



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-04725
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro Se*

January 13, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on February 6, 2007. On June 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 requested a hearing before an Administrative Judge. I received the case assignment on October 28, 2008. DOHA issued a notice of hearing on November 18, 2008, and I convened the hearing as scheduled on December 9, 2008. The Government offered Exhibits (GE 1-3), which were received into the record without objection. Applicant testified in her own behalf and submitted Exhibits (AE A-B), without objection. I held the record open until January 9, 2009, so that Applicant could submit

additional documents. The submission was timely received and marked as AE C. Department Counsel did not object to the documents. DOHA received the transcript on December 17, 2008. Based upon a review of the record, eligibility for access to classified information is granted

Findings of Fact

In her Answer to the SOR, dated June 27, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.e, 1.h, 1.j, 1.k, 1.l, of the SOR. She denied the other allegations, including ¶ 2.a-2.b of the SOR. She provided additional information to support her request for eligibility for a security clearance.

Applicant is a 47-year-old employee of a defense contractor. She graduated from high school in June 1979 and attended college for about one year. She has worked for her current employer for 14 years, but she did not require a security clearance for her position (GE 1).

Applicant married in 1986 and has two children from the marriage. They are now young adults. She also has two grandchildren who live in her home (Tr. 23). The marriage was quite volatile. Applicant never knew when her husband would bring home his paycheck. There were times when her husband would just disappear for a period of time. She tried to save the marriage by attending counseling. Her husband was an alcoholic and did not make himself amenable to the counseling. In 1994, her husband suddenly left the marriage. The final divorce occurred in 2007 (Tr. 14).

Applicant had a difficult transition after separation and divorce. Her husband provided occasional support from 1994 until 2000 but at the same time he was taking money out of her account without her knowledge (Tr. 25). Applicant was trying to support herself and her two children but the income was reduced from two incomes to one. Her job paid an hourly rate of \$11 an hour which was much less than her husband's income. She had bills from various credit accounts to pay as well as her living expenses, including the mortgage on her home. As a result, Applicant fell behind with payments on bills. She had a home but she sold it in 2006 and moved to another state for more income. With the sale proceeds (\$7,000), she paid approximately \$2,400 on delinquent accounts. The accounts were debts that she and her husband accrued during the marriage (Tr 28).

Applicant incurred moving expenses when she relocated for a new position. The remainder of the \$7,000 from the sale of the home was spent on the expenses that resulted from the move and relocation.

In 2007, Applicant fell ill and was hospitalized for a period of time (Tr. 55). She received short term disability. She also incurred some medical bills from this period of time that she could not pay (Tr. 55).

The SOR alleges 15 delinquent debts for a total of approximately \$32,756 (GE 2 and 3). Applicant established a debt consolidation plan in 1995. She was paying \$400 a month to take care of her payments, but she could not keep up with the monthly amount. She contacted another company who advised her to try to settle with the creditors. She was also advised by the company to close her accounts (Tr. 16). Some of the creditors listed are not familiar to her. Applicant inquired about the accounts that were unknown to her. Some of the accounts were old and she has not been able to track them down. She sought the advice of a group that her employer recommended. On their counsel, she is taking care of the smaller debts at this time. She does not have any credit cards at this time. She was also advised by the company not to contact too many creditors because it “restarts” a cycle and it could appear that she is trying to get more credit (Tr. 17).

Applicant admitted owing six debts listed in the SOR. Applicant has paid the debt in ¶ 1.a for \$139. This is a medical account (AE A). She also has several other medical accounts listed in the SOR (¶¶ 1.k and 1.l). These accounts are being resolved through a payment plan. She pays \$25 monthly on a total of \$1,400.

Applicant has four SOR allegations (¶¶ 1.b, c, n. and o) that relate to AT&T wireless accounts. These appear to be duplicates. Applicant disputed that the accounts had not been paid. She contacted AT & T and learned that she is current on her account. She produced documentation that confirms that she has no delinquent debt on the AT&T wireless account (AE C). The other accounts alleged in the SOR have not been paid but Applicant has contacted them. She plans to settle the larger ones as soon as she pays off the smaller ones.

Applicant had not looked at her credit report prior to the security investigation. As noted above, she did not recognize some of the debts. She attended a few financial counseling classes in 2006. She was again advised that since so many of her accounts are old, she should not attempt to contact the creditors who held large accounts until she was in a position to make a settlement or pay on the debt each month (Tr. 32).

Applicant’s current monthly net income is \$2,800 (Tr. 49). After monthly expenses she has a net remainder of approximately \$200 (Tr. 51). She is paying on her current car loan. She completed financial counseling through work. She also pays on a few other small accounts that are not on the SOR. She had some extra financial expenses due to the hurricane evacuation last year (Tr. 37).

Applicant completed her first security application on February 6, 2007. In that application she answered “yes” to section 28(a) and (b) which asks for information on debts either 180 days delinquent in the last seven years or 90 days currently delinquent (GE 1). She listed approximately \$1,600 in delinquent debt (GE 1).

Applicant explained that she completed the application on line at work during her lunch period (Tr. 44). She did not have the information on her accounts with her and was overwhelmed. She was candid that she had delinquent debt but was not sure about

the status of the accounts and answered the questions to the best of her ability. She said it was a misunderstanding and that she was not familiar with the process. She was credible in his testimony that she had no intent to deceive the government.

When Applicant was interviewed as part of the security clearance process, she explained her financial status and her delinquencies. She indicated that she did not recognize the names of some of the accounts. She reported to the investigator that in her 2006 credit report the debts were not listed. She does not want to file bankruptcy because she wants to pay her debts (Tr. 47).

Applicant conducts herself in a professional and trustworthy manner. Her current supervisor recommends her for a security clearance based on her performance, personal conduct, and professional conduct in the workplace (AE) B. She performs her duties in a timely manner with the highest integrity. She pushes forward for new challenges to meet customer demands. Applicant's program manager describes Applicant as a kind and thoughtful person who consistently demonstrates high standards and ethic in her actions with others. She leads a team and provides exceptional work to the government customer. Applicant is rated as a very dependable, positive, and competent professional. She is recommended for a security clearance by all her managers.

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), Aa history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on numerous accounts during her marriage and was unable to meet her financial obligations from 1994 until the present time. Her credit reports confirm the debts. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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 when her husband left the marriage in 1994. Her husband also took money from her account without her knowledge. Her income was much less than her husband's and she had difficulty supporting herself and her two children. She established a debt consolidation plan in 1994 but she could not keep up with the payments. She sought financial guidance and counseling. While those circumstances may have precipitated the debt, the inquiry does not end at that point. She paid several smaller debts in the SOR and intends to repay the larger ones as soon as she can. She has not been able to settle some of them due to the large amount of money that is required for the settlement. Her conduct over the last six months with her creditors removes security concerns or doubts about her current reliability, trustworthiness, and good judgment. This potentially mitigating condition applies.

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 experienced separation and divorce. She lives within her means. She supported her family with an income that was much reduced. She was ill for a period of time. Applicant tried to consolidate her debts as early as 1994. She could not keep up with the payment due to high interest charges. She was as aggressive as she could in initially addressing or resolving her delinquent debts. I find this potentially mitigating condition 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 attended financial counseling through her work company. She investigated her credit report to track down unknown debts. She has paid some debts. I find her efforts are sufficient to carry her burden in this case. I conclude these potentially mitigating conditions apply.

AG ¶ 20(e) applies where the evidence shows "the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." In this case, Applicant provided documentation concerning the duplicate AT&T accounts.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" is potentially disqualifying.

In this case, when Applicant completed her 2007 security application, she answered "yes" to the question about any debts that were 90 or 180 days delinquent. She listed \$1,600 in debt and explained that she did not have any paperwork with her. I found her credible. The allegation of falsification is unsubstantiated. I do not find that she deliberately provided false information on her SF 86 in 2007.

Thus, Applicant's allegation of deliberate omission is mitigated under AG 17(f) "the information was unsubstantiated or from a source of questionable reliability."

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.

Through no fault of her own, Applicant's marriage created havoc with her financial situation beginning in approximately 1994. Her husband disappeared at times and did not help support Applicant and her two children. Applicant tried to keep the marriage together but despite counseling was unable to do so. Her husband left the marriage in 1994 and also took money from her accounts without her knowledge. She was working and continued to do so but at a much lower rate of pay. She supported her two children. She maintained them in the family home. She paid the mortgage and daily expenses. She acted responsibly after her husband left her in 1994 and established a debt consolidation program. However, she could not maintain that program. She had limited resources and made decisions which provided her family with their basic needs. She sought financial counseling and heeded the advice of the company. She was told to pay smaller debts first and to pay the larger ones later. She tried to settle some accounts but did not have the requisite amount to do so. She decided not to file bankruptcy because she wants to pay her debts.

She moved to another location to improve her pay. She sold her house and used part of the proceeds to pay her delinquent debts. She lives within her means. She had an illness about a year ago which added to her debt. She is paying the medical accounts.

Applicant's acquisition of debt was not the result of poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations. Based on the facts regarding her lifestyle and husband's abandonment, there is no indication that her debt raises questions about her reliability, trustworthiness, or ability to protect classified information. Although she still has \$32,000 in debt, she has made appropriate strides to address that debt and instituted organized repayments on some accounts. In light of these financial considerations and the "whole person" analysis, I find that Applicant has mitigated financial considerations security concerns.

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 has mitigated the security concerns arising from under the financial considerations and personal conduct guidelines.

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-o:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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