



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-03274
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel

For Applicant: Ronald Anderson Hurst, Esq.

September 30, 2008

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed and signed a Standard Form 86 (SF-86) security clearance application dated July 23, 2007. On May 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) stating 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 for SORs issued after September 1, 2006.

In a response notarized on June 24, 2008, Applicant admitted four of the five allegations raised concerning five allegedly delinquent debts. She also requested a hearing. DOHA received Applicant's request on July 9, 2008, and I was assigned the case on July 10, 2008. Department Counsel and Applicant agreed to an August 13, 2008, hearing date, and a Notice of Hearing was issued on July 17, 2008, to that effect.

The hearing took place as scheduled. Department Counsel submitted six exhibits (Ex.), accepted into the record as Exs. 1-6 without objection. Applicant was accompanied by a friend and represented by counsel. She gave testimony. No witnesses were called and no exhibits were offered into evidence. Applicant was given through August 20, 2008, to submit any additional materials. After the hearing, on August 13, 2008, three additional exhibits were submitted by Applicant through counsel via facsimile transmission. They were accepted into the record as exhibits (Exs.) A-C. The transcript (Tr.) was received on August 19, 2008, and the record was closed on August 22, 2008. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

Findings of Fact

Applicant is a 50-year-old employee of a government contractor. She has a background in finance and accounting with significant past employment as a Director of Accounting and Accounting Manager. Applicant completed one year of college. She is separated from her husband of four years, who lives in a distant state, and she recently filed for divorce.

In 1995, Applicant started work as an hourly wage employee for a hotel chain. She worked her way up until she was named Director of Accounting in 2001, earning approximately \$100,000 per year. By 2003, she was making about \$150,000. With bonuses, this sum was closer to \$200,000 per year. In late 2003, the chain looked like it might be vulnerable to a merger. Managers were assured their positions would be safe. One day in February 2004, however, many upper level employees, including Applicant, were told that they were to be let go effective that day and to leave the building. After a decade of relatively stable employment, Applicant was stunned. She left the building that day with her possessions and was paid \$110,000 in severance compensation.

Applicant states that she was "in shock" for six months following her February 2004 termination. In July 2004, she married her current husband. A self-employed construction worker, he was unemployed at the time. She remained unemployed, receiving \$350 a month in unemployment compensation. She then found work as an accounting manager in December 2004. The job paid approximately \$15 per hour. On this salary, she became the couple's primary provider.

When Applicant filed Chapter 7 bankruptcy in May 2005, she had approximately \$67,000 in delinquent debt.¹ She did not include her mortgages or automobiles in the bankruptcy petition. That petition was discharged in September 2005.

In 2007, Applicant became delinquent on mortgage payments on a first and a second mortgage for a house she and her husband had purchased. That same year, Applicant and her husband separated in February 2007. By March 2007, she had moved to another state to accept a position paying about \$80,000. She accepted the

¹ Applicant noted: "My husband liked to use credit cards." Tr. 30.

position and the move in part to get away from her husband, who “has a temper and I just wanted to get out of the state.”² She sold her car for a model with less expensive monthly payments.³ Since he would remain living in the house, her husband agreed to assume payments on the mortgage. In a letter dated January 10, 2008, Applicant was surprised to hear he had stopped paying the mortgages. The bank also informed Applicant that the house had been in a foreclosure sale. The sale covered the amount of the mortgage, so Applicant was relieved from future obligations on the first mortgage.

On January 15, 2008, the holder of a second mortgage informed Applicant she was seriously past due on her payments on a principal of about \$17,524 with interest of \$3.75 accruing each day. The mortgagor demanded payment within 10 days of the letter’s date. A subsequent letter, dated March 26, 2008, demanded full payment on the mortgage by April 5, 2008, in the amount of \$17,550.31. In response to that letter, Applicant entered into a repayment plan. Under the plan, she would pay \$400 by April 30, 2008. She timely made the \$400 payment.⁴ That initial payment was followed by monthly payments of \$200, starting on May 25, 2008. Applicant is currently in timely repayment on this debt. Her last payment was on August 11, 2008.

Since her move in 2007, Applicant’s salary has risen to \$82,000 per year. She rented a more expensive apartment for \$1,800 because it allowed pets. Her pets have since died. To compensate, she took in a roommate for four months who paid \$500 per month. Her landlady recently reduced the rent to \$1,500 per month. She is now looking for a less expensive apartment. Her regular bills include cable television service, a phone service, car payments and insurance, and credit card bills. She is current on her everyday expenses and monthly bills. Applicant considered financial counseling, but decided against it: “I can make my credit card payments currently, and in my mind as long as I can make above the minimum payment and try to pay [debts] off, that’s what I’m trying to do. . . .”⁵

Applicant currently has a little over \$11,000 in credit card debt and is making approximately \$500 a month in payments.⁶ Her monthly payments are expected to increase once she has made adjustments for her recently lowered rent. Presently, she is current on her six credit cards.⁷ She feels she has made adjustments which make her capable of living within her \$80,000 salary.

²Tr. 20.

³ Tr. 36.

⁴ See Interrogatories.

⁵ Tr. 22.

⁶ Tr. 33.

⁷ *Id.*

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. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ⁸ The burden of proof is something less than a preponderance of evidence. ⁹ The ultimate burden of persuasion is on the applicant. ¹⁰

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

⁸ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F, failure or an 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.¹⁴ The Regulation sets out several potentially disqualifying conditions under this guideline.

In February 2004, Applicant found herself abruptly released from a highly lucrative position. She received \$110,000 in severance pay and remained unemployed for 10 months. During that time she married an unemployed man. In May 2005, she filed for Chapter 7 bankruptcy, having accumulated a little over \$67,000 in debt. Since then she has had a home foreclosed upon and a second mortgagor demand payment in full of her balance. She also concedes she has over \$10,000 in credit card debt not noted in the SOR. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(c) (“a history of not meeting financial obligations”) and FC DC AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) apply. With such conditions raised, the burden shifts to Appellant to overcome the case against her and mitigate security concerns.

Despite assurances her job was secure, Applicant was let go from her \$200,000 job without notice in February 2004. Her loss of employment was clearly beyond her control. What is less clear is how she went through any cash reserves she might have

¹¹ *Id.*

¹² *Id.*

¹³ Executive Order 10865 § 7.

¹⁴ Revised Adjudicative Guideline (AG) ¶ 18.

had as of the time she was terminated, a \$110,000 severance check, and built up about 67,000 in mostly credit card debt in about a year. Applicant failed to explain how this money was expended while acting in a responsible manner. On its face, however, it seems as if her expenditures while unemployed continued on in much the same manner as they had when she was still earning \$200,000. Financial Considerations Mitigating Condition (FC MC) 2, AG ¶ 20(b) (“the conditions that resulted in the behavior 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”) does not apply.

When Applicant filed for bankruptcy protection, she utilized a commonly used and legally available method for addressing her debts and starting anew. Therefore, she cannot be slighted for that. It was her estranged husband who chose to continue living in their home and assume the mortgages’ payments, but who ultimately abandoned that obligation without advanced warning to Applicant. Luckily, no balance was due after the home was sold at auction. The only current issue regarding Applicant and overdue debts concerns her second mortgage.

Applicant became seriously delinquent on her second mortgage. Working with the bank, she entered into a repayment plan under which an initial payment of \$400 was submitted in April 2008. Since then, monthly payments of \$200 have been made regularly. To date, she is current on this plan. Although a rate of \$200 a month is relatively minimal, it is acceptable to the bank, reduces her obligation by about \$1,200, and helps represent meaningful debt reduction .¹⁵ Given her good faith efforts toward working out a repayment plan and five months of timely repayment by the time the record closed, FC MC 4, AG ¶ 20(d), (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) applies. Moreover, although she has not received credit counseling, her efforts to address her second mortgage and live within her budget do reflect a financial situation that is under currently under control. FC MC 3, AG ¶ 20(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”) applies to her sole unresolved obligation. No other mitigating conditions apply. Inasmuch as Applicant has presented mitigating conditions with regard to how her debts have arisen and shown how she has addressed the mortgage her husband neglected, she has mitigated financial considerations security concerns.

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;

¹⁵ See ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006).

(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 public trust position must be an overall common sense 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, as well as the "whole person" factors. Applicant is a mature, self-made woman, who has seen her share of economic ups and downs over the span of her career. A particularly rocky five year period appears to have recently closed. She is once again steadily employed and making a respectable salary given her experience and past employment. She is soon to be divorced from a husband she has supported since their 2004 marriage. She is living within her means. She understands the dangers of only paying minimum payments on credit cards, just as she has learned the importance of staying timely on her bills.

After Applicant demonstrated that she has an established plan to pay off her second mortgage and that she has taken significant actions to implement that plan, Department Counsel noted he was also troubled with the fact Applicant admits she currently has over \$10,000 in credit card debt. His concern is understandable. It was primarily credit card debt that led Applicant from a \$110,000 severance package to about \$67,000 in debt within a year that led to her bankruptcy. Today, however, Applicant is no longer responsible for her husband, who seems to have had a problem with credit card use. As well, she is thus far able to timely pay more than her minimum payments due to her creditors. Therefore, although her judgment could appear even sounder if she would seek financial counseling, it cannot be said she is presently living beyond her means, not meeting her obligations under her credit cards' terms, exercising poor judgment, or otherwise demonstrating an unwillingness to abide by rules and regulations. Moreover, Applicant knows well what will happen with her security clearance should she again let her debts become delinquent. Therefore, with security concerns thus mitigated, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

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
Subparagraph 1.e:	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.

ARTHUR E. MARSHALL, JR.
Administrative Judge