



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-02457
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: Samuel L. Hart, Esquire

December 15, 2008

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on May 3, 2007. On June 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 acknowledged receipt of the SOR on July 9, 2008. She answered the SOR in writing on July 19, 2008, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on August 12, 2008. DOHA issued a notice of hearing on August 19, 2008, and I convened the hearing as scheduled on September 19, 2008. The Government offered Exhibits (GXs) 1 through 8, which were received without objection. Applicant

testified on her own behalf and submitted Exhibits (AppXs) A through F, without objection. DOHA received the transcript of the hearing (TR) on September 29, 2008. The record closed on September 19, 2008, the date of the hearing. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations of the SOR, without explanations.

Guideline F - Financial Considerations

Due to a business downturn in the aerospace industry, the Applicant lost her job in 1999 (TR at page 26 lines 2~9, at page 27 line 7 to page 29 line 11, at page 35 line 17 to page 37 line 17, and AppX E). As a result, she was unemployed or underemployed until she acquired her present full time employment in 2005 (*Id*). She has now addressed all of her alleged past due debts, has a positive monthly cash flow, and about \$8,500 in savings (TR at page 39 line 7 to page 41 line 4).

1.a. and 1.b. During her period of unemployed or underemployed, Applicant “obtained independent [medical] insurance” (TR at page 41 line 5 to page 43 line 4). It did not pay all of her medical claims; and as a result; she had a total of \$197 in past due medical bills (*Id*). These have been “PAID IN FULL,” as is evidenced by receipts from the two creditors’ collection service (TR at page 30 line 18 to page 32 line 13, and AppXs A and B).

1.c. The Applicant has settled and paid a \$10,434 credit card debt for \$5,300 (TR at page 32 line 24 to page 34 line 2). This is evidenced by a letter from the successor creditor to this debt, and by a “trust check” drawn to that successor creditor (AppX D).

1.d. The Applicant has paid in full a \$1,251 credit card debt, as is evidenced by a letter from the successor creditor to this debt (TR at page 32 lines 14~23, and AppX D).

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

The security concern relating to the guideline for Financial Considerations is set out in Paragraph 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 Subparagraph 19(a), an *"inability or unwillingness to satisfy debts"* is potentially disqualifying. Similarly under Subparagraph 19(c), *"a history of not meeting financial obligations"* may raise security concerns. During her extended period of unemployment or underemployment, the Applicant accumulated her delinquent debt. These are clearly countered by the Mitigating Conditions found in Subparagraphs 20(b) and 20 (d). Under Subparagraph 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, . . .), and the individual acted responsibly under the circumstances."* Furthermore, Subparagraph 20(d) applies where the evidence shows *"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."* Here, the Applicant has addressed all of the alleged past due debt.

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): "(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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Here, she has the unqualified support of her manager (AppX E).

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge