



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-13265
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

July 28, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on October 10, 2006. On March 17, 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 5 which were received without objection. Applicant testified on her own behalf. She also submitted Exhibits (AE) A through E. 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 21, 2008, Applicant admitted the factual allegations in ¶¶ 1.a- 1.h of the SOR. Applicant provided additional information to support her request for eligibility for a security clearance.

Applicant is a 50-year-old employee of a defense contractor. Applicant graduated from high school in 1976 (Tr. 31). Applicant has been employed in her current position since May 1981. She is technical support (assembler) for her employer (Tr. 16). She also has a seasonal part-time job.

Applicant has been widowed since 2005 (GE 1). She has a grown daughter and three grandchildren. Applicant married her husband when she was 17 years old. She and her husband had a difficult marriage due to his drinking problems. Applicant's husband was verbally abusive to her. He also had health problems due to his drinking. Applicant decided to leave her husband and move to another state in November 2001. She was able to continue her employment with the same company.

Applicant's financial problems began when she moved out of her husband's home to work in another state. They had not paid federal income taxes from 1995 until 1999. He used his money for his drinking habit. Applicant and her husband had arranged to make payments with the Internal Revenue Service (IRS). When Applicant moved out of the house, her husband stopped making the payments. The IRS garnished Applicant's wages in September 2002. The levy was satisfied in May 2003. All the money was taken from Applicant's pay check leaving her with a minimal amount.

SOR ¶ 1.a is a garnishment for federal taxes not paid by Applicant and her husband for the 1995-1999 years. This levy on her wages began in September 2002 and terminated in May 2003.

SOR ¶ 1.b is a medical account for \$164. This debt originated with x-rays that Applicant needed in conjunction with her gall bladder problems. This account is paid (AE A).

SOR ¶ 1.c is another medical account for \$1,090. This debt originated with Applicant's emergency surgery for gall bladder problems. The account is paid (AE A).

SOR ¶ 1.d is an unnamed medical account for \$41.25. This account is paid (AE A).

SOR ¶ 1.e is a medical account for \$143. This account is paid (AE B).

SOR ¶ 1.f is for a credit card account that is charged off in the amount of \$794. This account is paid (AE C).

SOR ¶ 1.g is for a credit card account that is charged off in the amount of \$8,530. Applicant charged hotel, rental car, and other daily expenses when she moved from her home to another state. This account is not paid (GE 3).

SOR 1.h is for a charged off account for \$1,990. Applicant purchased furniture for her apartment when she moved out of her home in 2001. This account is not paid.

Applicant completed a thirteen-week financial counseling course. However, she continues to attend classes until she is debt free. She has a plan to pay off her bills. Not only is she using the \$400 that she has left after expenses, but she is taking any money that she makes from her part-time job and using that to reduce her debts (Tr. 53). She is saving money and she uses a budget (Tr. 29). Applicant may take another hardship loan and pay the largest debt. She is looking for someone to share her apartment to reduce her rent. She plans to pay the remaining debt in one year. Applicant lives frugally. After 23 years she finally bought a new car. She is current on her monthly payment of \$166 for her new vehicle. Her credit report confirms that she is in good standing with other accounts (GE 3).

Applicant's current monthly net income is approximately \$2,601. After monthly deductions and expenses, she has a net remainder of approximately \$400 a month to help pay her debts (Tr. 53). She now pays her bills as soon as they are due.

Applicant took a hardship loan from her 401(k) retirement money. She used that money to pay bills. She plans to do another hardship loan so that she can more quickly pay off her largest remaining debt.

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^o is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations^o may raise

security concerns. Applicant had delinquent debts that total about \$13,000. She also had her wages garnished in 2002 for failure to pay federal income taxes. 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 partially a result of her separation from her husband. Since that time, she has paid the taxes due from her wages. She has also paid all but two of the debts listed in the SOR. 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. As noted above, Applicant's husband contributed to the financial problems that evolved. Applicant was steadily employed. She also had some medical problems that resulted in bills. I find that this mitigating condition applies in part.

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 completed a 13-week counseling program and continues to receive counseling. She paid medical accounts and a charged off credit account. She borrowed against her retirement funds to pay the credit account. She has shown good faith with her creditors. 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) 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 person. She has been employed for the past 27 years with her employer. She has no incidents or problems with them. She married quite young and her marriage was a difficult one. Her husband's drinking caused financial problems in the marriage. He did not pay federal taxes for the years 1995-1999. Applicant made an arrangement with the IRS to pay the taxes, but when she moved out of her husband's house, he stopped paying the amount. Applicant's wages were garnished and the tax levy was completely paid in 2003. She is now widowed and living on her own. She paid several medical accounts and a charged off credit account. She took a financial planning course and has a budget and savings. She took a hardship loan to help pay the one credit account. She does not live beyond her means. She plans to pay the remaining debt with her net monthly remainder and if necessary, take another hardship loan against her retirement. She has met her burden of proof in this case to overcome the government's case.

Overall, the record evidence leaves me without questions or 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:	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
Subparagraph 1.h:	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