



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-10249
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

April 29, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on May 8, 2008. On January 27, 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 February 14, 2009. She requested a hearing before an Administrative Judge. I received the case assignment on March 12, 2009. DOHA issued a notice of hearing on March 16, 2009, and I convened the hearing as scheduled on April 9, 2009. The Government offered Exhibits (Ex.) 1-6, which were received without objection. Applicant testified in her own behalf. She submitted Exhibits (AE) A-C which were admitted into the record. I held the record open

until April 17, 2009 for any documents that Applicant wished to submit. Applicant submitted three documents, which were marked as AE D-F. DOHA received the transcript of the hearing (Tr.) on April 17, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, dated February 14, 2009, Applicant admitted the factual allegations in ¶¶ 1.a through 1.l of the SOR. She provided additional information to support her request for eligibility for a security clearance.

Applicant is a 44-year-old employee of a defense contractor. She graduated from high school in 1983, and attended a community college but did not obtain a degree. She worked from 1983 until 2007 full time for the federal government and received raises and promotions working as a budget analyst. She has worked for her current employer since June 2008 (GE 1). She held a security clearance when she first joined the federal government in 1983 (Tr. 54).

Applicant is single with two children, ages 19 and 17. She has never received child support from the father of the children (Tr. 45). She and her children lived with her mother after high school until 1996 (Tr. 124).

In 1996, she purchased a home. She and her children and her boyfriend lived together in the home (Tr. 127). Her boyfriend was a contractor and Applicant was working for the federal government. She reports that they were financially sound (Tr. 37). When her boyfriend lost his job, she could not manage financially. Applicant could not remember when he lost his job. She reported she could afford the home with her friend's income but got behind in the mortgage when he lost his job. She was also paying her boyfriend's bills. Applicant stated that her expenses were more than her income could afford. She could not maintain her mortgage and various expenses. She incurred delinquent debt.

Applicant filed for Chapter 7 bankruptcy in December 2000 on the advice of legal counsel. Her debts were discharged on or about July 2002 (GE 6). The amount discharged was approximately \$83,600 (GE 1).

After the bankruptcy, she lived with her niece from 2000 until 2006 (Tr. 131). Applicant paid half the utilities. In approximately 2006, she also co-signed a car note for her niece because her niece did not have good credit.

Applicant purchased her mother's home in 2006. Her mother paid half the mortgage until she died late in 2006. During this time Applicant obtained a second mortgage of approximately \$30,000 to redecorate the home, make home repairs, such as a new roof, and remodel a bathroom (Tr. 77). She also purchased a new vehicle for

approximately \$41,000 (Tr. 89). The monthly payment was \$985. She has remained current with her car payment.

When Applicant's mother died, Applicant could no longer afford the home mortgage. She acknowledged that before her mother died she was able to spend money on other things. Her home was foreclosed in 2007. The mortgage loan was approximately \$280,000 (Tr. 113). Applicant filed for Chapter 13 bankruptcy in July 2007. The petition was dismissed on August 6, 2007 (AE) B. Applicant did not proceed with the bankruptcy because she did not want to include a vehicle that her niece was using for transportation to work (Tr. 66).

Applicant resigned from her position in September 2007, after 24 years, for a variety of reasons (Tr. 40). She was feeling stressed and was offered a leave of absence but decided not to take one. At that time her salary was \$106,000. When she resigned, she received a lump sum retirement amount (\$72,000) and unemployment benefits for a total of \$81,000 (Tr. 49). She was unemployed from September 2007 until April 2008.

Applicant had entered into another relationship at this time. Her boyfriend lived with her in her home before it was foreclosed. They moved into an apartment and she remained in this relationship until 2008. He did not contribute financially to the relationship. She paid some of his expenses, such as his car insurance.

In 2009, Applicant filed a Chapter 13 bankruptcy on the advice of legal counsel (GE 4). She has paid \$1,165 for the first three months (AE A). She will have a monthly payment of \$1,795 for the next 57 months if her plan is approved. However, the confirmation hearing is in May and the amount could change based on an increase in her income and a deficiency of \$27,000 for the second home mortgage. Applicant is hoping that her car payment will be put into the bankruptcy as a "cram down" and her monthly payment to the trustee would include the car note.

The SOR alleged 10 delinquent debts, including a defaulted mortgage, voluntary repossession, and credit card bills. Applicant admitted the debts and her credit reports confirmed them. The total amount of delinquent debt was approximately \$42,112. The debts are incorporated into the Chapter 13 bankruptcy (AE A).

Applicant's Chapter 13 plan included additional debts not listed on the SOR. Applicant had a 2008 judgment of \$1,890 for rent and a \$50 judgment to an oil company. Applicant submitted documentation that she paid the oil company \$728.68 in 2008 which satisfied the principal owed but did not include the court costs (AE E). She also settled another account for \$340 (AE F).

Applicant's current net monthly income is \$6,125. After her monthly expenses, she has a net remainder of \$1,100. She is current with her bills. She now lives in an apartment with her two children. Her son's daughter visits on the weekends. She helps

support her grandchild. Her son does not contribute to the household. Her daughter is in high school and does not work.

Applicant completed the required financial counseling when filing for her bankruptcy. This was approximately a one hour course on line. She has never sought formal financial counseling.

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” is potentially disqualifying. AG ¶ 19(b) “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt” is another disqualifying condition. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated delinquent debts on numerous accounts for a period of almost ten years. She has filed for bankruptcy on three occasions. After the first bankruptcy her debts were discharged in 2002. She spent above her means after her first bankruptcy. She purchased a home and then resigned a job rather than take a leave of absence. She admits that she did not meet her financial obligations from 2000 until the present. The evidence is sufficient to raise these potentially 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 span a period of nine years. She has recently filed her third bankruptcy petition. A Chapter 7 was discharged in 2002 and a Chapter 13 was dismissed in 2007. She co-signed a car note for her niece when she was having financial difficulties. The 2009 Chapter 13 has not yet been confirmed. This potentially mitigating condition does not apply.

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 earned a salary with step increases and promotions from 1983 until 2007. She resigned in 2007 rather than take a leave of absence. She was unemployed for a period in 2007 until 2008. She admits making poor financial decisions. I find this mitigating condition does not apply.

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 completed the required financial counseling when filing for bankruptcy. This was approximately a one hour course on line. She has never sought formal financial counseling. Applicant has recently filed her Chapter 13 bankruptcy petition and has made the first three payments in the plan. Given her cycle of delinquent debts and prior bankruptcy filings, it is too soon to find that there are clear indications that the problem is under control. I conclude these mitigating conditions do not 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. She worked in the federal government for 24 years. When she resigned in 2007, she was earning approximately \$106,000. She decided not to take a leave of absence. She took her entire retirement fund and in a year it was gone. She spent above her means and paid the bills of her boyfriends instead of managing her own money. She purchased a home and then shortly after resigned. She used a legal means to resolve debt but has not seemed to change her behavior. She has not received formal financial counseling. She co-signed car note for her niece when she had financial

difficulties of her own. She bought a \$41,000 vehicle after her second bankruptcy. She has shown poor judgment and financial irresponsibility.

In January 2009, Applicant filed a Chapter 13 bankruptcy petition. She has made the first three payments. She acknowledges her past financial mistakes. While she is using a legal means of debt resolution and intends to pay her debts now, her recent efforts are not sufficient for her to meet the burden in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge