



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



In the matter of:)
)
) ISCR Case No. 08-06441
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: [Applicant's father], Personal Representative

March 31, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

On September 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on October 14, 2008, and requested a hearing before an administrative judge. The case was assigned to me on February 17, 2009. DOHA issued a notice of hearing on February 26, 2009, and the hearing was convened as scheduled on March 19, 2009. The Government offered Exhibits (GE) 1 through 4,

which were received without objection. Applicant testified on her own behalf, called one witness, and submitted Exhibit (AE) A, which was received without objection. DOHA received the transcript of the hearing (Tr.) on March 27, 2009.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. She attended college for a period but did not obtain a degree. She is married with two children, ages ten and seven.¹

The SOR alleges six delinquent debts totaling \$9,601. SOR ¶¶ 1.a through 1.e consist of five medical debts totaling \$472. SOR ¶ 1.f alleges a debt to a collection company for \$9,129. Applicant admitted all the allegations in her response to the SOR.

Applicant's husband served in the United States Army. There is no indication of any financial difficulties before he was discharged in 2000. He was unemployed for an extended period and certain bills went unpaid. The debt of \$9,129 is to a collection company, collecting what was originally a credit card debt. The balance on the account was about \$4,500 when Applicant stopped making payments in 2000. Her husband rejoined the Army in 2001, and their finances stabilized. She paid several accounts that were delinquent. She contacted the creditor in SOR ¶ 1.f after her husband was back in the Army about paying the debt. The company wanted half of the debt paid up front and the remainder paid in three monthly payments. It was unwilling to accept any other payment arrangements. Applicant and her husband could not afford that much money in such a short period and did not pay the account. She has not heard from the creditor in many years. The debt is no longer listed on her credit report. She believes the account is uncollectable because of the statute of limitations and is hesitant to contact the creditor because it could revive the debt and open her to a lawsuit.²

Applicant's believes the five medical debts should have been paid through her husband's military medical insurance, TRICARE. TRICARE has different plans. Her family had TRICARE Prime, the plan that has the least flexibility to obtain health care providers, but normally incurs the least out-of-pocket costs. She stated that she never received any medical bills that were not paid. She learned about the debts when she took her child to the hospital and they told her that she had open accounts. She requested an accounting of the debts, but the hospital refused to provide it to her, citing privacy concerns. She even received a \$250 refund from an overpayment she made on another bill. She was perplexed as to why the hospital sent her a refund if the hospital believed she owed on her accounts. She is willing to pay the debts if they are her responsibility, but will not pay them until she is provided a detailed accounting of the debts.³

¹ Tr. at 18; GE 1.

² Tr. at 16-18, 21-23, 30-32; Applicant's response to SOR; GE 1-4.

³ Tr. at 14-16, 19, 23-24, 28-30; Applicant's response to SOR; GE 1-4.

Applicant's husband was medically discharged from the Army in 2006. He has been steadily employed since then. Applicant was a stay-at-home mother for about two years from about late 2003 through 2005. She has had constant employment since she returned to the workforce. She has worked for her current employer since the summer of 2007. Applicant has not received financial counseling. Other than what is reflected in the SOR, she has no delinquent debts. Her family's current financial situation is sound. They are able to pay their debts and expenses with some extra at the end of the month.⁴

Applicant's supervisor wrote that her job performance is excellent and her character is that of an honest, dedicated, and hard working person. He recommends her for a security clearance.⁵

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 to be used 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, administrative judges apply the guidelines 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(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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

⁴ Tr. at 19-21, 24-28; GE 1-4.

⁵ AE A.

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 adverse 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20 are potentially applicable:

- (a) 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;

(b) 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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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.

Applicant's financial problems started in 2000, when her husband was discharged from the military and was unemployed for an extended period. Their finances stabilized after her husband returned to the military a year later. She paid several debts, but the creditor for the large credit card debt refused to accept any payment arrangements other than half immediately and the rest in three monthly payments. She could not afford those arrangements and did not pay the debt. It has since dropped off her credit report. She is reluctant to pursue further negotiations with the creditor for fear that it would revive the debt from being barred by the statute of limitations and open her to a lawsuit. Applicant credibly testified that she never received medical bills that went unpaid, and that she would pay the medical debts if the hospital responded to her request to provide a full accounting of the debts. Her finances are currently in good shape. She and her husband are both employed. They are not accruing new delinquent debt, and they have money left over at the end of the month. Her testimony about the medical debts was credible. The amount of her medical debt is insufficient to raise any real security concerns.

AG ¶ 20(a) is not completely applicable even if the credit card debt is uncollectable because Applicant acknowledged she owed the debt and it has never been paid. The medical debts have also not been completely resolved. Her husband's unemployment qualifies as a condition that was largely beyond her control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant paid some debts after her husband rejoined the military. She could not make the payments that the credit card required and that debt was never paid. She never went back and attempted to renegotiate payments with the creditor, which would have been the responsible action under the circumstances. AG ¶ 20(a) is partially applicable. That debt is no longer listed on her credit report and Applicant believes it is barred by the statute of limitations. However, Applicant does not receive full credit under AG ¶ 20(d) for

relying on the statute of limitations as a defense to paying the debt.⁶ She has not received financial counseling. However, she and her husband are now financially solvent. Her financial problems are being resolved and are under control. AG ¶ 20(c) is partially 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. I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is a 31-year-old mother of two who encountered financial difficulties in 2000, when her husband was discharged from the Army and could not find employment. He rejoined the Army in 2001, and their finances stabilized. They paid several debts, and with the exception of the relatively small medical debts, she has not accrued new delinquent

⁶ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

