



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08969
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on May 12, 2008. On February 6, 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 March 2, 2009. She requested a hearing before an Administrative Judge. I received the case assignment on April 2, 2009. DOHA issued a notice of hearing on April 15, 2009, and I convened the hearing as scheduled on May 13, 2009. The Government offered Exhibits (Ex.) 1-5, which were received without objection. Applicant testified on her own behalf. She submitted Exhibits (AE) A-C which were admitted into the record. I held the record open until May 20, 2009

for additional documents that Applicant wished to submit. Applicant submitted documents, which were marked as AE D-K and admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on May 26, 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, dated March 2, 2009, Applicant admitted the factual allegations in ¶¶ 1.a through 1.k and 1.m of the SOR. She denied 1.l because the account was paid. She provided additional information to support her request for eligibility for a security clearance.

Applicant is a 39-year-old employee of a defense contractor. She graduated from high school in 1987. She has worked for her current employer since April 2008 (GE 1). She first held a security clearance since 1999 (Tr. 16).

Applicant married in 1992. Her marriage ended in divorce in 2000. Applicant was the sole provider for her two young children after her divorce. She did receive some child support (Tr. 30). Applicant worked and paid for day care for her children. She also paid legal bills for a protracted child custody dispute after her separation and divorce (Tr. 47). She concentrated on certain bills that she deemed a necessity or priority and department store credit bills were not addressed. She admits that she was very concerned about raising her children and surviving on her income (Tr. 15). She acknowledges that she has made some bad financial decisions (Tr. 19)

Applicant had very short periods of unemployment in 2005 (Tr. 52). In 2006, she had a serious medical procedure. This created many medical bills that she could not afford to pay (Tr. 31).

Applicant remarried in 2007. She and her husband have six children in their combined family. Four children currently live in Applicant's home. She and her husband contribute to the household income (Tr. 29). Her husband has had his income adversely affected by the recent economic crisis (AE B).

The SOR alleged 8 delinquent debts, including medical bills, and credit card bills. Applicant admitted the debts and her credit reports confirmed them (GE 2). The total amount of delinquent debt was approximately \$12,029 (GE 3).

Applicant contacted credit reporting companies. She discovered that some accounts on her credit reports were duplicates. She contacted each creditor and researched the accounts. She has written letters and is still awaiting changes to be noted on her credit reports (Tr. 24). Her credit reports also show that she has many accounts that are "paid as agreed."

Applicant presented documentation that she has addressed/paid all the debts in SOR ¶ 1 (GE 4; AE D-J) with the exception of SOR ¶ 1.a which has been disputed. The account is for an item that her ex-husband owns. They are now attempting to pay it together through a payment plan (Tr. 33). Applicant has one remaining debt that she has not paid in full (SOR ¶ 1.i). The account is for a medical bill for which Applicant has had a long dispute with the physician. However, she is now preparing to make payment arrangements (Tr. 43).

Applicant's current net monthly income is \$1,800. After her monthly expenses, she has a net remainder of \$350. She is current with her bills. She follows a budget. She contacted a credit company to help her research the debts that appeared on her credit reports. She has worked with them and her credit score has increased.

Applicant's supervisor describes her as conscientious worker, extremely bright, a fast learner and well liked by everyone. She is a fighter and has been the sole provider for her three children for a long time. She works long hours. She is a generous woman who genuinely cares about people. She was raised in a military family and is patriotic. She is no security risk to the nation (AE B).

Applicant is an aggressive self-starter who provides invaluable planning assistance to every project she is assigned. She has insight which has earned her a Commander's Coin for Outstanding Performance (AE D). She received a promotion and a salary increase after just six months of employment. She is a Team Coordinator and has responsibility for researching and providing subject matter expertise in her field.

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, 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 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(a), an inability or unwillingness to satisfy debts^o is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on numerous accounts for a period of almost ten years. She admits that she did not meet her financial obligations from 2000 until the present. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where 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. Applicant's financial difficulties were a result of a separation, divorce and medical issues. She tried to pay her bills but could not afford to pay all of them. This potentially mitigating condition applies in part.

Under AG & 20(b), it may be mitigating where 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. Applicant's separation, divorce and emergency medical bills account for her debts. She had short periods of unemployment as well. I find this mitigating condition applies.

Evidence that 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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant paid or resolved the majority of her delinquent debts. She is in the process of making arrangements to pay the last two debts. There are clear indications that the problem is under control. I conclude these mitigating conditions apply.

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. Applicant is a mature, intelligent woman. After her separation and divorce, she was a single working mother caring for her two young children. She provided for her family and did the best that she could

under the circumstances. She had some unemployment and a medical issue that created more bills.

She was candid and straightforward at the hearing. She acknowledged that she put her children's needs first and paid bills according to her priorities. She was very organized and presented documentation that confirmed she has paid the debts in the SOR with the exception of the two that she disputed. She is now making arrangements to pay those using payment plans.

She has a very long and very positive work history. She has excellent references. She has received praise and recognition from her current employer. She has held a security clearance during her career and understands the importance of security responsibilities.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from 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
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	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.

NOREEN A. LYNCH
Administrative Judge