



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 07-15897
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

February 26, 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 Security Clearance Application (SF-86), on September 14, 2004. On July 16, 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.

Applicant answered the SOR in writing on September 26, 2008, and requested a hearing before an administrative judge. DOHA received her response on September

29, 2008. Department Counsel was prepared to proceed on November 5, 2008. On November 14, 2008, the case was assigned to another administrative judge, and on January 15, 2009, the case was reassigned to me due to caseload considerations. DOHA issued a notice of hearing on December 12, 2008, scheduling the hearing for January 22, 2009. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 9, which were received without objection. The Government submitted a List of Government Exhibits, Exhibit (Ex.) I. The Applicant offered a binder with three separate tabs collectively marked as Applicant Exhibit (AE) A, which was received without objection, and testified on her own behalf.

I held the record open to afford the Applicant the opportunity to submit additional documents on her behalf. Applicant timely submitted a series of e-mails collectively marked as AE B, which were received without objection. DOHA received the hearing transcript (Tr.) on February 2, 2009.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a. – 1.c., 1.e. – 1.i., 1.k. and denied 1.d. and 1.j. All admissions and denials were accompanied by explanation. Her admissions and 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 37-year-old logistics analyst, who has worked for her defense contractor employer since April 2008. GE 2, Tr. 19-20. She currently holds a top secret clearance, discussed *infra*, and seeks to renew her clearance. To remain eligible for employment, she must maintain a secret clearance. Tr. 20-21.

Applicant graduated from high school in June 1989, and was awarded a bachelor of science degree majoring in information technology in October 2003. GE 2, Tr. 21-23. She served in the U.S. Army from November 1991 to August 2000, and was honorably discharged as a Sergeant (pay grade E-5). While in the Army, she successfully held a top secret clearance, which was granted in December 1996. She maintained that clearance with several employers post-Army until now. GE 2, Tr. 20-21, 28-29.

Applicant was previously married from December 1990 to February 1993. That marriage ended by divorce. Applicant remarried in December 1998, and that marriage ended by divorce in January 2002. She has a nine-year-old son from her second marriage. Applicant lives and works in a very remote U.S. location in military housing with her 61-year-old mother, and nine-year-old son. Her mother suffers from the effects of a 2003 heart attack and receives social security disability payments. Applicant's mother is unable to care for herself both financially and physically. Applicant provides her mother financial support sufficient to claim her as a tax exemption. GE 2, Tr. 23-28.

Applicant's background investigation addressed her financial situation and included the review of her signed sworn October 2002 statement, her September 2004 SF-86, her December 2004, May 2006, December 2007, June 2008, November 2008 credit reports, and April 2008 DOHA Interrogatories. GE 1 – 8.

Applicant's SOR identified 11 separate line items, which included three charged off accounts, and eight collection accounts approximating \$36,900.

Applicant attributes her financial problems to unemployment following her discharge from the Army, a series of low paying jobs, a former husband who incurred debt and did not contribute to the family income, and a separation followed by divorce. It was not until she secured her present job that she was able to earn sufficient income to support herself and her family. Tr. 35-56.

Since her SOR was issued, Applicant has paid off one charged off account in the amount of \$683.00 (SOR ¶ 1.b.). In September 2008, she entered into an agreement with a credit management company to consolidate her debts. Since October 2008, she has been paying this company a monthly fee by direct debit that is applied to the company's fee or debt principle. AE A. Additionally, post-hearing she provided evidence of having sought financial counseling and provided updates of her progress in attaining financial stability. AE B.

Applicant provided five favorable reference letters from individuals who have known her in a professional and personal capacity. All references support the notion that Applicant is trustworthy and honorable. AE A.

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 that Applicant owed substantial debt as reflected in SOR ¶¶ 1.a. – 1.k. through her admissions and evidence presented. At the time the SOR was issued in July 2008, Applicant owed 11 debts approximating \$36,900.

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.

Applicant's indebtedness stems from a lengthy period of underemployment and unemployment. Additionally, her former husband incurred debt during Applicant's second marriage which she is responsible for. All of this contributed to Applicant being placed in a financial tailspin.

Her financial situation has substantially improved as a result of finding a job which provides her with enough income to support her family and meet her financial obligations. She entered into an agreement with a credit management company to whom she pays a monthly fee by direct debit, and has sought financial counseling. She has submitted post-hearing updates on her financial progress. She has established a credible budget. All indicators point to an individual who has taken this process quite seriously and taken what appears to be all reasonable steps to correct her financial situation. What is different now as opposed to before is she has the means, tools and resolve to achieve financial stability.

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

AG ¶ 20(b) applies because at the time Applicant incurred the debts, she was either underemployed or unemployed, and married to a spouse whose spending exceeded his contributions. Her financial situation continued to deteriorate during her separation and divorce. AG ¶ 20(c) applies because Applicant sought financial counseling. While paying down her debts, she continues to explore strategies to improve her financial situation. AG ¶ 20(d) applies because Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. In short, Applicant has made substantial progress in turning her financial situation around. She has established a viable budget, which shows a net remainder after her monthly bills are paid.

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. I also gave considerable weight to her years of honorable service in the Army, her years of successfully holding a top secret clearance, her service as a defense contractor serving in a very remote U.S. location, and her being the sole support for her nine-year-old son and to a lesser extent her 61-year-old mother. 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”¹ 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.k.:	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

¹ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).