



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



In the matter of:)
)
-----) ISCR Case No. 08-04828
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: Pro Se

February 27, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on June 14, 2006. On September 19, 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 October 29, 2008. She requested a hearing before an Administrative Judge. I received the case assignment on January 8, 2009. DOHA issued a notice of hearing on January 13, 2009, and I convened the hearing as scheduled on February 4, 2009. The Government offered Exhibits (Ex.) 1-3, which were received without objection. Applicant testified in her own behalf. She submitted Exhibits (AE) A-B which were admitted into the record. I held the record open

until February 24, 2009, for any documents that Applicant wished to submit. Applicant submitted three documents, which were marked as AE C, D, and E. The record closed on February 24, 2009. DOHA received the transcript of the hearing (Tr) on February 12, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, dated October 29, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.m 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 1979, and attended college on a part time basis. She obtained her college degree in 2006. She has worked for her current employer since June 2006 (GE 1). She held a security clearance until the recent revocation.

Applicant married in 1986 and separated from her husband approximately 16 years ago. She received a final divorce approximately 13 years ago. She has two daughters from the marriage. Since her divorce, Applicant has worked and provided for her daughters as a single parent. Although she has worked her entire adult life, her employment included many lower paying positions and in general she has been underemployed through no fault of her own.

Applicant moved several times in order to procure better employment. She managed a small business and various restaurants. She admitted that during this time she maintained herself financially but she used credit cards extensively (Tr. 16).

In 1999, Applicant moved to her home state so that her family could provide some emotional support and help care for her daughters while she worked. Her career options were fewer in that state. She struggled to find good paying positions. Again, Applicant admitted that she made some poor financial decisions. She used credit cards to pay for daily expenses.

In 2006, Applicant obtained her current full time employment with a defense contractor. She was earning a decent salary. She admits that she overextended herself by renting a house that was too expensive and by buying an expensive car (Tr. 17). She was maintaining and paying her current expenses. She acknowledged that she was not paying on the debt that she incurred prior to 2006.

In 2007, Applicant decided to repay her debt. She settled a Sears account for \$2,698. She also settled a debt that she had with Household Bank for \$1,800. Her credit report confirms that the Sears account is paid (GE 3).

Applicant's single daughter, 19 years-old, lived with Applicant. She was financially independent and paid her car insurance, car payment and various personal

expenses. Applicant provided room and board. In December 2007, Applicant learned that her daughter was seven months pregnant. Applicant's daughter had medical problems during the pregnancy that prevented her from working. Thus, Applicant was now responsible for her daughter's bills. After Applicant's grandchild was born in February 2008, her daughter could not find any employment. Applicant is now financially responsible for her daughter and grandchild. Applicant claimed them as dependents for tax purposes (AE A). Since Applicant was paying her bills as well as her daughter's bills and paying for the baby, she had no money left to repay her delinquent debt.

The SOR alleged delinquent debts, including a vehicle repossession, a trailer home repossession and credit card bills. The total amount of delinquent debt was over \$42,000. Applicant now owes approximately \$38,652 (GE. 3).

Applicant admitted that the accounts in allegations ¶ 1.a through 1.m are delinquent accounts. She also acknowledges that they are not paid except for the one account with Household Bank (referenced above) in allegation 1.i.

Applicant's current net monthly income is \$2,490. After her monthly expenses, she has nothing left. She is behind in her utility bills. She has a credit card that she has maxed out. She borrowed money from her mother to have work done on her car. She deferred her student loans but the deferral period is exhausted. She also borrowed money recently from a family member to pay some expenses (Tr. 33). She has borrowed against her retirement account (Tr. 39). Applicant does not want to file for bankruptcy. She is nervous that it will have a negative effect on her job. She wants to take responsibility for her debts and pay them (Tr. 36).

Applicant registered for a one-day seminar on "Women and Money" (AE B). She intends to follow this up with a budget counselor. She wants to learn to use a budget and improve her financial management skills (Tr. 23). Applicant is more realistic at this point. She did not buy a new car when her vehicle was stolen in January 2008. She and her daughter share the same car.

Applicant's plan is to use her tax refund of \$6,400 wisely. She had already filed and expects her refund shortly (AE A). She hopes to pay her insurance for six months and to pay other current bills. She wants to consolidate her student loans (Tr. 51).

Applicant's employer highly recommends her for a security clearance (AE C). Her direct supervisor considers her a "fantastic asset." Her key strengths are an ability to adapt quickly, and learn and process new tools for use directly in various programs. She is honest, forthright and has the highest ethical standards. She is trustworthy in protecting sensitive data.

Applicant is a subject matter expert in the company. She is an excellent engineering leader. She has been very reliable and is trusted with program and company material. She is a mentor to junior members of her team (AE D).

Applicant is consistently described as a key asset to the company. She has been instrumental in supporting very unique and complex contractual requirements. Her astuteness, dependability and moral judgment have been demonstrated time and again. She has served in the defense industry for over 30 years (AE E).

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. She admits that she did not meet her financial obligations from 2000 until the present with the exception of two accounts. Her credit reports confirm that she has recent debts as well. 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 Athe 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.^o Applicant's financial worries arose in approximately 2000. She accumulated some delinquent debt due to an admitted use of credit cards. While those circumstances may have precipitated the debt, the inquiry does not end at that point. She has not acted responsibly. She has approximately \$30,000 in delinquent debt. This potentially mitigating condition does not apply.

Under AG & 20(b), it may be mitigating where Athe 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.^o As noted above, Applicant reported that her daughter became pregnant and had a child in 2008. Applicant's daughter lived with her and Applicant supported her and her grandchild. Her daughter is still living with her. Due to the fact that her daughter could not work,

Applicant paid her daughter's bills. She could not keep paying on her own delinquent debt. Applicant's situation may have started due to underemployment after her separation and divorce, and may have initially started a downturn for her. It did impact on her ability to pay other debts. She also related that she overextended herself when she was working. After she became gainfully employed, she did not act 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 has not received formal financial counseling. She registered for a seminar on finances for women and then plans to get help to manage her financial problems. She promised to use her tax refund to pay on recent expenses and some debt. Her promises to pay in the future do not constitute evidence of financial reform or resolution of debts. I conclude these mitigating conditions partially 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 insufficient to overcome the government's case. Applicant's marriage ended in separation and divorce. She raised her two daughters as a single parent. She worked but was underemployed for many years. She moved to procure better jobs but overextended herself with credit cards. Applicant has a long history of financial difficulties and has not resolved many debts that occurred after her gainful employment. She admitted that she has no handle on her finances and that she overextended herself with her credit cards. Her recent efforts are not sufficient for her to meet the burden in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has not mitigated the security concerns arising from her financial considerations and personal conduct.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge