limited income. She found herself unable to remain current on her debts and in 2006, she experienced intermittent periods of unemployment. Tr. 20. Overwhelmed, she consulted a bankruptcy attorney and was counseled to file for chapter 7 bankruptcy. Tr. 21-23.

During the time Applicant was experiencing financial difficulty and before she filed for bankruptcy, she had a low paying job making approximately \$23k per year. Struggling to make ends meet and on the advice of "friends," she changed her federal income tax exemptions to "eight or nine" to increase the amount of her net take home pay. She explained before she changed her exemptions, her take home pay was approximately \$600 every two weeks and her rent was \$600 per month.

When it came time to file her income taxes, she did not have enough money withheld to pay her income taxes. This created her income tax liability to the Internal Revenue Service (IRS) reflected in SOR ¶ 1.b. Tr. 27-28. She has been diligently paying off her debt to the IRS for the past "two or three years." Tr. 29. Initially, she was paying the IRS \$25 per month, however, since January 2008, she increased her monthly IRS payment to \$250. This amount is automatically deducted from her pay check. Tr. 30, 37-38, GE 2.

Applicant's son has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and requires medical treatment and medication. As a single parent, Applicant has had to pay for her son's uncovered medical and prescription costs. Tr. 22-26 50.

In conjunction with filing for bankruptcy, Applicant participated in mandatory financial counseling. After receiving her SOR, Applicant also sought financial counseling through her credit union. Tr. 26-27, 39-40, 46-47. Applicant's current annual salary is \$80k per year and her monthly budget reflects a net remainder of \$954 after she pays all of her bills. AE B.

Applicant provided her most recent work performance evaluation which reflects "outstanding" performance. AE A. She also submitted eight reference letters covering a cross section of people who know her and are familiar with her. Included among these letters is one from her Executive Vice President, her Senior Pastor, a Senior Human Resources Specialist, and four personal references. The tenor of these letters focuses, among other things, on her integrity, contribution to the community, and the superb job she is doing as a single parent. AE A through J.

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

Under Guideline F (Financial Considerations),¹ the Government's concern is that an Applicant's

"[f]ailure 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."

Applicant acknowledged she made some poor financial decisions. Her problems stem primarily from being a single parent without child support, and working in a low paying job. She experienced a brief period of unemployment and found herself incurring high interest loans to survive. Recognizing she was in over her head, she sought advice from a bankruptcy attorney and on his advice, filed for chapter 7 in 2005. She was awarded a discharge in 2006. She incurred a debt to the IRS during this time, which was not discharged in bankruptcy. She is current on this debt having started at a modest payment of \$25 per month to today's \$250 per month.

She participated in two separate types of financial counseling. The first financial counseling she participated in was mandatory and in conjunction with her chapter 7 bankruptcy. The second financial counseling she participated in was voluntary and through her credit union. Applicant's son is also diagnosed with ADHD. She is solely responsible for his care and any unreimbursed medical expenses. Applicant's financial picture has taken a sharp turnaround from her former annual salary of \$24k per year to her present \$80k per year. Her budget reflects a net remainder of \$954 per month after her monthly bills are paid. What is different now as opposed to before is she has the means and the tools to achieve financial stability.

Her reference letters are noteworthy. She has proven to be a conscientious and caring single parent, a trusted and valued employee, and a contributing member of society.

¶ 19. Conditions that could raise a security concern and may be disqualifying include:

¹ Guideline ¶ 18.

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Of the nine Financial Considerations Disqualifying Conditions (FC DC) listed *supra*, two are applicable: ¶ 19(a): inability or unwillingness to satisfy debts; and FC DC ¶ 19(c): a history of not meeting financial obligations.

¶ 20. Conditions that could mitigate security concerns include:

- (a) 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;

(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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) 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; and

(f) the affluence resulted from a legal source of income.

Considering the record evidence as a whole,² I conclude three of the six Financial Considerations Mitigating Conditions (FC MC) are applicable or partially applicable: ¶ 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; ¶ 20 (c) 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 ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does support a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”³ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant

² See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

³ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

has mitigated or overcome the government's case. For the reasons stated, I conclude she is eligible for access to classified information.

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. – 1.b.: 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. Clearance is granted.

ROBERT J. TUIDER
Administrative Judge