



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



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| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 08-11535 |
| SSN: ----- |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

October 20, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

On April 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). DOHA acted 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 adjudicative guidelines (AG).

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on June 4, 2010. DOHA issued a Notice of Hearing on August 16, 2010, and I convened the hearing as scheduled on September 16, 2010. Department Counsel offered seven exhibits, which were admitted without objection as Government Exhibits (GE) 1-7. Applicant testified and presented three exhibits, which were admitted without objection as Applicant Exhibits (AE) A-C. I kept the record open until September 30, 2010, for Applicant to submit additional documents. Applicant timely submitted three additional documents, which were accepted into the record and marked as AE D-F.

DOHA received the transcript (Tr.) on September 23, 2010. 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, 1.g, and 1.i. She denied the remaining SOR allegations.

Applicant is a 36-year-old employee of a defense contractor. She served in the United States Army (USA) from May 1997 until June 2000. She has held a security clearance since 1997. Applicant has been with her current employer since April 2008. (GE 1)

Applicant's first marriage in 1992 occurred when she was 17-years-old. She has two children from that marriage. Her husband physically abused their daughter which caused brain damage. As a result of this abuse, Applicant divorced her husband in 1999. (GE 3) She could not divorce him sooner as he was in jail, and she could not afford the divorce. She had no income as she was home caring for her children. Applicant never received any financial support from her ex-husband. (Tr.14)

Applicant married her second husband while she was in the military. That marriage ended in 2001, partly as a result of the separations that occurred during their military service. They decided to end their marriage amicably after less than two years. (Tr. 44)

In 2004, Applicant married her third husband. They purchased a home using her VA home loan benefits. (Tr. 33) In 2006, while Applicant was in Iraq working for a contractor, her husband lived in the family home. She made arrangements to have the mortgage paid by automatic pay deduction. When she returned home in 2007, they separated. Her husband stayed in the home, and he agreed to pay the mortgage. However, he did not pay the mortgage. She did not know about any foreclosure. Their divorce finalized in 2009.

When Applicant left the family home in 2007, she incurred more expenses for an apartment and other daily expenses. She also had student loans totaling \$3,000. She had payment arrangements for the student loans, which are now paid in full.

The SOR alleges eleven delinquent debts, including medical accounts, a judgment, and a home foreclosure in 2008. The approximate total for Applicant's debts is \$7,895, excluding the foreclosure (GE 6).

The debts alleged in the SOR that Applicant admitted, have been paid in full. She provided documentation for each account. (AE A-F) The debt alleged in SOR ¶ 1.f for a credit card for \$20 was disputed. Applicant contacted the company and was notified that there was no balance owing. (Tr. 27)

Applicant denied the debt in SOR ¶ 1.i because it was paid in March 2009. She provided documentation for proof of payment when she completed DOHA interrogatories. (GE 2)

The debt alleged in SOR ¶ 1.j was not her debt. Applicant's estranged spouse paid the bill, which was for his son's high school. (Tr. 31) She provided documentation that this account has been paid with her answer to the SOR. (File) SOR ¶ 1.k is a duplicate account of 1.j.

SOR ¶ 1.l was the result of Applicant's home mortgage account that went into foreclosure without her knowledge in 2008. Her estranged husband remained in the house, but did not make the monthly mortgage payments. When Applicant left the home, the mortgage was current. (Tr. 36) She had every reason to believe that he would pay the mortgage. Applicant was living in another state at the time. She admits her indebtedness and did not shirk from her obligation. The home was purchased using her VA guaranteed home loan. (GE 4) The foreclosure process was completed in April 2009. When the house was sold for less than the amount owed, which was \$48,000, the VA covered the difference. (AE B) The account shows a zero balance.

When Applicant received the SOR, she had already been making payments on the debts alleged, some as early as 2008. She obtained her credit report and researched the remaining debts. The judgment, that was the result of an apartment rental default in 2003, was paid in 2005. She received financial counseling as part of a routine training program while on active duty. (Tr. 21). Applicant's current monthly net income is approximately \$3,841. (GE 2) She is current with her monthly expenses. She has no credit cards. She has no car payment. Her net monthly remainder is approximately \$1,000. She has a savings account.

At the hearing, Applicant was forthright and candid about her struggle with debt over the years as a single parent. She supported her children with no child support. She has worked since 1997, but earned less than it cost to support her family. (Tr. 14) She acknowledges that, at times, she had to accept food stamps and other government aid. She joined the military to improve her employment opportunities. She worked in Iraq in 2006 to make more money for her family.

When she returned home, she learned that her husband had not paid the bills and that one of her creditors had sued, resulting in a judgment. Her salary was deposited into a joint account and her husband was responsible for the payment of bills. (Tr. 14) He did not act responsibly.

In 2010, Applicant worked in Afghanistan to earn money to alleviate the financial difficulties that her third husband had exacerbated. With the extra income, Applicant paid her delinquent debts. She was passionate at the hearing about her patriotism and loyalty to the United States. She acknowledged that she is now earning more money than she ever had, and when she was in great financial difficulty, she never

compromised her access to classified information. (Tr. 17) She has never lived beyond her means.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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, 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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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 debts⁶ is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations⁶ may raise security concerns. Applicant accumulated delinquent debts on various accounts and had a 2008 foreclosure. Her credit reports confirm the debts. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes 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.⁶ She acknowledged her delinquent debts from 2003. This mitigating condition does not apply.

Under AG & 20(b), the disqualifying condition may be mitigated 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.⁶ Applicant's home foreclosure was beyond her control. She acted responsibly while deployed with automatic mortgage payments. When she separated and left the family home, her husband agreed to pay the mortgage. He did not. She was living in another state and had no knowledge of default on the mortgage. She has resolved her delinquent debts. They are paid in full. She consistently showed reliability. Also, she is now in a stable financial situation. Applicant consistently acted responsibly in paying her debts. Her separation and divorce exacerbated her financial difficulties. She was the sole support of her family. As soon as Applicant learned about her debts, she began paying them. She addressed the foreclosure when she learned about it. 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 control⁶ 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 received financial counseling when she was in the military. Applicant has a history of good-faith efforts in paying bills. She has resolved her delinquent debts. She has sufficient income to pay her bills. Her efforts are sufficient to carry her burden in this case. 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 must 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 and conclude they are sufficient to overcome the Government's case. Applicant served in the military from 1997 until 2000. She held a security clearance during her service without incident. She has provided for her two children as a single parent. She has worked hard to keep her family together.

Applicant's first marriage caused her much suffering. Her daughter was physically abused. She could not work when the children were young. Her husband was imprisoned. She joined the military to help improve her situation. She deployed to Iraq. Unfortunately, her second marriage was not successful. At the hearing, Applicant was candid that she has struggled with finances. However, her third husband created greater financial difficulties for her when he did not make the mortgage payments on the family home. This was not the fault of Applicant. She had no idea when they separated that he would not pay the mortgage. When Applicant learned about the debts and the foreclosure, she acted with resolve. Her delinquent accounts are paid. There is no balance owing on the mortgage account. She was candid and forthright at the hearing about her future and her past mistakes. She supports her family. She has been divorced since 2009. She is now stable and able to work in a position that will render her financially solvent.

Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising 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

Subparagraphs 1.a-1.l: 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.

NOREEN A. LYNCH
Administrative Judge