



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



In the matter of:)	
)	
)	ISCR Case No. 09-00292
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: Michael Mumford, Personal Representative

April 27, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Positions (SF 86) for an upgrade of her security clearance with a defense contractor on August 20, 2008. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), dated August 28, 2009, to Applicant detailing security concerns for financial considerations 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on August 31, 2009.

Applicant answered the SOR on October 9, 2009, admitting the four allegations under Guideline F with explanation. Initially, Applicant requested a decision on the written record. Subsequently after talking to Department Counsel, Applicant requested a hearing before an administrative judge. (Court Exhibit I, Request, dated January 7, 2010) Department Counsel was prepared to proceed on January 13, 2010, and the case was assigned to me the next day. DOHA issued a Notice of Hearing on January

27, 2010, scheduling a hearing for March 12, 2010. I convened the hearing as scheduled. The government offered seven exhibits, marked Government Exhibits (Gov. Ex.) 1 through 7 which were admitted without objection. Applicant and one witness testified on her behalf. Applicant offered eight exhibits marked Applicant Exhibits (App. Ex.) A through H which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 22, 2010. I kept the record open for Applicant to submit additional documents. Applicant timely filed four additional documents marked App. Ex. I through L, which were received without objection. (Gov. Ex. 8, Memorandum, dated March 26, 2010) Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted the four factual allegations in the SOR with explanation. I included Applicant's explanation in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 44 years old, and has worked as a software engineer in the defense industry for over 21 years. Most of her employment was with one defense contractor. She is a college graduate with a bachelor's degree in electrical engineering awarded in 1989, and a master's degree in computer science awarded in 2004. She has held a security clearance for over 21 years. She married in 1993, and has two children ages ten and fourteen. Applicant's yearly salary is approximately \$94,000. Her husband's yearly salary as a health care business analyst has fluctuated but is now approximately \$48,000, for a yearly family income of \$142,000. Applicant and her husband estimate their monthly discretionary funds are approximately \$700. (Tr. 11-19, 51-57; Gov. Ex. 1, SF 86, dated August 20, 2008; Gov. Ex. 5, Statement, dated October 23, 2003)

Credit reports (Gov. Ex. 6, Credit report, dated September 20, 2008; and Gov. Ex. 7, Credit report, dated July 8, 2009) show the following delinquent debts for Applicant: a charge off loan for \$9,142 (SOR 1.a); a charged off credit card account for \$8,726 (SOR 1.b); a collection account on a credit card for \$1,354 (SOR 1.c); and a mortgage debt past due more than 120 days on a balance of \$382,000 (SOR 1.d).

The delinquent debt at SOR 1.d concerns Applicant's mortgage. Applicant and her husband had good credit history until they purchased a house in 2005 and encountered mortgage administration and payment problems. The couple purchased a lot in a subdivision and had a house built on it starting in 2005. The house was financed by a mortgage. The initial mortgage payments included only principle and interest and not taxes since the house was new and the amount of tax on the house was unknown. Applicant and her husband were advised to anticipate the property taxes to be approximately \$6,000. In March 2006, they received the annual tax assessment which was lower, since they only paid property tax for an unimproved lot for part of the tax years. They paid the bill since they had been keeping funds aside for that purpose. They continued to keep funds aside in 2006.

Their mortgage company, in keeping with the common business practice, sold the mortgage to another mortgage company who in turn sold it again to another mortgage company. In March 2007, when the property taxes became due, the new mortgage company paid the property tax without notifying Applicant. When Applicant's husband called the tax office to pay the 2007 property tax assessment, he was informed that the mortgage company had already paid the property tax. Applicant's husband immediately called the mortgage company, offering to reimburse them for the 2007 taxes. Instead the mortgage company informed him that they would amortize the payments over the next year. The mortgage company also increased their payments to reflect the anticipated following year's tax assessment. Their monthly payments increased almost \$2,000. Applicant and her husband paid \$4,791.40, as requested by the mortgage company, from March 2007 until March 2008. In March 2008, the monthly mortgage payment dropped to approximately \$2,798. Applicant has paid the monthly mortgage on time each month in the amount requested by the mortgage company. However because of the tax payment issue, the mortgage company reported that the mortgage was past due in some amount. Applicant and her husband requested a mortgage loan modification which has been approved by the mortgage company. This will further lower their monthly mortgage payments. (Tr. 32-66; App. Ex. G, Bank Statements from March 2008 until February 2010; App. Ex. G, Mortgage Account Statement, dated August 29, 2008; App. Ex. I, Loan Modification, dated October 27, 2009)

The delinquent debt at SOR 1.a is for a loan of \$7,000 that with interest and fees is now for \$9,142. Applicant and her husband used the loan to pay living expenses when the mortgage payments were in dispute and the payments increased by over \$2,000. Applicant received a settlement offer from the loan company for \$5,443.70. However, Applicant is paying the loan by automatic direct deposit at the rate of \$400 per month. Applicant has paid over \$1,300 from December 2009 until the hearing in March 2010. (Tr. 21-26; App. Ex. A, Settlement offer, dated December 224, 2009; App. Ex B, C, D, Bank Statements January, February, March 2010)

The delinquent debt at SOR 1.b is for a credit card Applicant and her husband used to pay living expenses while their mortgage payments were in flux. Applicant already had the credit card with a balance owed when the mortgage issue occurred. Applicant is making \$300 monthly automatic direct deposit payments on this account. (Tr. 21-26; App. Ex. M, Bank Statement, dated March 24, 2010)

The delinquent debt at SOR 1.c is for a credit card. The debt was paid in full in October 2009. (Answer to SOR, Letter, dated October 29, 2009)

Applicant has received special awards for her exceptional performance with the defense contractor. (App. Ex. F, Certificate, dated December 15, 2006) Her performance ratings show that she meets or exceed expectations for her job performance. (App. Ex. K, Rating, May 2008, June 2009; App. Ex. L, Performance rating, January 2003 to December 2003)

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 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(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 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 as to potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations:

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 (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts as reported in credit reports and admitted by Applicant are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Applicant incurred delinquent debts when her mortgage was miscalculated and she and her husband used credit cards and a loan to pay living expenses.

I considered Financial Considerations Mitigating Conditions (FC MC) AG ¶ 20(a) (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), and FC MC AG ¶ 20(b) (the conditions that resulted in the financial problems 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). The mitigating conditions apply. Applicant's delinquent debts occurred when her mortgage company paid the property tax on the property unbeknownst to Applicant and then doubled her mortgage payments. Applicant and her husband continued to make their monthly mortgage payments as requested by the mortgage company. They set aside funds for property taxes as recommended by the mortgage company. Applicant had to use credit cards and a loan to meet their living expenses. The mortgage problem occurred under very unusual circumstances and was beyond Applicant's control. She acted reasonably by having the mortgage modified, and timely making her mortgage payments as requested by the mortgage company. She paid one of the debts incurred to meet living expenses and has payments plan for the two remaining debts.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments

or reduction of debt through payment of debts. An applicant is not required to establish that she paid each and every debt listed. The entirety of an Applicant's financial situation and her actions can reasonably be considered in evaluating the extent to which that Applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. All that is required is that Applicant demonstrates she has established a plan to resolve her financial problems and taken significant actions to implement that plan.

Applicant's financial problems were caused by a condition beyond her control. She and her husband paid their mortgage and set aside funds to pay the property taxes. The mortgage company without notice to Applicant paid the property tax increasing her mortgage payments. She used credit cards and a loan to pay their normal living expenses. She is current with her mortgage and has entered a loan modification to keep payments within her limits. She paid one loan in full and is making monthly automatic payments on the other two loans. Applicant's actions paying and resolving her delinquent debts is significant and credible information to establish a meaning track record of debt payment, and shows that she acted reasonably under the circumstances.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 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. I considered that Applicant is a highly regarded employee with excellent performance ratings. She held a security

clearance for over 21 years with no security issues. Her record shows she is trustworthy, reliable, honest, competent, capable, and exercises good judgment.

Applicant established a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. Applicant presented sufficient information to show she is taking reasonable and responsible action to resolve her financial issues. Her mortgage issues, which started her financial problems, were caused by her mortgage company and not by her. She is current with her mortgage and has the ability to make her mortgage payments. She paid one of her other debts and has payment plans and is paying her two remaining debts. Applicant's management of her finances and payment of past obligations indicates she will be concerned, responsible, and careful regarding classified information. Applicant mitigated security concerns based on her finances. Overall, on balance the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from 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.d: 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.

THOMAS M. CREAN
Administrative Judge