



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



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 09-00985
SSN: XXX-XX-XXXX)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

July 28, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On July 29, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF-86). On September 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) for Applicant. 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 for SORs after September 1, 2006.

Applicant answered the SOR on November 25, 2009, and DOHA received her answer on November 30, 2009. Department Counsel was prepared to proceed on

May 26, 2010. The case was assigned to me on May 28, 2010. DOHA issued a notice of hearing on June 4, 2010, scheduling the hearing for June 29, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 6, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through L, which were received without objection, and she testified on her own behalf. DOHA received the hearing transcript (Tr.) on July 7, 2010. The record closed on July 7, 2010.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. Her answers with explanations are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 48-year-old lead dispatcher, who has worked for her defense contractor employer since January 2008. She currently has an interim secret clearance. Successfully vetting for a security clearance is a requirement for her continued employment. (GE 1, AE I, AE J, Tr. 20, 28-29, 48.)

Applicant immigrated to the U.S. from Germany when she was 13 years old. She did not graduate from high school, but did attend a vocational school and earn her General Educational Development certificate in approximately 1986. While attending vocational school, she took secretarial courses. She later attended a community college to pursue a course of study in physical therapy, but did not complete the program. (GE 1, Tr. 26-28.)

Applicant is in her third marriage. She was married to her first husband from March 1986 to July 1987, which ended by divorce. She was married to her second husband from June 1988 to December 1997, which ended by divorce. She married her third and current husband in January 1998, separated in December 2008, and is pending divorce. She and her third husband have a 12-year-old son. Applicant has custody of their son and receives approximately \$800 in monthly child support by informal arrangement. She has a 19-year-old daughter from her second marriage, who lives with her father. Applicant also has two stepsons from her current husband's first marriage. (GE 1, 20-26.)

In February 2010, Applicant was diagnosed with breast cancer. She had surgery on April 1, 2010 and remained on sick leave until May 1, 2010. Applicant was scheduled to begin chemotherapy treatment the day after her hearing. (Tr. 34-37.) She also was unemployed from December 2006 to January 2008, which ended when she began her current job. (GE 1, Tr. 40-41.)

Financial Considerations

Applicant's background investigation addressed her financial situation and included the review of her July 2008 SF-86, her May 2009 Responses to DOHA Interrogatories, as well as her July 2008, May 2009, and June 2010 credit reports. Applicant's SOR identified eight separate debts totaling \$16,115. (GE 1 – 6; SOR ¶¶ 1.a. – 1.h.)

Applicant has settled, paid, or otherwise resolved the eight debts alleged. A brief summary of each debt follows. The debt alleged in SOR ¶ 1.a. is a collection account for an education loan in the amount of \$424. Applicant settled this account for \$212, which she paid in November 2009. (AE A, Tr. 39-40.)

The debt alleged in SOR ¶ 1.b. is a past-due account for a medical bill in the amount of \$25. Applicant paid this account in full in June 2010. (AE B, Tr. 40.)

The debt alleged in SOR ¶ 1.c. is a past-due credit card account in the amount of \$711. Applicant settled this account for a lesser amount and made a final payment of \$178 in May 2009. (AE C, Tr. 40-42.)

The debt alleged in SOR ¶ 1.d. is a collection account for a computer she purchased for \$3,020. Applicant made payment arrangements to pay the creditor \$100 monthly. She is current on her monthly payments. (AE D, Tr. 42.)

The debt alleged in SOR ¶ 1.e. is a collection account for cell phone service in the amount of \$1,079. Applicant settled this account with the creditor for \$647, and made her last payment of \$497 in July 2010. (AE E, Tr. 43.)

The debt alleged in SOR ¶ 1.f. is a collection account for cell phone service (different company than debt in SOR ¶ 1.e.) in the amount of \$111. Applicant settled this account for \$48, which she paid in July 2010. (AE F, Tr. 43-45.)

The debt alleged in SOR ¶ 1.g. is a collection account for telephone service in the amount of \$250. Applicant settled this account for \$125, which she paid in June 2009. (AE G, Tr. 45.)

The debt alleged in SOR ¶ 1.h. is for a past-due student loan in the amount of \$10,495. This debt was repaid by recoupment of federal income tax refunds owed to Applicant. As of June 2010, Applicant no longer had a balance due on this account. (AE H, Tr. 45-46.)

Applicant attributes her financial problems to a combination of factors to include her husband's injury and her family's forced relocation following a hurricane, her recent diagnosis of breast cancer and uncovered medical expenses, and her unemployment before beginning her current job. However, the most significant factor

affecting her current financial situation was the reduction of income following her separation from her husband. (Response to SOR, Tr. 32, 34-36, 38, 44, 50.)

In conclusion, Applicant has paid, settled, made good-faith efforts to repay overdue creditors, or resolved all debts alleged. Applicant remains current on the rest of her monthly bills. Her budget further demonstrates that she maintains a modest lifestyle and is living within her means. (AE L, Tr. 29-33, 46-49.)

Character Evidence

Applicant submitted three reference letters. Two of those letters are from the manager who hired her and her current supervisor. Both individuals enthusiastically commend Applicant's performance as lead dispatcher, a position to which she was promoted to January 2009. They describe her as "a highly valued part of the Emergency Management Team" and as a "proven . . . professional and dedicated member of the (command) Dispatch team." She supervises a ten-person contractor dispatch team with great skill and dedication. Her supervisor described her as "honest, dependable and a very capable person, skillfully handling a myriad of both personal and professional circumstances." Applicant is entrusted with many personal and intimate details of each dispatcher, which she has never compromised. (AE I, AE J.)

Applicant's last letter was a personal reference from a long-time family friend, who is a medical doctor. He described Applicant's role as a mother as well as her involvement in the community. She was the director of the local cheerleading league and organized the teams, scheduled competitive events, and ran fundraising events to buy uniforms. She also volunteered for the Special Olympics and other organizations. He added that his handicapped daughter is a good friend of Applicant's daughter and has spent a significant amount of time at Applicant's home over the years. He concluded by saying that Applicant is "a person of integrity, honesty, dependability, and honor." (AE K.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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.

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 in seeking 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that a relevant security concern exists under Guideline F (financial considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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 ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by her admissions and the evidence presented. As indicated in SOR ¶¶ 1.a. to 1.h., she had eight delinquent debts totaling \$16,115 that were in various states of delinquency for several years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) through (e) are potentially applicable:

(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;

(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;

(c) 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;

(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.

Applicant’s conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. It was not until recently that these debts were paid or resolved. Therefore, her debts are “a continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). She receives partial credit under AG ¶ 20(a) because the debt “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.” Under AG ¶ 20(b), she receives full credit because the hardship caused by a hurricane to her family, her unemployment, her diagnosis and costs associated with breast cancer, and

her separation and pending divorce were largely beyond her control and she acted responsibly under the circumstances.¹

AG ¶ 20(c) is not applicable because Applicant did not seek financial counseling. She has, however, produced evidence that establishes that she is living within her means and has regained financial responsibility. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).² Applicant has paid, is paying, or has otherwise resolved her debts. AG ¶ 20(e) is not applicable because Applicant did not dispute the legitimacy of any of her debts.

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.

¹"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether she maintained contact with her creditors and attempted to negotiate partial payments to keep her debts current.

²The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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. AG ¶ 2(c).

There is evidence against mitigating Applicant's conduct. The SOR lists eight debts totalling \$16,115 that were at one time or another in various states of delinquency. Her lack of success in resolving delinquent debt until recently raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole-person concept is more substantial. Applicant's record of community involvement and good employment weighs in her favor. There is no evidence of any security violation during the time Applicant held her interim security clearance. She is a law-abiding citizen. All of her SOR debts are paid or resolved. Her monthly expenses are current. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that [she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that [she] has ". . . established a plan to resolve [her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and [her] actions in evaluating the extent to which that applicant's plan for the reduction of [her] outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is making a significant contribution to the national defense. Her company fully supports her and recommends her for a security clearance. She made mistakes, and debts became delinquent. There is, however, simply no reason not to trust her. Her reference letters substantiate her good character. She has paid her debts. Furthermore, she has established a "meaningful track record" of debt payments. These factors show responsibility, rehabilitation, and mitigation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude she has mitigated the financial considerations security concerns.

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 and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully 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

Subparagraphs 1.a. to 1.h.: For Applicant

Conclusion

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 eligibility for a security clearance. Eligibility for a security clearance is granted.

Robert J. Tuidor
Administrative Judge