



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



In the matter of:)
)
-----) ISCR Case No. 08-06387
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Pro Se

April 16, 2009

Decision

ABLARD, Charles D., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on July 30, 2007. On November 4, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 8, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed, and I received the case assignment on January 30, 2009. DOHA issued a notice of hearing on February 3, 2009, for a hearing on February 19, 2008, and it was convened as scheduled.

At the hearing, the government offered six exhibits (Exhs. 1-6) that were admitted in evidence without objection. Applicant testified on her own behalf but submitted no documents. DOHA received the transcript of the hearing (Tr.) on February 26, 2009. At the hearing, I granted Applicant's request to keep the record open until March 20, 2009, to submit additional evidence. At the request of Applicant, the period was extended until March 27, 2009. A post-hearing submission was received within the specified time containing two documents (Exhs. A-1 and 2). The government had no objection to the submission and the documents were admitted in evidence without objection.

Findings of Fact

In her answer, Applicant admitted all of the ten allegations in the SOR concerning delinquent debts of approximately \$28,000. Applicant is a 45-year-old employee of a defense contractor who has worked for the company and its predecessor since 1994. She has risen in responsibility and now is a lead project manager supervising ten people. She has held a security clearance since 1997 without any adverse incidents.

Applicant is married with four children ages 21, 17, 14, and 13. Her oldest child is now on his own and is paying his own way. She has been the sole income provider for the family since 2000 when her husband left his job to stay at home to help with the children and the household. He still prefers not to work even though the children are no longer in need of his supervision or at-home care.

It also was in 2000 that Applicant had the first of two spinal surgeries that caused her to be placed on medical leave reducing her income by 2/3s. She was out of work for over five months after that surgery. The second surgery was in 2001 and she was out of work for six weeks. Each surgery cost \$40,000 to \$50,000. Her insurance paid 90% of the cost but she was required to pay the balance. It was during the period of illness and unemployment that many of the debts were incurred.

At the time Applicant submitted answers to interrogatories in August 2008, she had a negative monthly cash flow of \$197. Several weeks ago, she received a promotion and pay increase of \$2.50 per hour so her net monthly gross income has increased by \$400 (Tr. 48-49). Also, she has taken steps over the last six months to reduce her housing costs with a smaller home paying less rent, and uses less utilities. She is also making wiser purchasing decisions for her family. She no longer pays auto insurance for her son's car. She now has a \$600 per month positive balance at the end of the month (Tr. 45-53). She currently has a gross income of \$5,300 per month and net income of \$4,100.

An analysis of the current status of the delinquent debts listed on the SOR indicates as follows:

1. SOR ¶ 1.a.: Medical bill of \$164 from one of the surgeries on which there has been no payment (Tr. 21).

2. SOR ¶ 1.b.: Visa charge of \$1,485 for repair for her husband's auto. Payment plan has been established. The debt is being paid with \$198 monthly payments and will be fully paid in the next 60 days (Exh. 2, pp 4 and 5) (Tr. 22 and 55).

3. SOR ¶ 1.c.: Medical bill of \$604 is one of three bills from her hospitalization for surgery that she intends to pay (Tr. 25).

4. SOR ¶ 1.d.: Medical bill of \$971 is the second of the bills from surgery (Tr. 25).

5. SOR ¶ 1.e.: Medical bill of \$137 is the third of the bills from surgeries (Tr. 25).

6. SOR ¶ 1.f.: Visa credit card debt of \$13,200 on a card that her sister named her as an authorized user when she was unemployed after her surgeries. The accumulated debt was approximately \$8,000 and the additional amount is for interest and charges. Applicant charged approximately \$4,000 on the card and has offered without success to pay her sister that amount since she believes the balance is for her sister's debts, and her sister's daughter's debts. Applicant made the last payment to be made on the account in 2006 of \$500. She has been in contact with the creditor about resolving the matter but without resolution since the company insisted on full payment. Her mother has become involved in the issue, and expressed a willingness to either help pay the debt or try to resolve the conflict between the two sisters. Applicant recognizes that she may have to pay the full amount and will do so if necessary (Tr. 26-32).

7. SOR ¶ 1.g.: Although Applicant accepted responsibility for all the SOR debts, this debt for \$62 is unknown to Applicant (Tr. 32).

8. SOR ¶ 1.h.: Medical bill of \$197 for emergency room services for Applicant's husband which is not paid (Tr. 197).

9. SOR ¶ 1.i.: Medical clinic bill for \$29 that she believes is her son's bill (Tr. 34).

10. SOR ¶ 1.j.: Direct TV bill of \$196 which she will pay with increased income (Tr. 35).

11. SOR ¶ 1.k.: Quest Communications bill for \$186 will be paid with increased monthly income (Tr. 36).

12. SOR ¶ 1.l.: Cash advance amount of \$307 to supplement income when unemployed will be paid with increased monthly income (Tr. 36).

13. SOR ¶ 1.m.: Auto loan of \$10,500 on 2003 Oldsmobile became delinquent but she has paid the delinquency and, for several months has been paying \$499 per month which is \$100 more than the required payment (Tr. 39). She now has paid the loan down to \$6,500 with a recent payment of \$1,000 (Exh. A-2).

14. SOR ¶ 1.n.: Medical expense of \$240 for her husband is not paid (Tr. 40).

15. SOR ¶ 1.o.: Auto insurance payment of \$91 for her son's car has been paid (Tr. 41.).

In summary, Applicant has taken positive steps to pay or negotiate the three largest debts (SOR ¶¶ b., f., and m). The remaining debts total almost \$3,000 of which approximately \$2,500 is for medical expenses for herself, her son, and her husband which she is now able and willing to pay. She does not have any credit cards. Her principal asset is \$11,000 of stock value in an Employee Stock Ownership Plan she has accumulated over the 15 years of employment with her company.

Applicant is highly regarded by her supervisor who describes her as having "diligently worked for this organization and our Government customers for the past 15 years without one blemish on her work record." He has discussed her financial difficulties with her and is convinced she can and will resolve the remaining debts. He expressed amazement that she was faced with a problem as to her security clearance as she is the most worthy person in the organization. She started her employment as a data collector and has grown steadily in her responsibilities to the company and its predecessor company. At one time she supervised 25 persons. She has received numerous performance awards and letters of commendation for exemplary work (Exh. A-1).

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 overarching 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 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” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations may raise

security concerns.” Applicant incurred delinquent debts over several years and most were unresolved. The government established sufficient facts to raise a security concern.

The guideline also includes examples of mitigating conditions (MC) that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(b), the security concern may be mitigated 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 had extensive medical expenses which resulted in several months of unemployment. Those factors were the primary cause of most of the indebtedness. Until recently her income was insufficient to allow her to resolve all the debts. However, she was able to work on the three largest debts by developing a payment plan for one, paying her auto loan at an accelerated rate, and she is attempting to negotiate the credit card debt with her sister and the credit card company.

While the debts have been owed for several years, I conclude that the Applicant has done all that she could have done with her limited income to resolve the debts until recently. She has worked for over fifteen years with the same employer and her income is only now sufficient to allow her to resolve all of the accumulated debts. She understands the impact of debts on her ability to hold a security clearance. I am confident she will do so with oversight from her supervisor. Thus, I conclude that she has acted responsibly and the mitigating condition is applicable.

Under AG ¶ 20(d) the security concern may be mitigated when the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts. Although some of the debts have not been paid or a settlement negotiation initiated, they are the smaller debts and most relate to her medical bills or those of family members. She has made substantial efforts to resolve the three largest delinquent debts which she felt were the most important to protect against litigation and repossession. From the evidence presented, I find this mitigating condition is also applicable.

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.

Applicant is a mature adult with significant responsibility in her work for which she is highly regarded by her company and her supervisor. She has grown in responsibility over the years of her employment. She has been generous to her own immediate family and is burdened by being the sole income provider for her family. Now that one of her sons is mature and no longer dependent on her, she can resolve her financial obligations more quickly. She has taken positive and specific steps to reduce her expenses so that she has more disposable income to resolve the remaining debts and remain solvent.

The mitigating evidence under the whole person concept is substantial. Applicant's excellent record of employment weighs heavily in her favor. There is no evidence of any security infraction. She has taken actions that she was able to undertake with her limited income and substantial family obligations after her extensive medical expenses and periods of unemployment as a result thereof.

The Appeal Board has addressed key element in the whole person analysis for financial cases as being establishment of a "meaningful track record" This does not require that every debt be paid but that an applicant demonstrate a plan and taken significant steps to implement the plan. All outstanding debts do not need to be addressed simultaneously, and may provide for payment of debts one at a time. There is no reason not to trust Applicant to do what she intends to do, or to in any way compromise national security. (ISCR Case No. 07-06482 App. Bd. May 21, 2008).

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), a careful consideration of the whole person factors and supporting evidence, application of the pertinent factors under the adjudicative process, and interpretation of my responsibilities under the guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude she is eligible for access to classified information.

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

Subparagraphs 1.a.-o.: 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. Access to classified information is granted.

CHARLES D. ABLARD
Administrative Judge