



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX.)	ISCR Case No. 08-11591
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

June 30, 2009

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns pertaining to Financial Considerations. Clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP), on March 25, 2008. 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. 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 answered the SOR in writing in an undated response, and requested a hearing before an administrative judge. DOHA received her response on April 16, 2009. Department Counsel was prepared to proceed on May 5, 2009. On May 7, 2009, the case was assigned to me. DOHA issued a notice of hearing on May 14, 2009, scheduling the hearing for June 4, 2009. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 4, which were received without objection. The Government submitted a List of Government Exhibits, Exhibit (Ex.) I. The Applicant offered Applicant Exhibits (AE) A through F, which were received without objection, and testified on her own behalf.

I held the record open until June 19, 2009 to afford the Applicant the opportunity to submit additional documents on her behalf. Applicant timely submitted AE G through J, which were received without objection. DOHA received the hearing transcript (Tr.) on June 18, 2009.

Findings of Fact

Applicant admitted SOR ¶¶ 1.b. – 1.c., 1.e. – 1.h., 1.j., 1.l. and denied 1.a., 1.d., 1.i., 1.k. and 1.m. – 1.n. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 59-year-old functional area supervisor, who has worked for her defense contractor employer since January 2004. GE 1, Tr. 17-18. She successfully held a security clearance from 1982 to 1999 while employed for a defense contractor. Tr. 22. Applicant again seeks a security clearance, which her employer requires as a condition of her continued employment. Tr. 30-31, 80.

Applicant graduated from high school in May 1968. She did not pursue further education beyond high school. Tr. 17. She has never married; however, she has maintained a long-term relationship with the father of her sons. Her oldest son is married with a family and is self-supporting. Her youngest son, who is 22 years old, lives with her. He is currently unemployed and is solely dependent on Applicant for support. Tr. 18-19. Applicant and her life partner own the home they live in free and clear and share expenses. Tr. 47-48, 76. Her life partner has not worked in two years, having sustained a work-related injury as a driver for a railroad company. He initially was receiving Workers' Compensation, and is now receiving unemployment compensation. Tr. 49-50.

Applicant's background investigation addressed her financial situation and included the review of her e-QIP, her March 2009 and April 2008 credit reports, and her February 2009 Responses to Interrogatories. GE 1 – 4.

Applicant's SOR identified 14 separate debts, which included three civil judgments, and the remaining delinquent debts included credit cards, student loans,

medical bills, and telephone or cable bills. Total debts alleged approximated \$29,000.00. Tr. 11.

Applicant's financial problems began following a lengthy period of employment from October 1999 to August 2001. She lost her job as a government contract employee when the government facility closed where she was assigned. Tr. 31. When she did return to work in August 2001, she took a substantial pay cut with her new employer until she left in December 2003. Tr. 32-33. It was not until she secured her present job that she was able to earn sufficient income to meet her expenses.

Since her SOR was issued, Applicant has made substantial progress in resolving her debts. At her hearing, she submitted a comprehensive plan that documents past and present action taken with regard to her debts. She has consolidated her student loans, contacted creditors and initiated payment plans and is making payments on those plans, paid off individual creditors, eliminated duplicate accounts, and disputed one account. AE A – F, AE J. While she still owes a balance on the majority of debts, she has demonstrated her good-faith effort to repay her creditors or otherwise resolve her debts. Tr. 33-70, 73-76.

Her 2008 1040 federal income return reflects an adjusted gross income of \$36,383.00. Her post-hearing monthly expense sheet reflects she lives a modest lifestyle and has a net monthly remainder after she has paid all of her bills. AE D, AE I.

Applicant provided her 2008 Annual Management Performance Review, which reflected above average performance. Given her performance level, her supervisor recommended her for a pay raise. AE G. Her employer also awarded her with a Special Recognition Award for meeting 2008 company goals. AE H.

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(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. 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

Under AG 18, the Government’s concern is:

“[f]ailure 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 Government established that Applicant owed substantial debt as reflected in SOR ¶¶ 1.a. – 1.n. through her admissions and evidence presented. At the time the SOR was issued in July 2008, Applicant owed 14 debts approximating \$29,000.00

Under AG ¶ 19, two disqualifying conditions raise a security concern:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's indebtedness stems from a lengthy period of underemployment and unemployment. Additionally, she is supporting her 22-year-old son who is currently unemployed. These factors directly contributed to Applicant's past financial indebtedness.

Her financial situation has substantially improved as a result of finding a job which provides her with enough income to support her family and meet her financial obligations. She has developed a comprehensive strategy supported by documentation that she has gained control of her finances. She is meeting her obligations to the best of her ability while maintaining a modest lifestyle. Applicant has established a credible budget and submitted post-hearing updates on her financial progress. All indicators point to an individual who has taken this process quite seriously and taken what appears to be all reasonable steps to correct her financial situation. What is different now as opposed to before is she has the means, tools, and resolve to achieve financial stability.

Under AG ¶ 20, there are three potentially mitigating conditions:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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 action to resolve the issue.

AG ¶ 20(b) applies because at the time Applicant incurred the debts, she was either underemployed or unemployed. Her financial situation continued to deteriorate until she was able to secure her present job. AG ¶ 20(d) applies because Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Lastly, AG ¶ 20(e) applies because Applicant has provided sufficient evidence challenging the validity of one of her debts. In short, Applicant has made substantial progress in turning her financial situation around. She has established a viable budget, which shows a net remainder after her monthly bills are paid.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision. I also gave considerable weight to her years of successfully holding a clearance, her service as a defense contractor, her favorable financial history before she lost her job in 1999, and her efforts to date in attaining financial responsibility. In reaching this conclusion, the whole person concept was given due consideration and that analysis also supports a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”¹ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the Government’s case. For the reasons stated, I conclude she is eligible for access to classified information.

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. – 1.n.:	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. Clearance is granted.

ROBERT J. TUIDER
Administrative Judge

¹ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).