



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



In the matter of:)
)
) ISCR Case No. 08-06932
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro Se*

July 28, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On February 8, 2008, Applicant submitted a Questionnaire for Sensitive Positions, Standard Form 86 (SF 86). On October 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), 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.

On November 7, 2008, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On March 27, 2009, Department Counsel prepared a File of Relevant Material (FORM) containing seven Items, and mailed Applicant a complete copy on March 31, 2009. Applicant received the FORM on April 7, 2009, and had 30 days from its receipt to file objections and submit additional information. On May 5, 2009, Applicant submitted exhibits to which Department counsel had no objection. On May 15, 2009, DOHA assigned the case to another administrative judge and re-assigned it to me on July 7, 2009. After receiving the file, I marked Applicant's exhibits as AE A through G and entered them into the record.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations contained in the Paragraph 1 of the SOR. She supplied numerous documents in support of her request for a security clearance.

Applicant is 54 years old and unmarried. She has two grown children. She completed more than three years of college. Since September 2007, she has worked as a resource analyst for a federal contractor. Before this position, she had worked in private industry in the area of accounting for a number of years, earning a good salary. (Item 4)

In January 2006, Applicant and her fiancé relocated from one state to another, in order to start an automotive transportation business, purchase a home and get married. Subsequently, they invested in an expensive truck and incurred other business expenses. Six months after starting the business, her fiancé became seriously ill and could not work. In September 2006, she found employment, but was unable to manage the medical and household bills on her salary, in addition to the outstanding business expenses. In order to pay the bills, she borrowed from her retirement account and put the house on the market, hoping for a sale. Despite a \$100,000 investment in the house, she was unable to obtain a home equity loan because of the outstanding business debts. (Item 4 at 16-17) In May 2007, her fiancé died of a brain tumor. Her house is still on the market.

In September 2007, Applicant began a position with her current employer. Initially her salary was \$54,000; as of September 2008, it rose to \$70,000. According to a December 2008 budget, her net monthly income is \$3,252 and expenses are \$1,430. She pays about \$1,770 in financial obligations, leaving a small remainder. She has consulted with a credit consolidation firm to help establish an affordable plan to resolve her delinquent debts. (Item 6 at 2)

Based on a credit bureau report (CBR), dated August 18, 2008, the SOR alleged six delinquent debts, totaling \$59,056, two of which are related to personal expenditures, and four of which relate to the operation of failed automotive transport business. The status of the debts is as follows:

1. SOR ¶ 1.a alleges a \$7,836 debt owed to a credit card company. Applicant is negotiating a resolution. (AE A)
2. SOR ¶ 1.b alleges a \$6,317 debt owed to the credit card company listed above. She is negotiating a resolution. (AE A)
3. SOR ¶ 1.c alleges a \$13,751 debt owed to a credit card company. She negotiated a resolution and began making monthly payments of \$375 at the end of February 2009. She anticipates that the debt will be paid by October 2012. (AE E, F, G)
4. SOR ¶ 1.d alleges a \$20,543 debt owed to a credit card company. She is negotiating a resolution of the debt. (AE A)
5. SOR ¶ 1.e alleges a \$9,603 debt owed on an automobile repossession. She has been making monthly payments of \$200 since September 2008. The account is in good standing. (AE D)
6. SOR ¶ 1.f alleges a \$1,006 debt owed to a telephone company. She paid the debt in December 2008. (AE A, C)

In summary, Applicant resolved three of the six debts and is negotiating resolutions for the remaining three.

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(a), 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. According to 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 and 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 that an 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 adverse to an applicant 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 *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for Financial Considerations are 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.

AG ¶ 19 sets forth nine conditions that could raise security concerns, two of which are potentially disqualifying in this case:

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

Based on a CBR and her admission, Applicant began accumulating a significant amount of debt in 2007 that she has been unable to satisfy until late 2008. The evidence is sufficient to raise these two disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. AG ¶ 20 sets forth six conditions that could mitigate security concerns arising from financial difficulties, three of which may be applicable:

(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; and,

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

Between 2006 and 2007, Applicant encountered circumstances that were clearly beyond her control and resulted in her incurring a significant amount of debt, viz., the death of her fiancé and a failed business endeavor. She unsuccessfully attempted to manage the debt by withdrawing monies from her retirement funds and applying for a home equity loan. Hence, AG ¶ 20(b) applies. Applicant presented evidence that she sought credit counseling and established a repayment plan for two debts, on which she has made a couple payments. She paid one debt in December 2008. Hence, she demonstrated a good-faith effort to repay three debts and is trying to resolve the remaining three. Her actions are sufficient to trigger the application of AG ¶ 20(c) and AG ¶ 20(d).

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). They include the following:

(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.

According to 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 54-year-old woman, who encountered a series of devastating personal and economic setbacks in 2007. Despite those difficulties, she has taken significant steps to address the resulting delinquent debt and manage her finances, demonstrating her reliability and good judgment. In addition, she has a job that affords her the financial means to continue paying her obligations. Based on her awareness of the effect that future financial delinquencies could have on her employment, I do not believe similar problems will recur. There is no other adverse information in the record file that raises a security concern. Overall, the record evidence leaves me without doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under financial considerations.

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 to 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge