



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



In the matter of:)
)
) ISCR Case No. 08-08690
)
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esq., Department Counsel
For Applicant: *Pro Se*

July 22, 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 May 16, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On March 13, 2009, 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 April 3, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On May 15, 2009, Department Counsel prepared a File of Relevant Material (FORM) containing seven Items, and mailed Applicant a complete copy on May 18, 2009. Applicant received the FORM on May 22, 2009, and had 30 days from its receipt to file objections and submit additional information. On June 15, 2009, Applicant submitted three additional exhibits not in the record, to which Department Counsel had no objection. On June 24, 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 C and admitted them into the record.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations contained in the SOR ¶ 1.a and offered further explanations in support of her request for a security clearance.

Applicant is 57 years old. She has been married for 19 years to a man who is a leader in their church. She has two grown children from a previous marriage. In 1980, she received a liberal arts degree. She served in the U.S. Army from 1985 to 1988. After leaving the Army, she began working for her current employer in September 1988. She is a site administrative aide. She has held a Top Secret security clearance since 2003. (Item 4)

In May 2008, Applicant completed an e-QIP. In it, she disclosed two debts that were more than 180 and 90 days delinquent. One debt is an automobile loan and another debt is a credit card. She indicated that the debts became delinquent because of a reduction in household income. (Item 4 at 30) Only the delinquent automobile loan is alleged in the SOR.

In November 2005, Applicant co-signed the automobile loan with her husband. In September 2007, she was unable to keep up payments because her husband's salary was reduced due to a decrease in church income. Subsequently, she and her husband paid some church expenses, which affected their family budget. (Item 7 at 7) According to the October 2008 credit bureau report (CBR), the loan was charged off in the amount of \$27,336.

In her Answer, Applicant stated that she resolved the debt with the creditor with a payment agreement. (Item 3) As of March 27, 2009, the balance of the debt was \$22,905, indicating that Applicant had paid or resolved \$4,400 of the debt since the charge off. (*Id.* at 6) She submitted an exhibit documenting a payment of \$600 on March 30, 2009. (*Id.* at 4) She made additional payments of \$600 on April 30, 2009 and on May 29, 2009, bringing down the balance to \$21,510. (AE A through C)

Applicant submitted a copy of her budget as of December 2008. She and her husband have a net monthly income of \$5,710 and expenses of \$4,350. She pays

\$1,120 on financial obligations, including the automobile loan, leaving her approximately \$240 remaining at the end of the month for other matters.

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 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 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 accumulated a large debt that began accruing in 2007, which she was previously unable or unwilling to satisfy until late 2008. The evidence is sufficient to raise these disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. The guideline includes six examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (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.

The SOR alleged one delinquent debt that arose in September 2007 when Applicant's household income decreased as a result of a reduction of her husband's salary and their assumption of some church expenses. Those appear to be isolated and unusual circumstances and do not cast doubt on her reliability or good judgment. Hence, AG ¶ 2 (a) has some application. Although, those circumstances were beyond her control there is no evidence that she began addressing the delinquency until late 2008, which evidence is necessary for the full application of AG ¶ 20(b).

Applicant presented evidence that she established a repayment plan for the debt contained in SOR ¶ 1.a, and is making monthly payments on the debt. Since October 2008, she has paid \$5,826 on the loan. Hence, she made a good-faith effort to resolve the debt and the situation appears to be under control, triggering the application of AG ¶ 20(c) and AG ¶ 20(d). There is no evidence to support the application of AG ¶ 20(e) or 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.

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 57 years old and has worked for a federal contractor for over 19 years. Prior to that, she served in the U.S. Army for three years. Only one debt is alleged in the SOR and it arose because of economic difficulties she and her husband experienced in 2007. She took responsibility for repayment of the automobile loan and began resolving it in late 2008, prior to the issuance of the SOR. According to her budget, she has sufficient money to pay the debt. Based on her awareness of the effect that financial delinquencies could have on her employment and her actions to resolve the delinquent obligation, I do not believe similar problems will recur in the future. There is no other adverse information in the record file. 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 from her financial issues.

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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraph 1.a: | 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