



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



In the matter of:)	
)	
)	ISCR Case No. 09-03672
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: Pro Se

December 9, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted her security clearance questionnaire (e-QIP) on February 6, 2009. On July 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 July 22, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 27, 2009. The case was assigned to me on October 7, 2009. On October 9, 2009, a Notice of Hearing was issued, scheduling the hearing for November 2, 2009. The case was heard on that date. The Government offered eight exhibits which were admitted as Government Exhibits (Gov) 1 – 8. The Applicant testified and offered 18 exhibits which were admitted as Applicant Exhibits (AE) A - R. The record was held open until November 16, 2009, to allow Applicant to submit additional documents. She timely

submitted an 18-page document that was admitted as AE S. Department Counsel's response to AE S is marked as Hearing Exhibit (HE) I. An additional two-page document was submitted on November 17, 2009. It was admitted as AE T. Department Counsel's response to AE T is marked as HE II. The transcript was received on November 10, 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 admits SOR allegations 1.a, 1.c, and 1.d. She denies SOR allegations 1.b and 1.e.

Applicant is a 35-year-old systems analyst with a Department of Defense contractor applying for a security clearance. She has worked for her current company since January 2008. This is her first time applying for a security clearance. She is a high school graduate and has 2 ½ years of college credit. She married in July 2001, but has been separated from her husband since August 2008. A divorce is pending. She and her husband have two children, a four-year-old son and an eight-year-old daughter. (Tr at 5-6, 46, 54-55, 88; Gov 1)

Applicant filed for Chapter 7 bankruptcy on July 23, 2002. She listed total assets of \$9,754 and total liabilities of \$32,423. Her debts were discharged on October 30, 2002. (Gov 6 at 5; Gov 7 at 4; Gov 8) Applicant filed for bankruptcy on the advice of her father-in-law. He is a real estate agent and advised Applicant and her husband that if they filed for bankruptcy they can expedite the process of qualifying for a mortgage. Some of the debts included in the bankruptcy were accounts that her mother opened in Applicant's name when Applicant was still a minor. She admits that she had delinquent debts prior to her marriage. (Tr at 34-35, 56-58)

Her background investigation revealed that she incurred the following delinquent accounts after the bankruptcy: a state tax lien that was filed on August 22, 2008, in the amount of \$1,768 (SOR ¶ 1.b: Gov 4); a \$93,000 second mortgage was past due in the amount of \$9,188 in May 2009 (SOR ¶ 1.c: Gov 2 at 4; Gov 3 at 4-5, 8; Gov 6 at 9; Gov 7 at 4); a \$371,000 mortgage was past due in the amount of \$19,582 in May 2009 (SOR ¶ 1.d: Gov 2 at 4; Gov 3 at 4-5, 8; Gov 6 at 9; Gov 7 at 4). In June 2009, both the first and second mortgages were in foreclosure proceedings. (Gov 2 at 4, 9)

Applicant's husband was the primary breadwinner for the family. In 2003, Applicant discovered that her husband was using crack cocaine. He eventually became addicted to crack cocaine and had difficulty holding jobs. Applicant has had several periods of unemployment over the past six years. From November 2003 to May 2004, she was unemployed after resigning from her position as a flight attendant in order to take care of her daughter. Her husband was working at the time and worked unusual hours so child-care proved to be difficult. From December 2004 to August 2005, Applicant was unemployed after she gave birth to her son. (Tr at 66-69; Gov 1, Section 11; Gov 3 at 8-9)

Applicant's husband's drug addiction adversely affected the family finances. He would withdraw money from the family bank accounts and disappear for days. He could not hold a job. On December 6, 2003, he was arrested for driving under the influence of a controlled substance after Applicant discovered him in his car in the driveway passed out with a low pulse. He currently has not worked for over a year and a half. He does not provide child support. (Tr at 38, 65, 100-101; Gov 3 at 8-9; AE S at 16)

In March 2004, Applicant's car was repossessed. Both she and her husband were unemployed at the time. The balance owed on the car loan after the repossession was \$16,405. In 2006, Applicant and her husband entered into a settlement agreement pertaining to the deficiency judgment. They paid \$4,000. Approximately, \$11,000 of the debt owed was forgiven by the creditor and reported to the Internal Revenue Service (IRS) as income. Applicant did not understand that this would be reported as income. The IRS later contacted Applicant notifying her that she and her husband owed taxes for tax year 2006. Applicant and her husband still owe the IRS \$3,384. Applicant wants the divorce decree to hold her husband responsible for part of the debt. (Tr at 70-71, 79-82, 100-101; Gov 3 at 8-9; AE C; AE D; AE J; AE Q)

In October 2006, Applicant and her husband purchased a home for \$465,000. They financed the home with two mortgages in the amounts of \$93,000 and \$371,000. When asked under cross-examination why she purchased a home with her husband while aware that he was a drug addict, Applicant stated that at the time she no longer had seen evidence of drug use. Her husband was employed and appeared to have stopped his substance abuse. Even though she did not say it, she implied that she wanted to save the marriage. In January 2007, Applicant and her husband became delinquent on their mortgage payments. Her husband's substance abuse problems resurfaced as well. In April 2008, they applied for a loan modification because her husband was unemployed. The loan modification was not approved until October 2008, three months after Applicant moved out. (Tr at 36, 76-77; Gov 3 at 8-9)

In April 2008, she found crack cocaine in her house. Her son was 2 ½ at the time. She realized that she needed to start planning to move out for the safety of her children because her husband's behavior was getting more unpredictable and violent. He physically attacked her in late July 2008. She moved out with the children in August 2008. (Tr at 37-39, 59, 87-88; Gov 3 at 8-9)

After Applicant moved out, she believed that the home went to foreclosure. She did not make payments on the home and her husband did not make payments on the home. She believes the last time payments were made on the home was in 2008. She was instructed to not make payments on the home when she applied for the loan modification. She later discovered that the home was not in foreclosure. She was advised that if she was awarded the home in her divorce decree, the bank would work with her to have the mortgage adjusted. Her husband was formally served Applicant's petition for divorce on November 14, 2009. She requests the house in her divorce paperwork. (Tr at 40-41, 88-89; Gov 1, section 28; Gov 2 at 4, 9; AE M; AE N; AE O; AE T)

A state tax lien was filed against Applicant and her husband on August 22, 2008, in the amount of \$1,768. Applicant initially denied that she owed this debt. She was not aware of the tax lien. She had previously paid off a state tax lien through a wage garnishment in 2006. When she contacted the state comptroller's office, she discovered the tax lien was a valid debt. She wrote a letter to the state comptroller's office stating that she is willing to pay 50 percent of the debt, but believes her husband should be responsible for 50 percent of the debt. She paid the state 10 percent of the balance owed and submitted an application for tax amnesty in September 2009. She has not received a reply from the state comptroller's office. If she is required to pay the full amount of the lien she will do it, but believes her husband should be responsible for half of the debt. (Tr at 47-49, 100-101; AE A at 1; AE B; AE H)

Applicant resolved several delinquent accounts that were not alleged in the SOR. She has been working to keep her financial situation current. (Tr at 51, 73, 89-92; Gov 1, section 28; Gov 2; AE A) She sought financial counseling from a company over the phone in July 2009 and August 2009. She has progressed in her job and is able to take care of herself and her two children. Her current annual salary is \$90,000. If she is awarded the home in the divorce and the mortgage companies continue to work with her, she claims she is able to pay the mortgage payment, which she anticipates will be \$3,408 monthly. (Tr at 52, 55, 94-95, 101-102; AE S at 14)

Applicant's net monthly income is \$7,049. Her expenses include rent \$1,950; groceries \$175, utilities \$200; car expenses \$200; daycare \$600; car \$388.80. She also lists eight credit cards with balances of \$2,000, \$480, \$300, \$161; \$1,400; \$300; \$230, and \$480. She makes monthly payments to each card ranging from \$15 to \$67. The total amount applied towards her credit cards each month is \$207. Her total monthly expenses total \$3,720. After expenses, she has approximately \$3,320 in discretionary funds. (Tr at 96 – 97; Gov 2 at 12)

Applicant received an outstanding performance rating for the performance period beginning February 2008 and ending February 2009. (AE S at 8 – 15) Applicant's co-worker provided a letter stating that she has worked with Applicant for two years. Applicant has integrity and works hard. She is a talented systems analyst with excellent communication skills and a strong moral compass. (AE R)

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 overarching

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant has had financial difficulties for several years. In 2002, she filed for Chapter 7 bankruptcy and received a bankruptcy discharge. She continued to incur delinquent accounts after the bankruptcy discharge. She and her husband defaulted on two mortgages valued at \$93,000 and \$371,000 for a home that they purchased in October 2006. She and her husband have an outstanding state tax lien in the amount of \$1,768. Although not alleged in the SOR, Applicant and her husband have a federal tax debt in the amount \$3,384 related to the \$11,000 debt forgiveness owed from a 2004 automobile repossession. Applicant resolved several other delinquent accounts that were incurred after her bankruptcy prior to the SOR being issued.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable because Applicant's history of financial irresponsibility. She admits that most of the debts included in her Chapter 7 bankruptcy were incurred prior to her marriage. While Applicant is in the process of negotiating settlement agreements with the creditors alleged in the SOR, she received no response as to her proposals at the close of the record.

FC MC ¶ 20(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) applies. Applicant is in the middle of divorce proceedings. Her husband's crack cocaine addiction created most of the recent family financial problems. While Applicant was well aware of her husband's substance abuse problems when she purchased a home with him in October 2006, she believed that he had turned a corner, most likely out of desire to keep her marriage together. When it was evident that her husband was using again, she eventually moved out of the marital residence in August 2008 with her children. She has resolved several delinquent accounts that were not alleged in the SOR. She has taken steps to resolve the

remaining delinquent accounts which include the two mortgages, a state tax lien, and a federal tax debt that was not alleged in the SOR. She is waiting for her divorce settlement to determine whether she can renegotiate the two mortgages on the home. She acted responsibly under the circumstances. She supports two young children while receiving no child support from her husband. He has been unemployed for the past year and a half. His employment was sporadic during their marriage because of his substance abuse problems.

FC MC ¶ 20(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) applies. Applicant attended two telephonic financial counseling sessions in July and August 2009. She earns a sufficient income to make the mortgage payment if she is awarded the house in the divorce property settlement. She is also capable of paying the full amount of the outstanding state and federal tax debt if her husband does not pay half of the debt. Once her divorce is final, it is likely Applicant's financial situation will be resolved.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant resolved several delinquent accounts before the SOR was issued. She has communicated with the mortgage company, the IRS, and the state comptroller's office regarding the outstanding debts. If she is awarded the home in the divorce proceedings, her income is sufficient to make the mortgage payments. Applicant wants the divorce settlement to hold her husband responsible for 50 percent of the federal and state tax as a matter of principle. It is unlikely that her husband will be able to pay the debts even if he is held responsible because of his substance abuse problems and unemployment. She is capable of paying the debt if he does not. While the debts are not fully resolved, Applicant demonstrated a good-faith effort to resolve the accounts.

Applicant has not mitigated the concerns raised under Guideline 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):

(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 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. I considered Applicant's previous bankruptcy in 2002 and the delinquent accounts incurred after the bankruptcy. I considered Applicant's husband's crack cocaine addiction and sporadic employment contributed a large part to the financial problems. While Applicant did not exercise the best judgment purchasing a home with her husband while aware of his substance abuse problems, her actions are understandable in the view of attempting to save her marriage and provide a home for her two young children. Applicant has fully informed the government of her financial issues and pending divorce. She is taking action to resolve the situation. While the status of the two mortgages, the state tax lien, and the federal tax debt remain unresolved, Applicant has been negotiating with all of the parties and is able to resolve these accounts if required to be responsible for the debts. Under the unique circumstances of this case, I conclude Applicant mitigated the security concerns raised 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
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

Conclusion

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

ERIN C. HOGAN
Administrative Judge