



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



In the matter of:)	
)	
)	ISCR Case No. 08-08596
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

November 30, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on October 17, 2007. On April 23, 2009, 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 April 30, 2009. She answered the SOR in writing on May 20, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on July 28, 2009, and I received the case assignment the same day. DOHA issued a notice of hearing the next day, on July 29, 2009, and I convened the hearing as scheduled on August 19, 2009. The Government offered Exhibits (GXs) 1 through 7, which were received without objection. Applicant

testified on her own behalf, as did three witnesses, and she submitted Exhibits (AppXs) A through J, without objection. DOHA received the transcript of the hearing (TR) on August 26, 2009. I granted Applicant's request to keep the record open until September 2, 2009, to submit additional matters. On September 2, 2009, she submitted Exhibit K, without objection. The record closed on September 2, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, through 1.e, and 1.g. through 1.i. of the SOR, with explanations. She denied the factual allegations in ¶ 1.f. of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Guideline F - Financial Considerations

The Applicant is estranged from her husband, and is now pending a divorce (TR at page 53 line 15 to page 56 line 14, and at page 61 line 24 to page 62 line 21). He assaulted her, locked her out of their house, and refused to pay her child support for their three children (*Id*). Only recently has he begun to pay \$180 each month in child support (TR at page 43 lines 22~24, 57 lines 9~10, and 58 lines 13~16). This has caused the Applicant financial difficulties.

1.a. The first debt is a credit card debt, for the purchase of a motor vehicle, in the amount of about \$17,634 (GX 6 at page 1). The Applicant is making monthly payments of \$100 towards this debt, for the motor vehicle, which her estranged spouse has kept (TR at page 21 lines 10~18, and at page 36 line 11 to page 38 line 11). This is evidenced by Applicant's banking records (AppX A).

1.b. The second debt is a medical bill in the amount of about \$6,926 (GX 4 at page 3). Initially, Applicant's estranged spouse agreed to pay this bill, but has gone back on their verbal agreement (TR at page 38 line 12 to page 41 line 5). As a result, the Applicant has written the creditor, trying to set up a payment plan (AppX K Encl 4). This is evidenced by correspondence to this creditor (*Id*).

1.c. The third debt is a credit card debt in the amount of about \$1,001 (GX 4 at page 2). The Applicant has written to this creditor, repeatedly, in an effort to satisfy this debt (TR at page 23 lines 4~17, at page 42 line 24 to page 44 line 21, AppX B, and AppX K Encl 5). She has received no response (TR at page 42 line 24 to page 44 line 21).

1.d. The fourth debt is a bill for a cable box in the amount of about \$66 (GX 2 at page 7). The Applicant had to hire a locksmith to get into their home, as her estranged spouse locked her out (TR at page 24 line 22 to page 25 line 6, and at page 44 line 23

to page 46 line 13). She then retrieve and return the cable box (*Id*). She has now paid the additional charges on this debt, as evidenced by her banking statement (AppX C).

1.e. The fifth debt is a medical bill for her broken clavicle, a result of an assault by her estranged spouse, in the amount of about \$521 (GX 4 at page 1). The Applicant is making periodic payments, ranging from monthly to bi-monthly, towards this debt since May of 2009, as evidenced by her banking records (AppX D).

1.f. The sixth debt is a medical bill, for medication, related to the broken clavicle incident, in the amount of about \$54 (TR at page 26 line 24 to page 27 line 10, and at page 48 line 5 to page 49 line 1, and GX 2 at page 17). The Applicant has paid this debt, as evidenced by a letter from the creditor (TR at page 26 line 24 to page 27 line 10, and at page 48 line 5 to page 49 line 1, and AppX E).

1.g. The seventh debt is the result of a judgement in the amount of about \$256 (GX 4 at page 1). This debt is the result of a disputed car payment, which the Applicant has satisfied by way of garnishment (TR at page 28 lines 2~20, and at page 49 line 2 to page 50 line 21). This is evidenced by the Applicant's pay documents (AppX F, and AppX K at Encl 2).

1.h. The eight debt is a cellular phone bill in the amount of about \$542 (GX 4 at page 1). Initially, Applicant's estranged spouse agreed to pay this bill, as it was his half of their bill for two cell phones; but again, he has gone back on this verbal commitment (TR at page 29 line 12 to page 30 line 4 line 5, and at page 51 line 10 to page 52 line 12). As a result, the Applicant has "settled" this debt, to the satisfaction of the creditor (AppX G). This is evidenced by correspondence to this creditor (*Id*).

1.i. The last debt is for a home equity loan in the amount of about \$24,428 (GX 6 at page 3). As the Applicant's estranged spouse still lives in their house, he will assume responsibility for this debt (TR at page 30 line 22 to page 31 line 19, and at page 52 line 13 to page 53 line 4). This is evidenced by their divorce paperwork, specifically the division of their property and the assumption by each party of their debts (AppX H).

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(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 Paragraph 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 Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns. During her period of estrangement from her spouse, the Applicant accumulated many of her delinquent debts.

These are clearly countered by the Mitigating Conditions found in Subparagraphs 20(b) and 20 (d). Under Subparagraph 20(b), it may be mitigating where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., . . . divorce or separation), and the individual acted responsibly under the circumstances.”* Furthermore, Subparagraph 20(d) applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Here, the Applicant, with little help from her estranged spouse, has addressed all of the alleged past due debt.

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.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Here, she has the unqualified support of her colleagues (TR at page 66 line 15 to page 79 line 12, and AppX I).

The Administrative Judge should also 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge