



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-03505
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: Pro Se

April 8, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on April 17, 2007. On December 2, 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 December 22, 2008. She requested a hearing before an Administrative Judge. I received the case assignment on February 10, 2009. DOHA issued a notice of hearing on February 18, 2009, and I convened the hearing as scheduled on March 19, 2009. The Government offered Exhibits (Ex.) 1-7, which were received without objection. Applicant testified in her own behalf and presented the testimony of one witness. She submitted Exhibits (AE) A-G

which were admitted into the record. I held the record open until April 3, 2009, for any documents that Applicant wished to submit. Applicant timely submitted three documents, which were marked as (AE) H, I, and J. DOHA received the transcript of the hearing (Tr) on March 27, 2009. 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, dated December 22, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.k of the SOR. She provided additional information to support her request for eligibility for a security clearance.

Applicant is a 34-year-old employee of a defense contractor. She graduated from high school in 1993 and attended college for approximately one year. She has worked for her current employer since February 19, 2007 (GE 1). She held a security clearance from 2001 until the recent revocation.

Applicant was in relationship from approximately November 1993 until 1998. As a result of that relationship, she had two children. The father of Applicant's children left in 1998 and has not provided any financial support. During those years, Applicant worked as much as she could and supported her children (Tr. 17). Applicant used her credit to finance everything. Her boyfriend used her credit as well but he did not pay any of the bills. Applicant was faced with overwhelming debt. She filed for Chapter 7 bankruptcy in March 1999. The bankruptcy was discharged on June 24, 1999 (GE 7).

Applicant moved in with her family at that time. In 2002, Applicant married. She and her husband purchased a home in a neighborhood that was safe for their children. She believes they may have lived above their means (Tr. 20).

In 2003, Applicant left her job partly because she was pregnant. She was unemployed from 2003 until 2006. She attempted to do some consulting work and some temporary jobs. Applicant was not making very much money. She and her husband were falling behind in their payments and could not keep up with their expenses.

In 2005, Applicant was expecting another child. She started a full time position until the birth of her child in 2006. She attempted part time employment a few days a week but she could not afford child care. She did not work outside the home at that time.

Applicant and her husband did not ignore the ever increasing debt situation. They tried to provide for their family and manage the debts. Applicant and her husband have five children. They moved in with friends and withdrew funds from a retirement fund. They developed a budget. They contacted their creditors and researched the debts.

The SOR alleged ten delinquent debts, including four judgments and credit card bills. The total amount of delinquent debt was approximately \$25,000 (GE 3). Applicant documented that some of the accounts listed on the SOR for Capitol One are duplicated as judgments. Applicant produced documentation that the judgments for Capitol One alleged in the SOR have been satisfied (AE H)

Applicant discussed her financial status with her father in late 2008. She was concerned about the financial considerations security concerns. Her parents decided that they would give their daughter a gift of approximately \$18,000 (AE C) so that she could pay her debts (Tr. 22). Applicant settled the debts alleged in the SOR. She and her husband have moved to a smaller home in the same neighborhood (Tr. 23). She has a payment plan for Dominion Power (AE G) Applicant submitted documentation that AT&T and Verizon have been paid (AE D).

Applicant's current net monthly income is \$5,025. She is current on her daily expenses. After her monthly expenses, she has a net remainder of \$500 (GE 6). She no longer uses credit cards (Tr 62). Applicant enrolled in a class, "Smart Money Management" designed to address her goals for savings and budgeting (AE J). She has registered for a "Financial Assessment" class and a "Home Ownership" seminar through a state university.

Applicant's employer rates her as superior in her job performance. This is the highest rating. She conducts herself in a professional manner and is respectful. She is a team player who maintains a good attitude. She is being promoted based on performance rating (AE I).

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, 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 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^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on numerous accounts. She admits that she did not meet her financial obligations from 1999 and filed for bankruptcy

which was discharged in June 1999. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where 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 approximately 1999. The father of her two children did not provide for them financially. She worked as much as she could but could not keep paying all the bills. He used her credit. She married in 2002 and she and her current husband incurred more delinquent debt due in part to her unemployment. She had approximately \$25,000 in delinquent debt. This potentially mitigating condition does not 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. As noted above, Applicant had two children to support for many years as a single parent. She had a period of unemployment from 2003 until approximately 2006. Applicant's situation may have started due to underemployment after her separation, and may have initially started a downturn for her. It did impact on her ability to pay other debts. She also related that she and her husband overextended themselves. After she became gainfully employed, she acted as responsibly as she could have in identifying and resolving these debts. She admits making poor financial decisions. I find this mitigating condition partially applies.

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 registered for counseling (AE J). She now has a budget. She has resolved all of her accounts. She has made good-faith efforts to repay her creditors and never ignored the issue. I conclude these 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): "(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) the 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 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 and conclude they are sufficient to overcome the government’s case.

Applicant has a very good work record. She has held a security clearance since 2001. Her current employer rates her highly. She has supported her children and worked hard to manage her bills.

She did not receive any financial support from the father of her first two children. He used her credit and did not pay any bills. Applicant worked as hard as she could but was unemployed for a period of time. She filed for bankruptcy in 1999 which is a legal means to resolve debt.

Applicant is now married and has five children. She and her husband are both working. She received a gift from her father to pay her delinquent debts. She is mindful of her financial responsibilities. She is now in a better position to remain on a sound financial track.

Overall, the record evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under the financial considerations guideline.

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-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. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge