



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-17808
)
)
Applicant for Security Clearance)

For Government: Braden M. Murphy, Esquire, Department Counsel
Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro Se*

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 September 11, 2006, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On February 12, 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 21, 2008, and waived her right to a hearing before an administrative judge. On April 16, 2008, she withdrew her waiver and requested a hearing. On April 21, 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 5 into evidence without objection. Applicant testified and offered Exhibits (AE) A through F 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 12, 2008, she submitted four additional exhibits that I marked as AE G through J and admitted into the record without objection. DOHA received the hearing transcript (Tr.) on June 11, 2008. On June 26, 2008, Department Counsel notified me that Applicant informed him that she recently remarried and that the bankruptcy court entered a discharge order on June 24, 2008. On July 8, 2008, I received the four additional documents that I marked as AE K through N and entered into the record without objection from Department Counsel.

Findings of Fact

In her Answer to the SOR, Applicant admitted all factual allegations contained in ¶¶ 1.a through 1.r of the SOR and provided additional information in support of her request for a security clearance. Her admissions are incorporated into the following findings of fact:

Applicant is 42 years old. She has two children, ages 20 and 23, from her first marriage that ended in 1989 after six years. She married her second husband in June 1993 and legally separated from him in September 2004, at which time she left the state she where she was living. She was divorced in January 2005. (GE 1). Within the past couple of weeks, she remarried to a man who owns his own construction business. At the time of the hearing, they were making arrangements to move to a new home.

While married to her second husband, Applicant worked for a state agency for eleven years, until she resigned her position in 2001. She then began a computer business and worked from home, while her husband maintained his job as a manager of a food market. Around that time, her husband, who managed the family finances and played in a band, began using drugs illegally and diverting household funds from family expenses. As a result, her bills began becoming delinquent. (Tr. 23; 34). Prior to this time, she did not experience financial difficulties, other than for a brief time after her first divorce in 1989.

After leaving her home state in October 2004, Applicant moved to another state with her two children and began working for an employment agency. For the next couple years, she experienced periods of unemployment and under-employment, while accumulating a significant amount of debt that she could not manage. (Tr. 22). In August 2006, she began a position as a computer expert with a federal contractor. She worked there until last month when she was laid off, pending this hearing. (Tr. 42). She

earned about \$10,000 in 2004; \$14,934 in 2005; \$27,932 in 2006; and \$34,625 in 2007. (AE G).

In April 2007, Applicant consulted a bankruptcy lawyer. (Tr. 36). He advised her not to pay any of her debts, including those for small amounts. (Tr. 64). On February 29, 2008, Applicant filed a Chapter 7 Petition for Bankruptcy. On June 24, 2008, the bankruptcy court entered an order discharging approximately \$31,581 of debt, including some that were attributable to her former husband's unpaid accounts. (AE L). As part of the bankruptcy proceeding, she completed a five-hour credit counseling session over the internet. (AE D at 4; Tr. 37).

The SOR alleges 18 debts, totaling \$21,070, and includes medical bills not covered by insurance, credit card debt, utility bills, unpaid rent, and department stores bills. All of the debts alleged in the SOR are included in the discharge order.¹ (Tr. 28) .

Applicant submitted a copy of her budget. Her net monthly income is \$1,292 that she receives as an unemployment benefit. Her expenses total \$1,290.² Both of her children are working and no longer live with her. She does not have any credit cards or other outstanding debts. (Tr. 61). She asserted a commitment to her job that she finds very satisfying and managing her finances. (Tr. 77). She admitted that in the past she did not take adequate responsibility for her finances, resulting in debt and financial difficulties. At 42, she wants to begin saving money for her retirement. (Tr. 67). She acknowledged her mistakes and stated, "I've learned some tough lessons, very tough lessons. The counseling that I took has helped a lot. I'm not a person who is prone to going out and just spending wildly. I do have self-restraint. I think I just had to learn how to budget." (Tr. 59).

Applicant submitted six letters from her colleagues in support of her request for a security clearance. Her direct supervisor for the past year and 8 months knows of Applicant's personal life. He does not believe she is a security risk. (AE F at 3). A naval Captain, who has worked with Applicant, wrote, "From my perspective, [Applicant's] dependability as a worker, her strong patriotism, her long term goals, and her personal character would prevent her from taking any questionable short cut to improve her situation." (AE at 2). A retired senior chief electronics technician with the Navy, who has known her since 1983, believes Applicant is a "honest, hard-working, all-American. I understand the circumstances she's been through that would cast doubt on her ability to hold a clearance, but her integrity and patriotism are unsurpassed." (AE at 6). On July 8, 2008, the security director for her employer submitted a request that DOHA expedite the security determination process because he would like her to resume her position as soon as possible. (AE N).

¹According to Applicant's bankruptcy lawyer, "Pursuant to 6th Circuit precedent *In re Madaj*, F.3d 467, if a debtor inadvertently omits a creditor from her bankruptcy schedules in a no asset Chapter 7 case, the debt is nonetheless discharged. Because [Applicant's] Chapter 7 case was a no asset case [SOR ¶¶ 1.a and 1.e are the same debt] is discharged." (AE I).

²Applicant recently remarried and her husband's income is not included in this income number.

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.

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 accumulated a significant amount of delinquent debt, which began accruing in 2001 while married to her husband that she was unable to pay. The delinquencies have been ongoing until they were recently discharged in a Chapter 7 bankruptcy. 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 2001 and continued into 2008. Because the problems were unresolved for about seven years, this condition cannot apply.

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 as a result of her husband's illegal drug use, and her subsequent decision to move out of the house and get divorced. They were exacerbated by extended periods of unemployment and under-employment. Those circumstances were outside of her control. However, she did not present any evidence indicating that she attempted to manage her debts over those years, as further required under this condition. Thus, I find this potentially mitigating condition has partial application.

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 presented evidence that she obtained formal credit counseling and she submitted a copy of her budget. In February 2008, she filed a Chapter 7 bankruptcy that discharged approximately \$31,000 of debt, including those delinquencies listed on the SOR. A recent bankruptcy, absent a track record of financial responsibility subsequent to the bankruptcy, may be insufficient evidence to trigger the application of these two mitigating conditions in many cases.³ However, based on her current budget and change in family circumstances, along with her new knowledge of financial management, I conclude these mitigating conditions should be given some consideration, as she took steps to resolve her delinquencies and her other expenses are under control.

No other 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). 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 42-year-old woman, who began experiencing financial difficulties in 2001 after she left her husband, who was abusing drugs. Applicant had over a ten-year history of full employment during which time she did not incur financial difficulties. At this point in her life, she no longer is supporting her children, recently remarried a man who is fully employed, and is committed to achieving financial stability and security. Given her awareness of the effect

³ See e.g., ISCR Case No. 97-0016 (Dec. 31, 1997) at p.4 (“While a discharge in bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant’s history of financial problems from being considered for its security significance.”)

that future delinquencies could have on her employment, coupled with her organized presentation that demonstrated her understanding of her situation and her employer's strong support, I do not believe similar financial problems will recur in the future.

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 unanticipated family problems that seriously affected her financial life. 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.r: 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