



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 07-13859  
)  
)  
Applicant for Security Clearance )

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 16, 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 July 24, 2006, Applicant submitted her Security Clearance Application (SF 86). On February 7, 2008, 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). 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 28, 2008, and requested a hearing before an administrative judge. On April 22, 2008, DOHA assigned the case to me and issued a Notice of Hearing the same day. The case was heard on May 15, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified and offered Exhibits (AE) A through D into evidence without objection. At the conclusions of the hearing, I left the record open until May 29, 2008, to give Applicant an opportunity to submit additional information. On May 27, 2008, Applicant submitted a letter and two exhibits that I marked as AE E, F and G, and admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on May 27, 2008.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted all factual allegations contained in ¶¶ 1.a through 1. f of the SOR. Those admissions are incorporated into the following findings of fact:

Applicant is a 58 years old. She is married and has two grown children, ages 35 and 40. She enlisted in the U.S. Army in October 1969, and received an honorable discharge in December 1971. For the past ten years, she has worked as an owner-operator truck driver. From June 2002 to one week ago, she drove for a federal contractor, hauling classified freight. She quit the company because she was not receiving enough work to meet her expenses. She will begin driving for another federal contractor within a week. Her husband also owns and operates the truck with her. He has a security clearance.

About ten years ago, Applicant's husband had heart surgery. He was out of work for six months, leading to financial problems for them. After he returned to work, they were unable to obtain sufficient hauling assignment for another six months because of his medical condition. (Tr. 39). During that time, she made minimum payments on her debts because she not could afford to pay them in full. Between 2002 and 2004, some of her debts became delinquent. (Tr. 35-37). She admitted that she did not call the creditors to work out a repayment plan or obtain credit counseling while the debts were accumulating. (Tr. 40). In July 2007, she started resolving her delinquent debts. (Tr. 48).

On May 27, 2008, Applicant submitted a budget, along with a debt repayment plan that she executed on May 23, 2008, for purposes of resolving four unpaid debts. The debt reduction plan will begin in June 2008 and requires a \$575 monthly payment. (AE G). According to the budget, she and her husband have a net monthly income of \$21,416. Their monthly expenses, including those related to the cost of operating the truck, total \$12,269. She makes monthly payments of \$7,432 on other obligations, such as her mortgage, vehicle loans, and credit cards, in addition to the monthly payment for debt management plan. She has a net remainder of about \$1,714 per month for other expenses. She has not incurred any additional delinquent debts since 2004. (Tr. 55-56).

The SOR alleged Applicant failed to satisfy six delinquent debts, totaling \$40,470. The status of those debts, as enumerated in the SOR, is as follows:

1.a. Applicant is making monthly payments of \$400-425 on an \$8,085 debt owed to a credit card company for charges she made to operate her truck. The current balance is \$5,285. She anticipates paying off the debt sometime in 2009. (AE C and D).

1.b. Applicant paid the \$7,242 balance owed to a credit card company. (AE A and B).

1.c. The \$6,733 debt owed to a credit card company is unresolved and is included in the recently executed debt reduction plan.

1.d. The \$2,153 debt owed to a credit card company is unresolved and is included in the recently executed debt reduction plan.

1.e. The \$6,644 debt owed to an automobile company is for a leased vehicle that Applicant returned. The debt is included in the recently executed debt reduction plan.

1.f. The \$9,617 debt owed to a credit card company is unresolved and is included in the recently executed debt reduction plan.

Since July 2007, Applicant paid or resolved approximately \$15,200 of the outstanding delinquent debt. Within the past month, she executed an agreement to repay the remaining \$25,200 through a repayment plan that begins in June 2008. She intends to resolve all of her debts, stating, "I got myself into it, I have to get out of it." (Tr. 58). Based on Applicant's candid testimony and demeanor, I believe she will make those payments in order to resolve her obligations and maintain her employment.

### **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(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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) an inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant began accumulating delinquent debt after her husband had heart surgery in 1998. He was unable to return to work for six months and then worked at on a reduced schedule for another six months. She managed to make minimum payments on many of her outstanding obligations until 2002 at which time they started to become delinquent, some of which remain unresolved until very recently. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. The conditions that could mitigate security concerns arising from financial difficulties are provided under AG ¶ 20:

- (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.

Applicant's delinquent financial obligations accumulated between 2004 and 2004, and four of them remain current. Because the problems have been ongoing since arising, AG ¶ 20(a) cannot apply.

AG ¶ 20(b) has partial application in this case. Applicant's debts began accumulating as a consequence of her husband's surgery in 1998 and his inability to

return to full-time work for about a year later. That was a situation outside of her control. However, she admitted that she did not take any steps to manage the debts during that period of time, but instead allowed them to accrue. Thus, full consideration of this condition cannot be applied.

Applicant recently entered into a debt reduction plan with a credit counseling company to pay the four delinquent debts, totaling \$25,200, on a monthly basis. She submitted a copy of her budget, which indicates that she is able to afford the monthly payments on her income, such that her financial obligations are now being resolved and under control. I conclude AG ¶ 20(c) is applicable.

Applicant presented evidence that she paid or resolved two delinquent debts, totaling about \$15,200, over the past year. That evidence demonstrated her good-faith effort to manage her financial affairs, sufficient to trigger the application of AG ¶ 20(d).

There is no evidence to support the application of AG ¶ 20(e) and AG ¶ 20(f).

### **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.

According to 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 a 58-year-old woman, who served in the U.S. Army for two years in the early 1970's. She and her husband have been the owners and operators of a truck for over ten years. For the past five years, they have hauled government freight. Subsequent to her husband's surgery about ten years ago, she began accumulating delinquent debts that she failed to manage or resolve. However, given her recent resolution of \$15,200 of the debt and the execution of an agreement to pay the remaining \$25,200, coupled with a budget that provides sufficient income to pay her obligations, I believe similar financial problems will

