



**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. 09-01034

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

April 2, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) 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.

On October 10, 2009, Applicant answered the SOR, and requested a hearing. She admitted the factual allegations in SOR ¶ 1.a through 1.o, 1.r, 1.t. and 1.u. She denied the remaining allegations. DOHA assigned the case to me on February 2, 2010. DOHA issued a Notice of Hearing on February 24, 2010, and I convened the hearing as scheduled on March 25, 2010. Department Counsel offered eight exhibits, which were admitted as Government Exhibits (GE) 1-8, without objection. Applicant testified on her own behalf and offered five exhibits, which were admitted as Applicant Exhibits (AE) A-E. DOHA received the transcript (Tr.) on March 30, 2010. Based upon a review of the

case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. After graduating from high school in 1974, she attended a community college. She earned her undergraduate degree in 2003. In 2005, Applicant received a Master of Business degree. (AE E.) She earned outstanding grades in both programs. She has been with her current employer since September 2008. (GE 1.) Applicant has held an interim security clearance since the beginning of the 2008 employment.

Applicant married in August 1980. As a result of that marriage, she had four children. Applicant raised her four children as a single parent, because her husband left the family in 1988 (Tr. 27.) He did not provide any child support. (Tr. 54.) Applicant had no contact with her husband. They divorced in 2007. Applicant worked when she could, but was forced to accept state assistance to provide for her family until approximately 1996.

Applicant secured permanent employment starting in approximately 1995. (AE D.) During the evenings, she started taking more college classes in order to obtain an undergraduate degree, which would increase job opportunities. She worked as an administrative assistant from December 1996 until November 2001. (GE 1.) During this time, she continued to support her family and to send her children to college. (Tr. 27.)

In 2001, Applicant obtained a position as an Executive Assistant with a new company. She continued to take college courses in the evening. At this time, Applicant obtained student loans to finance her education. (Tr. 55.) Her employer agreed to reimburse her for her tuition costs (Tr. 27.) While they did not have a written agreement, each year her employer assured her during her annual review that when her student loans became due, the company would provide the finances to pay for them. (Tr. 48.)

In 2007, Applicant's employer experienced financial difficulty. (Tr. 28.) A new management team took over the company. Applicant was not retained as an employee, and was unemployed from November 2007 until June 2008. Applicant was never given any tuition reimbursement. She was now fully responsible for the student loans. The deferred loans defaulted, and Applicant did not have the income to begin paying on them.

The SOR alleges 21 delinquent debts totaling over of \$75,000. (GE 5.) The current status of Applicant's delinquent debts is described below.

The debts alleged in SOR ¶¶ 1.a (\$505), 1.p (\$96); 1.q (\$121); and 1.s (\$106) are paid in full. (AE B.)

The debts alleged in SOR ¶¶ 1.b, through 1.o, are student loans (\$75,000) which have been consolidated. (AE A.) Applicant's monthly payments are \$360. Prior to the loan consolidation, Applicant completed a "rehabilitation program" and paid \$421 monthly for approximately ten months.

The debt alleged in SOR 1.r (\$306) is a medical bill that Applicant recently learned about. She is in the process of paying it.

The debt alleged in SOR ¶ 1.t (\$799) is a utility bill. Applicant entered into a payment plan. The monthly payments are \$50. The current balance is \$449. (Tr. 23.) Applicant is current with her monthly payment. (Tr. 23.)

The debt alleged in SOR ¶ 1.u (\$1,496) is a hospital bill. Applicant entered into a payment plan. The monthly payments are \$50. Her current balance is \$996. (AE C.)

Applicant received financial counseling, and worked with various credit counseling agencies to assist her with her budget development and payment plans. She was not successful in obtaining a loan to pay off the delinquent debts that are not student loans. (Tr. 16.) She has been successful with her payment plans that are in place.

Applicant's net monthly income is approximately \$2,200. (Tr. 41.) This does not include her new husband's net monthly income of approximately \$3,000. Applicant's husband supports the household. Applicant puts most of her income into their joint account. She keeps some money to pay her remaining debt. She is current with her monthly expenses. Applicant has no credit cards. She has no car payment. Her recent credit reports confirm that she "pays as agreed" on her accounts.

Policies

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

Section 7 of Executive Order (EO) 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 *a/so* 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^o is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on several accounts,

including student loans. Her credit reports confirm the debts. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where 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 accumulated delinquent debt while going to school to gain better employment opportunities. She also believed that her company would help pay for the tuition. Applicant was a single parent raising four children. They are now adults. She is recently remarried. She has paid several of the delinquent debts. She has a consolidated student loan. She is in a stable financial situation. There is no likelihood that future debt will occur. The vast majority of the delinquent debts reported on her credit reports were the result of the student loans. This mitigating condition applies.

Under AG & 20(b), the disqualifying condition may be mitigated 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 husband left her in 1988. She had to accept assistance in the earlier years but she found employment. She attended college at night. She worked steadily and until 2007, she did not have any financial difficulties. The loss of her position in 2007 and the lack of tuition reimbursement were the main cause of her delinquent debts. Applicant acted responsibly in paying her accounts under the circumstances. This mitigating condition applies.

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 received formal financial counseling. She worked with several firms to help her develop a budget and a payment plan. She has a consolidated student loan. She has paid the smaller accounts. Her efforts are sufficient to carry her burden on those debts which are hers. I conclude these mitigating conditions apply.

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 the 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 the facts and circumstances surrounding this case and conclude they are sufficient to overcome the government's case.

Applicant is a well-educated professional. She was a single parent for 20 years and educated her children. She had no support from her ex-husband. She attended college at night for many years. In 2005, she earned an advanced degree (MBA). She is a role model for her family. She earns a good salary and is financially stable. She paid \$421 monthly for ten months, and is now on a \$360 per month payment plan for her student loan consolidation program. Her student loans, which constitute the overwhelming bulk of her debts are in current status. She remarried in 2007, and her husband's income helps with household expenditures. She obtained financial counseling and has been very responsible in dealing with her financial situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under 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: through 1.u: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge