



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



In the matter of:)
)
) ISCR Case No. 07-15661
)
 SSN:)
)
)
 Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

February 24, 2009

Decision

TUIDER, Robert J., Administrative Judge:

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

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions (SF-86), on October 31, 2006. On May 9, 2008, 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.

On June 14, 2008, Applicant wrote a letter to DOHA, apparently in response to the SOR, stating among other things that she wished to have a decision based on the written record. GE 2. The Department Counsel exercised his prerogative under the Additional Procedural Guidance of the Directive and requested a hearing. Applicant subsequently answered the SOR in writing on August 6, 2008. DOHA received her response on August 11, 2008. Department Counsel was prepared to proceed on September 22, 2008, and the case was assigned to another administrative judge on October 2, 2008.

On October 15, 2008, the case was reassigned to me due to caseload considerations. DOHA issued a notice of hearing on November 12, 2008, scheduling the hearing for December 2, 2008. On the day of the hearing, Applicant failed to appear. After determining that she had been given proper notice, I entered a default against her.¹ By letter dated December 30, 2008, Applicant requested that her case be reopened. Exhibit (Ex.) II. For good cause shown, I granted her request. DOHA issued a notice of hearing on January 26, 2008, scheduling the hearing for February 5, 2009. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 8, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through I, which were received without objection, and testified on her own behalf. Applicant's husband served as an English-Spanish interpreter. DOHA received the hearing transcript (Tr.) on February 13, 2009.

Findings of Fact

Applicant admitted both of the SOR allegations with explanations. Her admissions with explanations 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 62-year-old cleaning day porter, who has worked for her defense contractor employer since July 2005. GE 1, Tr. 26-27. Her duties consist of cleaning 13 bathrooms in a secure site. Tr. 43-44. She seeks a security clearance as a requirement of her employment. Ex. I, AE C.

Applicant was born, raised and completed high school in Ecuador before immigrating to the U.S. GE 1. English is her second language and as such, I made allowances during her testimony and case presentation. Applicant met her husband, who is from Columbia, in the U.S. They were married in November 1968, and have three adult U.S.-born children, who all live in the U.S. GE 1, Tr. 24-25.

Applicant's background investigation addressed her financial situation and included a review of her October 2006 SF-86, her June 2008 letter to DOHA, her December 2007 and April 2008 Responses to DOHA Interrogatories, her November

¹ See transcript from hearing held on December 2, 2008.

2006, October 2007 and September 2008 credit bureau reports. She was also interviewed by an Office of Personnel Management (OPM) investigator in February 2007. GE 1 – 8.

Applicant's SOR identified two separate line items, which included a collection account for a credit card in the amount of \$10,650, and a second collection account for a credit card in the amount of \$3,921. (SOR ¶¶ 1.a. -1.b.)

Although Applicant admitted the first debt of \$10,650 in her Response to SOR, she amended her answer and denied this debt at her hearing. She stated after she investigated this debt, she determined the account was not hers. She pointed to a discrepancy in account numbers and added that she contacted the creditor to inform them of same. The creditor was unable to locate the account alleged in their database. She filed a dispute with the credit reporting agency on February 4, 2009. Applicant adamantly denied incurring the charges as alleged with this creditor. AE B, Tr. 27-36.

Applicant did admit owing the second debt of \$3,921. She contacted the creditor and arranged to settle this account for \$2,561.82. AE A, Tr. 36-37. This debt became delinquent in 2002 while Applicant was unemployed.

Applicant's husband has been disabled since 1994 following two heart operations. He has been receiving Social Security Disability since then. His current monthly disability check is \$1,047. AE H. Applicant's husband described his disability income as "peanuts" compared to his former salary. Tr. 38-41. Applicant was unemployed from 1999 to 2005. During this time, she and her husband lived off her husband's disability and proceeds from the sale of a former home. Tr. 44-46. Applicant recently began receiving social security at the monthly rate of \$596. Tr. 52.

Applicant and her husband own their home, which they purchased in October 2003 for \$137,000. Their monthly payments are \$577 and they owe a balance of \$88,000. They are current on their house payments and other expenses. Tr. 45-47. Although current on other expenses, Applicant and her husband depend on her income with the defense contractor to augment their income. Tr. 55.

Applicant's employer views her as a valued employee and continues to sponsor her for a security clearance. Ex. I, Tr. 8.

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 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 AG ¶ 18, the Government's concern is:

"[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."

The Government established Applicant indebtedness as initially reflected in SOR ¶¶ 1.a. – 1.b. Applicant's indebtedness stems from her husband's reduced income following his being placed on disability in 1994 and her six-year period of unemployment. During this time, she fell behind with at least one of her creditors as admitted to during her hearing (SOR ¶ 1.b.).

The Government established its case under Guideline F by showing Applicant owed the debts as alleged, except as noted, by the evidence presented. Under AG ¶ 19, two disqualifying conditions raise a security concern:

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

Under AG ¶ 20, there are three potentially mitigating conditions:

(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;

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

(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.

AG ¶ 20(b) applies because, at the time Applicant incurred her indebtedness, her husband was disabled and she was unemployed for a six-year period. AG ¶ 20(d) applies because Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts as it pertains to the debt alleged in SOR ¶ 1.b. Lastly, AG ¶ 20(e) applies because Applicant has a reasonable basis to dispute the debt alleged in SOR ¶ 1.a. She has contacted the creditor and provided documentation to the credit reporting agency substantiating the basis of her dispute. Applicant has demonstrated she is living within her means and is financially responsible.

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”² and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant 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

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