



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



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 08-00317
SSN: XXX-XX-XXXX)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. Delaney, Esq., Department Counsel
For Applicant: *Pro se*

August 29, 2008

Decision

TUIDER, Robert J., Administrative Judge:

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

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing on (e-QIP), on September 16, 2005. On March 27, 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 April 17, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 5, 2008, and I received the case assignment on May 8, 2008. DOHA issued a notice of hearing on May 14, 2008, scheduling the hearing for June 11, 2008. On June 5, 2008, DOHA issued an amended notice of hearing rescheduling the hearing for June 24, 2008. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 4, which were received without objection. The Government also submitted a List of Government Exhibits, Exhibit (Ex.) I. The Applicant offered Applicant Exhibits (AE) A through O, which were received without objection, and testified on her own behalf.

I held the record open until July 18, 2008 to afford the Applicant the opportunity to submit additional documents. Applicant submitted AE P through AE II, which were forwarded to me without objection by Department Counsel by Memorandum, dated July 21, 2008 (Ex. II). DOHA received the hearing transcript (Tr.) on July 1, 2008.

Findings of Fact

Applicant admitted SOR ¶¶ 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.k., 1.n., 1.o., and 1.p. She denied SOR ¶¶ 1.a., 1.b., 1.c., 1.j., 1.l., and 1.m. Her admissions 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 41-year-old junior analyst, who has worked for a government contractor since September 2004. GE 1, Tr. 17-18. Applicant stated she currently has an interim top secret, and has held a clearance since November 2001. GE 1, Tr. 16-17. Her continued employment is dependent on maintaining a security clearance. Tr. 19-21.

Applicant graduated from high school in June 1985. She estimates that she has completed 36 college credit hours. GE 1, Tr. 15-16. She was previously married from January 1989 to August 1998. That marriage ended by divorce. Applicant remarried in March 2003. She has three children from her first marriage, an 18-year-old son, a 16-year-old daughter, and a 14-year-old son. All three children reside with her and her second husband. She receives \$452 per month in child support from her former husband. GE 1, GE 2, Tr. 15-16.

Applicant's background investigation addressed her financial situation and included a review of her September 2005 e-QIP, March 2008 Response to Interrogatory with Attachments, and March 2008 and April 2007 credit reports. GE 1 – 4. Allegations were delineated in SOR ¶¶ 1.a. – 1.p., and are substantiated by Applicants admissions and documents submitted by the Government.

Applicant's SOR identified 16 separate line items to include a Chapter 13 bankruptcy filed in September 1999 and dismissed in January 2000, and 14 separate delinquent debts totaling over \$16,000.

Applicant paid or otherwise resolved all of the debts alleged. SOR ¶ 1.a. is a \$1,370 judgment against Applicant, which has been paid in full. AE A. SOR ¶ 1.b. is a \$742 judgment against Applicant, which has been paid in full. AE B. SOR ¶ 1.c. is a \$750 collection account, which has been paid in full. AE C. SOR ¶ 1.d. is a \$222 collection account, which has been paid in full. AE D. SOR ¶ 1.e. is \$332 collection account, which has been paid in full. AE DD. SOR ¶ 1.f. is a \$346 collection account, which has been paid in full. AE DD, AE EE.

SOR ¶ 1.g. is a \$504 collection account, which has been paid in full. AE EE, AE HH. SOR ¶ 1.h. is an \$83 collection account, which has been paid in full. AE E. SOR ¶ 1.i. is \$8,783 collection account, for which Applicant has settled for \$4,100, is making payments and is current. AE F, AE G. SOR ¶ 1.j. is \$50 past due account, which Applicant has paid in full. AE H. SOR ¶ 1.k. is a \$1,527 past due account, for which Applicant is making payments and is current. AE I.

SOR ¶ 1.l. is a \$385 collection account, which Applicant has settled for \$192.50 and paid in full. AE GG. SOR ¶ 1.m. is a \$100 collection account, which Applicant has paid in full. AE K. SOR ¶ 1.n. is a \$1,295 collection account, for which Applicant is making payments and is current. AE L. SOR ¶ 1.o. alleged Applicant is only making partial payments on her mortgage. She has since rectified that and is current. AE M. Tr. 21-66, and AE Q apply to all SOR ¶¶.

Applicant's financial difficulties began in approximately 1994 when she separated from her first husband. She had custody of her three children and her former husband was not paying child support. Around that time, she took a job with the federal government and took an annual pay cut of approximately \$13,000. Overwhelmed, she filed for Chapter 13 bankruptcy protection in 1999, and simply did not have the money to make monthly payments to the trustee. Tr. 65-70. Her bankruptcy was dismissed. (SOR ¶ 1.p.) Applicant's financial difficulties continued. Her income deficiencies and lack of child support placed her in a financial tailspin. Although Applicant's former husband is now paying child support, he remains \$20,000 in arrears. Tr. 81-87

Applicant has remarried, obtained a better paying job, and learned to budget her finances better. She sought professional financial counseling since receiving her SOR, established a budget, and is well on the road to financial recovery. Her financial net worth is \$27,822. AE CC.

Applicant provided numerous reference letters from past and present employers that support her good character and is a trustworthy individual. Her 2007 and 2008 work performance evaluations reflect above average performance. AE R – AE BB.

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 Guideline F (Financial Considerations),¹ the Government's concern is that an Applicant's:

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.

Applicant's financial considerations concerns were established by her admissions and the Government's evidence. Applicant's financial difficulties stem from her separation, divorce and underemployment beginning in 1994. She was faced with supporting three minor children without child support. She sought Chapter 13 bankruptcy protection in 1999, but was unable to make the monthly payments to the trustee and her financial difficulties continued until recently.

Of the nine Financial Considerations Disqualifying Conditions listed under Guideline ¶ 19, two are applicable: ¶ 19(a): "inability or unwillingness to satisfy debts;" and ¶ 19(c): "a history of not meeting financial obligations."

Applicant has paid or otherwise resolved all of the debts alleged in the SOR. She has a better paying job, is receiving child support, and sought financial counseling. Her financial house is in order, and her financial statement shows a positive net worth. In short, her financial situation has undergone a complete turnaround since she filed for Chapter 13 bankruptcy over nine years ago. She has demonstrated she is a trustworthy individual by successfully maintaining a security clearance since 2001 and character evidence submitted.

Considering the record evidence as a whole,² I conclude four of the six Financial Considerations Mitigating Conditions under Guideline ¶ 20 are applicable or partially applicable: ¶ 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;" ¶ 20(b) "the conditions that resulted in the financial problem were largely beyond the person's

¹ Guideline ¶ 18.

² See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

