



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



In the matter of:)
)
) ISCR Case No. 08-07603
)
)
 Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
 For Applicant: *Pro Se*

March 23, 2009

Decision

DAM, Shari, Administrative Judge:

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

On March 7, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On October 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 or about November 10, 2008, and requested a hearing. DOHA assigned the case to me on December 5, 2008, and issued a Notice of Hearing on January 7, 2009. The case was heard on January 27, 2009 as scheduled. Department Counsel offered Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified, called two character witnesses, and offered Exhibits (AE) A through H into evidence without objection. At the conclusion of the hearing, I left the record open until February 13, 2009, to give Applicant an opportunity to submit additional information. Applicant timely submitted four exhibits that were marked AE I through L, and admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on February 4, 2009.

Procedural Issues

At the commencement of the hearing, Department Counsel withdrew Paragraph 2, related to security concerns raised under the Personal Conduct guideline. (Tr. 9)

Findings of Fact

Applicant admitted all allegations contained in the SOR, except 1.j, 1.k, 1.m, and 1.x. Her admissions are incorporated into the following findings of fact:

Applicant is 42 years old and twice divorced. She has a 13-year old son from a first marriage who resides with his father. She married her second husband in February 2001 and separated in October 2002. They were divorced in March 2005. She graduated from high school in 1985 and completed two years of business school after that. From 1991 until February 2008, she had various low paying positions with law firms, banks, insurance companies, and private companies. She was unemployed from July 2007 until February 2008, and from June 2005 until November 2005, for a total of about 14 months. In February 2008, she started her present position as an armed security officer with a defense contractor. (GE 1)

Applicant's financial problems began after she married her second husband in 2001 and became responsible for all of their joint debts. (Tr. 41) During that time, she had a surgical procedure that resulted in additional medical bills, not covered by insurance. (Tr. 49) In May 2006, she hired a law firm to resolve her delinquent debts and avoid bankruptcy. (Tr. 88) However, she was unable to make many payments on the debts or pay the law firm's monthly fee because she needed to move out-of-state quickly due to her former husband's criminal behavior in September 2006. She thinks she made about four payments on two debts. (Tr. 63; 90; 92)

In January 2009, Applicant again retained the law firm to help with her financial delinquencies and credit problems. On January 14, 2009, the firm began disputing some of the debts listed on the SOR. (AE I & J) She recognizes that the firm has a high monthly fee of \$80, but feels that "it is worth it because they are going to help me re-establish my credit. But I am going to pay this. I have to pay them." (Tr. 102) She sincerely asserted, "I just don't want this over my head any longer. It has been since I

separated from my divorce, -- when I got divorced and it weighing heavy on me. I just want to get these debts paid off.” (*Id.*) Applicant sometimes works 14-hour days and has been unable to contact the bulk of the creditors because she does not have a computer at home and cannot use her employer’s computer for personal matters. (Tr. 99) On February 12, 2009, she executed a Debt Settlement Agreement that includes four delinquent debts, totaling \$16,043. Payments on the agreement are set to begin in March 2009. The company will not handle outstanding medical or utility bills. (AE K & L)

Based on credit bureau reports (CBR), dated April 2008 and August 2008, the SOR alleges 28 delinquent debts, totaling approximately \$22,300, which started accumulating in September 2001 and continued into April 2008. (GE 2 & 3) The status of the debts is as follows:

Four debts, previously disputed, are included in the debt settlement plan: ¶ 1.b for \$3,177 (educational loans); ¶ 1.j for \$10,000 (a previous automobile repossession); ¶ 1.k for \$1,175 (credit card); and ¶ 1.k for \$709 (credit card). The amount of the monthly payment is not included in settlement plan, as the company is in the process of negotiating a settlement amount for these four debts.

Eight debts are being investigated and disputed: ¶ 1.a for \$459; ¶ 1.c for \$532 and ¶ 1.x for \$1,153 may be duplicates; ¶ 1.d for \$394 and ¶ 1.q for \$305 may be duplicates; ¶ 1.g for \$110, ¶ 1.m for \$104 and ¶ 1.n for \$113 may be duplicates. These total \$3,170. (AE L)

Eight medical debts remain unresolved: ¶ 1.e for \$10; ¶ 1.f for \$369; ¶ 1.h for \$50; ¶ 1.r for \$66; ¶ 1.s for \$50; ¶ 1.t for \$122; ¶ 1.u for \$240; and ¶ 1.v for \$29. These total \$936.

Five utility debts remain unresolved: ¶ i. for \$229; ¶ 1.o for \$206; ¶ 1.w for \$104; and ¶ 1.bb for \$104. These total \$643.

Four miscellaneous debts remain unresolved: ¶ 1.p for \$1,341 (credit card); ¶ 1.y for \$66; ¶ 1.z for \$240; and ¶ 1.aa for \$850. These total \$2,497.

Prior to being placed on an administrative leave of absence pending the outcome of this proceeding, Applicant was earning a net amount of \$2,000 a month. (Tr. 80; AE B) After paying her expenses and sending her son some money, she has very little money at the end of the month. She does not have any savings, nor does she use credit cards. (Tr. 83) The last time she had a credit card was in 2001. (Tr. 50) While she was living with her fiancée her financial situation was much better.

Applicant’s supervisor, a senior site manager, testified. He has known Applicant since January 2008. He considers her to be an “exemplary employee.” (Tr. 19) He is aware of her financial problems. (Tr. 31) Applicant’s fiancée testified. They have been engaged for about three years, and known one another for about ten years. (Tr. 33). She has discussed her financial problems with him over the years and the steps she

has taken to attempt to resolve them. They do not live together now, but have in the past, and will in the future. (Tr. 38) Recently, they separated because their landlord's property went into foreclosure, requiring them to move quickly and causing them to spend around \$3,500 in moving costs. (Tr. 87) He attributes many of her debts to her former husband's failure to pay his share of expenses and criminal behavior. (Tr. 39) He has a good position with a delivery company.

Applicant submitted five letters of recommendation: one from her project manager, three from co-workers who have military and law enforcement backgrounds, and one from a friend. All of the letters are very supportive of her efforts and comment on her noteworthy work ethic, reliability and trustworthiness. (AE C, D, E, F, and G)

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 commonsense 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.

Directive ¶ E3.1.14 requires the Government to 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 and has the ultimate burden of persuasion as to obtaining a favorable security decision." 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."

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.

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.

AG ¶ 19 describes two conditions that could raise a security concern and maybe be disqualifying in this case:

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

Applicant began accumulating a significant amount of delinquent debt in 2001 while married to her second husband and after their divorce. Those debts continue into the present and are noted on two 2008 CBRs. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's delinquent debts arose in 2001 and continue into 2008. AG ¶ 20(a) does not apply because they are current and have been ongoing for seven years. Some of Applicant's financial problems are attributable to her second husband and two periods of unemployment, totaling 14 months. Those conditions were "beyond her control." There is evidence that while accumulating the debts she sought to responsibly manage her obligations with the assistance of a law firm, albeit such attempts were thwarted in 2006. Hence, AG ¶ 20(b) has some application. In January 2009, she again employed the law firm to resolve her delinquencies, and executed a debt consolidation plan in February 2009 to begin the resolution and repayment of four debts previously disputed. Although there is not sufficient evidence to indicate that the entire problem is under control, there is some evidence that a large portion of the debt, \$16,000 of \$22,000, is in the process of being resolved, warranting a limited application of AG ¶ 20(c). She also executed a repayment agreement, evidencing some good-faith effort to resolve the debts, triggering a limited application of AG ¶ 20(d). She produced evidence that she recently disputed several debts, warranting the application of AG ¶ 20(e), as to those debts.

The record evidence does not support the application of AG ¶ 20(f).

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include an overall commonsense 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 credible 42-year-old woman, who has experienced significant personal problems since 2001 that have contributed to her financial problems. In 2006, she employed a law firm to resolve the accumulating delinquent debts, but was unable to follow through with her agreement because of her former husband's criminal behavior, which required her to move. From 2001 to February 2008, she was unemployed for over a year, exacerbating her financial problems and substantially decreasing her income. Her supervisor is aware of her financial problems, which diminishes the opportunities for exploitation or coercion related to the delinquent debts. Both he and four colleagues are supportive and consider her reliable and trustworthy, having worked with her since February 2008. While recognizing that she has not yet paid any of the debts listed in the SOR and has limited funds to direct to their repayment because of her low salary, she is very concerned about her finances and dedicated to resolving them and achieving financial stability. Other than these financial problems, there is no other derogatory information in the record that challenges her ability to protect classified information. Her financial crisis appears to be more related to prior marital problems, inadequate employment and income, rather than a lack of reliability or trustworthiness.

Overall, the record evidence leaves me without questions 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 through 1.bb: For Applicant

Paragraph 2, Guideline E: WITHDRAWN

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