



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-15509
)
)
Applicant for Security Clearance)

For Government: Braden M. Murphy, Esquire, Department Counsel
Pamela Benson, Esquire, Department Counsel
For Applicant: Mr. Scott Harris, Personal Representative

July 24, 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 June 4, 2007, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP). On January 30, 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 15, 2008, and requested a hearing before an administrative judge. On April 9, 2008, DOHA assigned the case to me and issued a Notice of Hearing on May 7, 2008. The case was heard on May 29, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 3 into evidence without objection. Applicant testified and offered Exhibit (AE) A into evidence without objection. At the conclusion of the hearing, I left the record open until June 13, 2008, to give Applicant an opportunity to submit additional information. On June 3, 2008, Applicant submitted an exhibit that I marked as AE B and admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on June 11, 2008. In early July 2008, I received additional documents from Applicant that I marked AE C and D. On July 9, 2008, Department Counsel indicated that he had no objection to those documents and I admitted them into the record.

Findings of Fact

In her Answer to the SOR, Applicant admitted all factual allegations contained in ¶¶ 1.a through 1.f of the SOR, and provided additional explanations in support of her request for a security clearance.

Applicant is 38 years old and married. She has one child from a former marriage, age 13, and two stepchildren, ages 15 and 20. Her father was in the Air Force for 20 years and her oldest son recently joined the Navy. (AE A). In November 2003, she began working part-time for a federal contractor. In October 2006, she became a full-time employee as a contract administrator.

Prior to this position, Applicant was unemployed for five months, having been laid off in May 2003 from a job where she worked for five years. At the time of the layoff, she was earning \$32,000 annually. She received unemployment compensation of approximately \$1,000 per month until she started her current job. Around the same time, her husband lost his \$40,000 job. He then worked in his own business for the next couple years, until he obtained a full-time position in August 2007. He earns \$9.75 per hour. He is looking for a higher paying position. (AE A; Tr. 28-30).

Applicant's personal representative testified. He is Applicant's direct supervisor and a founding partner in the company that employs her. He also operates as the facilities security officer for the company and holds a Top secret security clearance. He has known Applicant since she started with his company in November 2003. Her previous employer recommended her to him. He is aware of the circumstances underlying her layoff and the financial hardship it created for her family. He was immediately impressed by her performance, and as a result, the company loaned her \$10,000 in October 2006 to purchase a car after her old vehicle broke down. She paid off the loan in October 2007. As the company has developed, her contract administrator's duties have grown and she has received salary increases. In October 2007, she received a promotion that increased her salary to \$35,000. The company provides generous health benefits for her family. (AE A). He considers her to be a model employee. He also knows her family and recognizes her parenting skills. He

noted that she drives a 100 miles a day to take her child to a special school. He thinks very highly of her. (Tr. 15-26).

The SOR alleged that Applicant failed to pay five delinquent debts and one judgment, totaling \$24,255. However, the debt listed in ¶ 1.e is the same debt referenced in ¶ 1.f, resulting in a total debt amount of \$15,620. The status of those five debts is as follows:

1. The \$213 debt listed in ¶ 1.a was paid in February 2008. (AE A at 24).
2. The \$5,467 debt listed in ¶ 1.b is unpaid and is owned to a department store. The balance was \$2,900 when it became delinquent. She is attempting to establish a resolution with the company. She wrote them in January 2008 and sent another letter in June 2008. (AE B at 3). On July 1, 2008, Applicant paid that debt in full. (AE D).
3. The \$473 debt listed in ¶ 1.c was paid in January 2008. (AE A at 22).
4. The \$832 debt listed in ¶ 1.d was paid in April 2008. (AE A at 19 and 20).
5. The \$8,635 judgment listed in ¶ 1.f is owed to a credit card company and is unpaid. The balance at the time she closed the account was \$6,900. (It is a duplicate of the debt listed in ¶ 1.e.) She recently sent a letter to the creditor requesting a repayment plan. (AE B at 4). On June 12, 2008, the company responded to her inquiry and noted that the matter had been resolved and deleted from her credit history. (AE C).

Since January 2008, Applicant paid or resolved all of the debts. She submitted a budget, itemizing her income and expense. She and her husband's combined net monthly income is \$3,310. The monthly expenses are \$3,265, leaving about \$50 per month remainder. (AE B at 2).

Applicant had the above two credit cards for many years and paid them regularly. After she lost her job in May 2003, she tried to pay some of her debts with her unemployment compensation, but was unable to manage her essential expenses and make minimum payments on the credit card accounts. She eventually stopped making those payments. (Tr. 41-43). She has not received any credit counseling, and has not considered filing bankruptcy. She testified:

Unlike most people, I never even considered filing bankruptcy. These are my debts. They will be paid. I may not be able to do it all now. I may not be able to do it as fast as they would prefer, but they will be paid. They're my bills, my responsibility. I never had a problem with that. And I never tried to run away from any of my bills. They've always been there. I've always known it. I never hid it, never not talked about it. Am I proud of it –

no. But I hit a situation in my life that I had no control over, that I am now recovering from and I'm doing the best I can. (Tr. 43).

Applicant submitted four letters of recommendation, including one from her personal representative. Her former employer of ten years considers her to be a "woman of high moral character and possess [sic] a strong work ethic." [(AE A at 10). He strongly supports her request for a security clearance. Her former supervisor, from 1998 to 2001, stated, "She was a high achiever, confidential, and appreciated by all her co-workers." (AE A at 11). He recommended Applicant to her current employer. The director for the school that her son attends also provided a letter on her behalf. He complimented Applicant's commitment to her son's education and role as an exemplary parent, recognizing the sacrifices she makes for her child. (AE A at 15).

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 commonsense 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.

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, AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant began accumulating a significant amount of delinquent debt that she was unable to pay after she and her husband became unemployed in early spring of 2003. The evidence is sufficient to raise these 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 guideline includes six conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated when "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 worries arose in 2003 and continued into 2008 when she began to resolve them. They were the result of unemployment for her and her husband, which is less likely to recur for her, given her employer's support. The prior situation does not cast doubt on her trustworthiness or good judgment. Because the debt problems are ongoing for almost five years, this condition cannot receive full application.

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.” Applicant’s debts began accumulating after she and her husband lost their employment in spring of 2003. Those circumstances were outside of her control. She presented evidence indicating that she attempted to manage some debts by paying her debts with her unemployment compensation. I find this potentially mitigating condition has application in this case.

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 did not obtain formal credit counseling; however, she submitted proof that she paid four debts and resolved the other one, indicating that she made a good-faith effort to resolve all of her debts. She submitted a copy of her budget, which demonstrates that her financial obligations are under control. She is carefully managing her limited funds. I conclude these mitigating conditions should be given consideration.

The evidence does not support the application of any other mitigating condition.

“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 38-year-old woman, who began experiencing financial hardships after she and her husband lost their jobs, and joint income of about \$70,000 in spring of 2003. Prior to this misfortune, she had

not experienced financial difficulties and regularly paid her bills. Since becoming a full-time employee in October 2006, she began resolving her financial difficulties. Since 2008, she paid four debts and resolved the outstanding judgment. She credibly acknowledged those debts as her responsibility and expressed a determination to resolve them.

Given her awareness of the effect delinquencies may have on her employment, along with a commitment to responsibly manage her finances, I do not believe similar financial problems will recur, despite a tight budget. The Appeal Board noted in ISCR Case No. 06-12930, "that an applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken 'significant actions to implement that plan.' ISCR Case No.04-09684 at 2-3 (App. Bd. Jul.6, 2006)." In this case, Applicant has addressed her obligations and has the strong and impressive support from her employer to assist her in doing so.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. Applicant is an intelligent, hardworking individual, who experienced an unanticipated period of unemployment and under-employment that seriously affected her finances. There is no other evidence in her background to indicate that her financial problems may create a security risk. For all these reasons, I conclude Applicant mitigated the security concerns arising under 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

Subparagraphs 1.a through 1.f: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge