



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 09-00189

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

July 20, 2010

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On January 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and DOHA recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 Adjudicative Guidelines (AGs).

Applicant responded to the SOR on February 12, 2010. She filed an amended response on March 3, 2010, and asked for a hearing. The case was assigned to me on May 18, 2010, and was scheduled for hearing on July 1, 2010. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of 11 exhibits

(GE). All but one of the Government's exhibits (GE 11) were admitted pursuant to stipulation by the parties. Applicant relied on one witness (herself) and six exhibits (AE). The transcript (Tr.) was received on July 14, 2010.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred two adverse judgments (subparagraphs 1.a and 1.s) in the respective amounts of \$816 and \$504; (b) accumulated 24 delinquent debts exceeding \$21,000; and (c) has a personal financial statement that reflects a minus \$239 monthly net remainder after payment of expenses and debts.

Under Guidelines J and G, Applicant allegedly was arrested in March 2009 for driving under the influence (DUI), pleaded guilty, and was sentenced to five years probation, fined, ordered to pay \$1,975 in restitution, required to serve five days in jail with credit for one day served, referred to a work release program, and ordered to participate in a licensed alcohol educational program for three months or longer and attend an aftercare program for first offenders.

In her February 2010 response to the SOR, Applicant admitted each of the allegations. She repeated her admissions in her amended March 2010 response.

Findings of Fact

Applicant is a 31-year-old technical writer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant moved to her current place of employment in 2003 with her then fiancé. In 2004, she married her fiancé. See GE 1. They have no children. See GE 1; Tr. 74. Applicant separated from her husband in 2008. Tr. 54. They have a separation agreement. Tr. 54, 71-72.

Applicant's finances

Following her separation, Applicant moved into a rental complex, which was subsequently foreclosed. As the result of the foreclosure, she was forced to vacate her apartment without any return of her security deposit and last month's rent. Tr. 36-37. Before her move to her new apartment, she did not have very good credit. Tr. 37-38.

Between February 2006 and February 2008, Applicant was either unemployed or worked at temporary jobs for very low wages. Tr. 55-56. She fell behind with her bills and experienced a worsening credit situation. Tr. 57-58. Two creditors (creditors 1.a and 1.s) obtained judgments against Applicant: one for \$816 and the other for \$504. See GE 2, 3, and 11. Credit reports document Applicant's accumulating delinquent debts (exclusive of the two adverse judgments entered against her) exceeding \$23,000. See GEs 2, 3, 9, and 11.

Since returning to full time employment with her present employer, Applicant has repaid over \$5,000 of her delinquent debts, including her creditor 1.a judgment. See AEs A and C. Tr. 58-59. Even though she continues to dispute most of her medical debts (claiming they should have been covered by her medical insurance), she paid them off. Specifically, she documents paying creditors 1.e and 1.f, 1.i through 1.k, 1.p through 1.r, and 1.t through 1.z. See AE C; Tr. 67-68. She continues to make payments on some of her remaining debts (creditors 1.i through 1.o). See AE C. And she expects to begin payments on the few debts she has not taken any action on to date (*i.e.*, creditors 1.b, 1.g, and 1.h). Applicant has a positive remainder every month. She predicts she will be debt-free in two and one-half to three years (save for her student loan). Tr. 63.

Applicant identified two medical bills listed on the SOR that are duplicative (creditors covered by subparagraphs 1.g and 1.r). Tr. 40-41. Her husband had promised to help Applicant with her old debts. Tr. 54. But to date, he has not. While some of the listed debts are assigned to her ex-husband under their separation agreement, Applicant accepts full responsibility for all of them and is addressing them. Tr. 54-55, 65-68, 71-74. Several debts remain to be addressed.

In the personal financial statement Applicant completed in February 2009, she reported net monthly income of \$2,420, net monthly expenses of \$2,090, and monthly debt payments of \$560. See GE 5. This left her with a minus monthly remainder of \$239. With the raise she received from her employer, she currently nets around \$2,660 a month. AE B.

Applicant has been able to reduce her monthly expenses to around \$1,884, while increasing her monthly debt payments slightly to \$650 a month. AE B. Based on these changes, Applicant has been able to achieve a positive net monthly remainder of approximately \$34. See AE B; Tr. 61-62.

Applicant's DUI incident

In March 2009, Applicant was arrested by local police and charged with DUI. She had attended a social event and consumed several drinks before she drove home. Tr. 48-49, 51-52. Police administered a breathalyzer test at the scene, and she registered a .154 blood alcohol content (BAC) level on the test. See GE 4.

Applicant pleaded guilty to the 2009 DUI charge and was sentenced to five years probation. She was also fined, ordered to pay \$1,975 in restitution, required to serve five days in jail with credit for one day served, and referred to a work release program. And she was ordered to participate in a licensed alcohol educational program for three months or longer and attend an aftercare program for first offenders. GEs 4 and 6. Tr. 50.

Applicant pays \$100 a month on her court-ordered restitution, which is scheduled to run through 2014. She has complied with all of the court's other conditions, and she rarely drinks anymore. Tr. 49-50. She consumed alcohol only on an occasional basis

before her 2009 DUI incident and has never been involved with law enforcement before or after her march 2009 incident. Tr. 52.

Endorsements

Applicant is well-regarded by her supervisors and colleagues. She documents numerous credits for her contributions to her team's missions. See AE D and F. Colleagues who have had considerable experience working with her describe her as very conscientious and trustworthy. They credit her with demonstrated courage, leadership, and outstanding performance in the execution of her assigned responsibilities as a team leader. See AE E.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

Alcohol Consumption

The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. AG ¶ 21.

Criminal Conduct

The Concern: criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. AG ¶ 30.

Burden of Proof

Under the Directive, a decision to grant or continue an applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) It must prove by substantial evidence any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance.

Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a respected employee of a defense contractor who accumulated a number of delinquent debts during periods of unemployment and underemployment following her move to her current location in 2003 with her fiancé. She has been able to resolve most of her old debts and disputed the remaining ones.

Besides initial security concerns over Applicant's finances, some concerns are also raised over her DUI incident in 2009. She has since complied with the court's conditions and rarely drinks anymore.

Financial concerns

Applicant's accumulated debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial consideration guideline: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c) "a history of not meeting financial obligations."

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily impose important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on government employees and contractors involved in other lines of government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Failure of the applicant to make concerted efforts to pay or resolve her debts when able to do so raises security-significant concerns about the sufficiency of the applicant's demonstrated trust and judgment necessary to safeguard classified information.

Addressing her listed debts, Applicant has repaid many of her debts (over \$5,000 in listed debts since she returned to full-time work in February 2008), and she is committed to repaying the remaining ones. Her most recent credit report reflects deleted accounts on the debts she repaid (*viz.*, creditors 1.e and 1.f, 1.i through 1.k, 1.p through 1.r, and 1.u through 1.z) and ongoing payments on some of her listed debts (creditors 1.1 through 1.o). See AE C). For those few remaining debts that she has not addressed (creditors 1.b, 1.g, and 1.h), she intends to pay them as well.

Applicant has a positive remainder every month, and she has shown considerable progress in payment of her debts since she returned to full time employment two years ago. She expects to be debt-free within two and one-half to three years on all but her student loan debt.

Evaluating all of her repayment efforts contextually, and given the difficult family and unemployment issues she has had to manage the past few years, Applicant may be credited with serious, good-faith efforts to resolve her debts and regain control of her finances. She has made considerable progress to date in regaining control of her finances and shows good promise for fulfilling her remaining debt obligations.

Based on her evidentiary showing, Applicant's proofs are sufficient to establish significant extenuating circumstances associated with her debt accumulations. As a result, MC ¶ 20(b) of the financial considerations guideline, "the conditions that resulted in the behavior 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)," applies to Applicant's circumstances.

Applicant's repayment efforts entitle her to mitigation credit under both MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," and MC ¶ 20(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 actions to resolve the issue." These mitigating conditions have application to Applicant's situation, considering her repayment efforts and credible reasons for disputing many of the listed debts (mostly medical debts).

In balance, Applicant has shown good faith in addressing her debts since she returned to full-time employment with her current employer in 2008. And with her improved financial situation (which includes a net monthly remainder), she demonstrates that she is now firmly control of her finances and can be expected to stay current with her debts.

Based on a whole-person assessment, Applicant surmounts the judgment questions raised by her accumulation of two judgments and a host of other debts after she relocated to her present state of residence, separated from her husband, and lost her full-time job. Her positive endorsements from her supervisors and co-worker and excellent performance evaluations merit considerable praise and commendation. In balance, she has shown sufficient tangible effort in addressing her major debts to mitigate her listed delinquent debts and demonstrate restored control over her finances.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources she has had to work with since her separation, and her loss of work for an extended period (*viz.*, 2006 through 2008) since her job dislocations, and the concerted steps she has mounted to address her debts (both her old ones and her current ones), safe predictive judgments can be made about her ability and intentions to repay her accrued debts and restore her finances to stable

levels commensurate with her holding a security clearance. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.aa.

Criminal conduct and alcohol concerns

Applicant's alcohol-related arrest alleged in the SOR raises important concerns about her risk of recurrent alcohol abuse. On the strength of the evidence presented, one disqualifying condition (DC) of the AG for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 22(a), "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

Because the offense is classed as a criminal offense, it is covered by DC ¶ 31(a) of the criminal conduct guideline as well: "a single serious crime or multiple lesser offenses." And because Applicant is still on probation, DC ¶ 31(d), "individual is currently on parole or probation," applies as well to her situation. Applicant's DUI offense would appear to qualify as a serious crime, but without a definition section in this guideline, it is less than clear.

Despite the seriousness of her March 2009 DUI offense, Applicant does not believe she is alcoholic and assures she was only an occasional drinker before the incident. Since her DUI incident she assures she has reduced her drinking even more. Applicant's assurances are quite credible and accepted.

Based on the isolated nature of her alcohol-related offense, Applicant may rely on one of the mitigating conditions of the alcohol guideline: MC ¶ 22(a), "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." MC ¶ 32(a), "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," of the criminal conduct guideline also applies to Applicant's situation.

Taking into account Applicant's very limited history of alcohol abuse (defined by her cited single alcohol-related incident), her strong work record, the applicable guidelines and a whole person assessment of her reduced alcohol consumption since her last and only DUI incident, conclusions warrant that her overall efforts reflect sufficient evidence of sustained commitment to responsible alcohol consumption to ensure that she is not at any risk of recurrent alcohol abuse. With no history of alcohol abuse before her DUI incident and renewed commitments to reducing her alcohol consumption, she is a solid risk not to repeat any of the mistakes that contributed to her 2009 DUI offense.

Considering the record as a whole, Applicant makes a convincing showing that she has the strength and stability to avert any recurrent problems with judgment lapses related to alcohol. Applicant's mitigation efforts are enough to warrant safe predictions

that she is no longer at risk to judgment impairment associated with alcohol abuse. Favorable conclusions warrant with respect to the allegations covered by the criminal conduct and alcohol guidelines of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in ¶ 2(a) of the AGs.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

 Subparas 1.a through 1.aa : For Applicant

GUIDELINE J (CRIMINAL CONDUCT): FOR APPLICANT

 Subparas 2.a and 2.b: For Applicant

GUIDELINE G (ALCOHOL CONSIDERATIONS): FOR APPLICANT

 Subpara 3.a: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

