



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



In the matter of:)	
)	
)	ISCR Case No. 08-11870
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

January 13, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted her Security Clearance Application (SF 86) on August 28, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on August 21, 2009. 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 August 26, 2009. She answered the SOR in writing on September 1, 2009, and requested a hearing before an

administrative judge. DOHA received the request on September 8, 2009. Department Counsel was prepared to proceed on September 18, 2009, and I received the case assignment on October 8, 2009. DOHA issued a notice of hearing on October 19, 2009, and I convened the hearing as scheduled on November 3, 2009. The government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant testified on her own behalf. She did not submit any exhibits. The record closed on November 3, 2009. DOHA received the transcript of the hearing (Tr.) on November 12, 2009.

Procedural and Evidentiary Rulings

Notice

At the hearing, Applicant indicated she received the hearing notice less than 15 days before the hearing. (Tr. 9.) I advised Applicant of her right under ¶ E3.1.8 of the Directive to receive the hearing notice 15 days before the hearing. Applicant affirmatively waived her right to 15 days notice. (Tr. 9.)

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR. Her admissions are included as part of my findings of fact discussed below.

Applicant, who is 25 years old, works as a security analyst for a Department of Defense contractor. She began her employment in August 2008.¹

Applicant graduated from high school in 2002. She plans to start college through online classes in January 2010. Approximately four years ago, Applicant began a relationship with a man with whom she lived for several years. They never married, but she has a two-year-old daughter from this relationship. Applicant ended the relationship in January 2009. Applicant now lives in an apartment with two co-workers and her daughter.²

In 2006, Applicant opened two credit card accounts with one bank, which she used to pay her boyfriend's legal bills. He agreed to pay these charges, but did not. She also had a bank account at this same banking institution. She opened two other store accounts and had a car loan. Applicant worked as a sales representative until January 2008. From January 2008 until August 2008, she was unemployed. She did not receive unemployment benefits. During her unemployment, her boyfriend paid her normal living expenses, but did not make any payments on her credit accounts.³

¹GE 1; Tr. 16.

²GE 1; Tr. 15-16, 20.

³Tr. 16-29.

Applicant's car broke down in late 2007 or 2008. She did not have the money to pay for the car repairs and for her monthly car payment. She learned that a class action lawsuit with the car company was proceeding through the courts because of mechanical problems like hers. She asked the car company to repair the car, but it declined, indicating it would repay her if the lawsuit settled and payments were required. Based on advice from her father, she voluntarily returned the car to the car company. The car company treated this as a voluntary repossession.⁴

Applicant's monthly net pay is \$1,669.⁵ She does not receive any child support from her daughter's father. Her monthly expenses include \$433 for rent, \$400 for food, \$200 for utilities, \$75 for cell phone, \$100 for transportation, and \$100 for entertainment. At the time of the hearing, Applicant's former boyfriend provided child care for their daughter. She paid him \$200 a month for child care and she purchased food for her daughter while in his care. Applicant decided to end this arrangement. She enrolled her daughter in a child care program, which began a week after the hearing. This program included three meals a day and cost \$163 a week, for a total monthly cost of \$652. She plans to pay this expense with the \$200 child care expense she paid her former boyfriend and half of her monthly food expenses. Applicant lives paycheck to paycheck.⁶

Applicant pays her current monthly expenses. Since she does not have any additional funds each month, she has not paid any of the debts listed in the SOR. In May 2009, she applied for a government program to help pay her child care costs. She expects to receive financial assistance early in 2010, which would eliminate her monthly child care costs. She plans to use this extra income to repay her debts. She has not consulted with a financial counseling agency. She is, however, working with a friend on her budget, looking for ways to cut small expenses. Since ending her relationship with her daughter's father, her monthly expenses have stabilized.⁷

Applicant acknowledged all the debts listed in the SOR. She admitted to two charge accounts and one account with the same bank. The bank sold these accounts to collection agencies. Through the selling process, the account numbers changed and one additional account with this bank appeared on the credit reports. Applicant has not challenged the validity of the additional account or otherwise provided information which reflects that the account is not hers.⁸

⁴GE 3; Tr. 16-29.

⁵Applicant is paid weekly. Eight months of the year, she receives four paychecks. Four months of the year, she receives five paychecks. I have calculated her monthly income on the basis of four weeks a month. See Tr. 29.

⁶GE 3; Tr. 31-35.

⁷GE 3; Tr. 27, 35-39.

⁸GE 4; GE 5; Tr. 20-27.

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 used 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. 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An 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 an 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. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated some delinquent debt and has been unable to pay these obligations for a period of time. 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), mitigation may occur when "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 worries arose about two years ago and are ongoing. This mitigating condition is not applicable.

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 financial problems arose during her relationship with her daughter's father, who failed to repay Applicant for debts incurred on his behalf, and when she was unemployed for eight months in 2008. Her debts arose from circumstances beyond her control. She lacked the financial resources to pay her debts when she was unemployed, and still lacks income to pay her past due debts. Thus, her debts remained unresolved. I find this mitigating condition has some applicability.

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 has not received financial counseling, nor has she developed a payment plan which would resolve her delinquent debts. While her current monthly expenses are paid, she lacks the financial ability to pay her past debts. These

mitigating conditions are not applicable. AG ¶¶ 20(e) and 20(f) mitigating conditions are not applicable in this case.

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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of denying a security clearance to applicant under the whole person concept is more substantial than the evidence in support of a grant. In reaching this conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began when she developed a relationship with her daughter's father. She obtained credit cards to help pay his legal fees, believing that he would pay the debt. In 2008, she did not work for eight months. Although her boyfriend paid living expenses, she did not have any income to pay her bills, including her debts. She returned to work in August 2008 and ended the relationship with her daughter's father in January 2009. For the last year, she has been able to pay her current expenses, but lacks sufficient income to pay her past debts, even the small debts. A friend is helping her evaluate her monthly expenses and look for ways to decrease her spending. She applied for a government program to help with child care expenses, and if accepted, will use this money to pay her past debts. At this time, Applicant has not shown a track record for payment of her past debts. Under the Directive, a sponsored Applicant can apply for her security clearance one year from the date of this decision. If she can show

that she has developed and complied with a debt payment plan, she would be a good candidate for being granted a security clearance, assuming no other issues of a security concern arise.

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 finances under Guideline F.

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:	Against Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge