



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



In the matter of:)
)
-----) ISCR Case No. 09-00439
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

August 10, 2010

Decision

HOWE, Philip S., Administrative Judge:

On August 15, 2008, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On October 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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).

Applicant answered the SOR in writing on December 16, 2009. Applicant requested her case be decided on the written record in lieu of a hearing.

On March 19, 2010, Department Counsel submitted the Department's written case. In the written case the Government amended Paragraph 1 of the SOR to add two

additional financial allegations. Those allegations were Subparagraphs 1.e for \$100 and 1.f for \$1,140.

A complete copy of the file of relevant material (FORM) was provided to the Applicant on March 25, 2010, when she received the file. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a Response to the FORM beyond the 30 day time allowed that would have expired on April 24, 2010. She filed her Response on May 5, 2010. Department Counsel had no objection to the inclusion of the Response in the file.

I received the case assignment on June 2, 2010. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted the financial allegations in Paragraph 1 of the SOR, including the two paragraphs added in the SOR amendment. She denied the allegations concerning falsification in Paragraph 2 of the SOR. (Item 4)

Applicant is 47 years old and has one child. She was married and divorced twice since 2000. She works for a defense contractor. She was unemployed from January 2005 to May 2008. During that time she married her second husband and spent \$50,000 from her retirement account to buy a house. She obtained a second mortgage on the house and used the proceeds to finance a honeymoon, to defease the debt on her husband's vehicle, to repay Applicant's credit card debt, and make two or three mortgage payments. (Items 4, 5; Response)

Applicant has six delinquent debts alleged in the SOR as amended, totaling \$29,132. Those debts and their current status are as follows:

1. A medical account debt for \$387 was owed from 2008 (Subparagraph 1.a). This debt was unpaid until Applicant's Response showed it was paid in January 2010. This debt is resolved. (Items 7-9; Response)
2. An auto loan debt owed to a credit union. The collection account (Subparagraph 1.b) and the credit union account (Subparagraph 1.d) are the same loan under two creditors. This debt was awarded to Applicant's first husband in their divorce decree. Applicant is not responsible for the debt. This debt is mitigated. (Items 4, 7-9; Answer)
3. A credit card debt owed to a bank (Subparagraph 1.c). Applicant opened this account on her own in May 1998 before any of her marriages. Applicant resolved this debt

in April 2010 by paying \$9,373 borrowed from her father. (Items 7-9; Response)

4. A medical debt for \$100 was resolved in November 2009 with the payment of the debt (Subparagraph 1.e). It originated in 2008. The debt is resolved. (Items 7-9; Response)
5. A medical debt dating from 2008 for \$1,140 owed to a hospital was paid on April 30, 2010, and is resolved (Subparagraph 1.f). (Items 7-9; Response)

Applicant had a tax lien filed in May 2006 and released when she paid it in March 2007. The amount of the individual tax lien was \$2,148. Applicant did not disclose in her August 15, 2008, e-QIP in Question 27 (c) ("In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?") the existence of this lien. She answered that question with a "no." (Item 5)

Applicant did not answer Question 28 on the e-QIP ("a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and b. "Are you currently over 90 days delinquent on any debt(s)?") with accurate answers. Her response was "no" to both questions. She did have the debts listed in the SOR. Applicant's Answer of December 16, 2009, stated she thought her former husbands were responsible for the debts based on their respective divorce decrees.

She claims the February 11, 2009, divorce decree from her second husband requires her to pay the \$11,000 credit card debt listed in Subparagraph 1.c of the SOR. She was waiting for a March 3, 2010, court date to "resolve" the auto loan debt listed in Subparagraphs 1.b and 1.d of the SOR. The divorce decree from her second husband does not list the credit card debt as a marital debt, therefore, it is Applicant's debt from 1998 which she is responsible to pay. The auto loan debt is allocated to Applicant's first husband in the divorce decree of July 7, 2005. The other debts in the SOR are not mentioned in either divorce decree and are properly debts of Applicant. The 2009 divorce decree stated Applicant and her second husband spent \$90,000 of her savings in the six months they lived together after their marriage. (Items 4, 5, 7)

Applicant submitted three character letters from three supervisors. Those letters describe her as conscientious and diligent in her work. She is also described as honest and professional in her attitude. (FORM Response)

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, the administrative judge applies the guidelines 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.

According to 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 the applicant or proven by Department Counsel, and 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

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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 1998 to the present, Applicant accumulated six delinquent debts, totaling \$29,132 that remained unpaid or unresolved when the SOR was issued.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three mitigating conditions might have partial applicability:

- (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 actions to resolve the issue.

AG ¶ 20 (b) applies because Applicant's two marriages and divorces adversely affected her ability to pay her debts in a timely manner. The auto loan debt listed twice in the SOR was the result of her first husband's failure to pay the debt. The second marriage dissipated \$90,000 of Applicant's savings in a six month spending spree. Applicant was responsible for allowing that to occur, but she did stop the expenditures and now has divorced that husband.

AG ¶ 20 (d) applies because Applicant has resolved her debts by payment or settlements with required payments. She paid the credit card debt of \$11,000 after negotiating a lump sum payment of \$9,373.

AG ¶ 20 (e) applies to the auto loan debt because the first divorce allocates that debt to her former husband, making him responsible for it. She has a legal basis to dispute that debt listed in the SOR as being her debt.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose her financial delinquencies as alleged in SOR Paragraph 1. She disclaims any intentional action in doing so. Applicant claims she thought her divorce decrees made her former husbands responsible for the debts listed in the SOR. Only the auto loan was the financial obligation of her first husband to pay. The other debts listed in the SOR were Applicant's to pay. It is obvious from the entire body of evidence that Applicant is not astute with her money and did not read fully or comprehend the totality of the divorce decrees. Applicant committed an inadvertent

error, not a deliberate effort to mislead the Government. This guideline is found in her favor. Hence, it is not necessary to consider any mitigating condition.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She was dilatory in resolving her delinquent debts, but after she realized the debts were her obligation she moved quickly to pay them. All the debts listed in the SOR were resolved in some manner. She incurred her debts voluntarily. There is no potential now for pressure, coercion, exploitation, or duress. After two failed marriages and the six month expenditure of \$90,000 during the short-lived second marriage, Applicant should have learned her lesson and there is almost no likelihood for a recurrence of such conduct.

Overall, the record evidence leaves me without questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Financial Considerations and the security concerns under the guideline for Personal Conduct. I conclude the "whole person" concept for Applicant.

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 to 1.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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.

PHILIP S. HOWE
Administrative Judge