



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



In the matter of:)
)
) ISCR Case No. 09-01129
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

December 4, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is granted.

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (e-QIP) on November 13, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

¹ Required by Executive Order 10865 and by DoD Directive 5220.6 (Directive), as amended.

On June 30, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).² Applicant signed her notarized Answer on July 20, 2009. She admitted to all allegations in the SOR except allegation 1.e. (see Procedural matters, below). She also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 31, 2009, and the case was assigned to me on September 4, 2009. DOHA issued a Notice of Hearing on October 5, 2009, and I convened the hearing as scheduled on October 27, 2009.

During the hearing, the government offered four exhibits, which I admitted as Government Exhibit (GE) 1 through 4. The government also offered a chart indicating the status of Applicant's debts, which I marked as Hearing Exhibit I. Applicant testified and offered nine exhibits, admitted as Applicant's Exhibit (AE) A through I. DOHA received the transcript (Tr.) on November 4, 2009.

Procedural Matters

Applicant's answer to the SOR did not indicate a response to allegation 1.e. At the hearing, she admitted to the debt listed at ¶ 1.e.

Findings of Fact

Applicant's admissions to SOR allegations 1.a. through 1.f. are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 42 years old, married in 1987 and divorced in 1993. She remarried in 1997, and has two children, five and seven years of age, from her second marriage. Both children live with Applicant and her husband. She is currently taking the final courses to complete a bachelor's degree in 2010. She was unemployed until she and her husband started their own mortgage business in 2007. In 2008, after the business failed, she worked for a private company in customer service, and shortly thereafter, began working for her current employer, a defense contractor, as a staff assistant (GE 1; Tr. 43-44).

While Applicant's husband worked as a realtor for approximately eight years, their credit rating was stable. In April 2007, Applicant and her husband started their own

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

mortgage loan business. They operated a small company, handling about six mortgage applications per month. The business was their sole source of income, and initially, it did well. However, within a few months it started to founder because of the housing market crash, and the resulting economic crisis. When the business began to fail, Applicant and her husband liquidated their retirement account to pay their bills. They then used cash advances on their credit cards to pay for their mortgage, utilities, and other expenses (GE 1, 4; AE B, E; Tr. 24, 42, 45-48).

In April 2008, Applicant's husband and two children were broadsided while driving in their car. The children were not injured, but Applicant's husband suffered a back injury. He required several months of medical treatment and physical therapy and was unable to work. They did not have medical insurance and paid for his medical expenses out-of-pocket. Although the other party was found to be at fault, they have yet to be reimbursed for the medical expenses.³ Their insurance company paid the remaining balance on the wrecked car, but provided no additional funds to replace the car. They were forced to purchase another car, and bought a used sedan; both of Applicant's cars are seven years old. During his medical treatment, Applicant's husband was unable to participate in operating their mortgage business or caring for the children. Applicant tried to care for the home and children, and also operate the business (GE 1, 2, 4; AE B, C; Tr. 59-62).

Applicant and her husband were able to pay their mortgage and car loans. However, they could not also keep abreast of their credit card payments, and their credit report started to show delinquencies in May 2008. The allegations in the SOR reflect these unpaid accounts, which amount to approximately \$77,000. Applicant contacted the credit card company listed at ¶ 1.a. and explained that she would not be able to pay anything in light of their limited income. She also tried to negotiate a settlement with the credit card company at ¶ 1.c., but was unsuccessful because, at the time, her husband was not employed and she "was a one-income household." (Tr. 51, 70).

Eventually, the financial difficulties started to affect Applicant's ability to keep up with payments on her first and second mortgages as well. However, she kept in touch with the lender. In February 2009, she was able to negotiate a modification of the mortgage loan, which reduced her monthly payment by approximately \$245 per month. Her payments have not been late since then. Her car loan payment has also been timely since at least February 2009. Applicant does not use credit cards (GE 3, 4; AE G; Tr. 25, 27, 65-69).

Applicant and her husband tried to keep their company operating, but could not. In June 2008, she found employment, which provided medical benefits and an annual salary of \$30,000. Several months later, she accepted an offer at her current company for a position that paid \$41,600. Applicant is currently taking college courses, using her company's 100 percent tuition reimbursement benefit. After the next three courses, she

³ The unreimbursed medical expenses are in Applicant's husband's name and are not alleged in the SOR (Tr. 62).

will complete requirements for her bachelor's degree, which will qualify her to pursue higher-paying positions within her company (GE 3; AE C; Tr. 26, 38, 42, 58-59).

The downturn in the real estate industry led Applicant's husband to change careers. Although he began a nursing degree a few years ago, he has been unable to complete it, given the family's financial constraints. However, he recently completed training as a Certified Nursing Assistant (CNA). In September 2009, one month before the hearing, he began employment at a local hospital. He plans to use the tuition reimbursement benefit from his current employer to complete his degree (Tr. 29-30, 88).

Applicant's mother has provided financial assistance. She received funds from a wrongful death suit after her husband died from mesothelioma. She shared these funds with her children, including Applicant. Over a period of about seven months, Applicant has received gifts ranging from \$600 to \$2,500 from her mother. She used these funds to help pay the family's living expenses (Tr. 27-29).

In 2009, Applicant and her husband considered whether to file for bankruptcy. They reviewed their income and debts, and decided that the best course for the family would be to file a Chapter 7 petition. In January 2009, they paid a partial retainer to an attorney, and were able to pay the balance during the summer. As of October 16, 2009, the attorney planned to file the petition within the month (AE E; Tr. 30, 33, 79).

Applicant's base salary is \$41,600. Her gross earnings for 2009 will be \$46,000, which includes overtime hours. When she began working for a private employer (June to September 2008), her net monthly income was \$1,981. Her net monthly expenses were \$3,649, leaving a net monthly remainder of negative \$1,668. In her current job, she earns \$2,878 net per month, which leaves a net monthly remainder of negative \$771. However, her husband's new job adds net monthly income of \$1,380. With this additional income, Applicant's monthly net remainder is now \$609. Applicant's husband's job, which began in September 2009, pays approximately \$22,000 per year. Their joint net annual income is approximately \$50,000 (AE F; Tr. 78).

Applicant received several awards for her work during her first year of employment. Character reference letters from her manager and traffic/logistics lead attest to her competence, timeliness, and commitment to her job. She was also cited for her security awareness during an on-site security inspection in September 2009. Applicant's security manager noted that Applicant initiated a discussion with him about her financial difficulties from the start of her security processing. She kept him aware of her debts payments and was forthcoming at all times (AE H, I).

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised

Adjudicative Guidelines (AG).⁴ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁵ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the government’s case. Because no one has a “right” to a security clearance, an Applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.⁷

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to 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

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

protect classified information. An individual who is financially over-extended 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.

Applicant had good credit until her business failed as a result of the recent mortgage crisis. She used credit card cash advances to pay living expenses and was unable to repay them timely. Applicant's credit reports show that she has had delinquencies since May 2008. Both disqualifying conditions AG ¶19(a) (*inability or unwillingness to satisfy debts*) and AG ¶19(c) (*a history of not meeting financial obligations*) apply. The record contains no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling or deceptive practices.

The Financial Considerations guideline also contains conditions that can mitigate security concerns. In this case, AG ¶¶ 20(a) and 20(b) are relevant.

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*) applies. Applicant's delinquencies, which began in 2008, are recent. However, lack of recency is not the only element that mitigates under AG ¶ 20(a). Applicant's inability to pay arose from one of the worst financial crises in recent memory, and it is unlikely that she will find herself in such circumstances in the future. Moreover, Applicant had solid credit before the mortgage crisis, she made diligent efforts to keep as many of her accounts up-to-date as she could, and she did not spend money in a negligent or frivolous manner. Applicant's response to her delinquencies showed good judgment, and her trustworthiness is not in doubt.

Applicant chose to start a mortgage lending business just before the mortgage crisis began. She had no way to foresee or control that event, which played havoc with her finances. In addition, Applicant's husband sustained a back injury in a car accident. She could not have foreseen this event, or the unexpected medical expenses, months of therapy, and lost capability that resulted from it. Applicant has acted responsibly: she immediately obtained employment, enabling her to pay her mortgage and car loan, so that she could keep her family in the home, and have reliable transportation to her job. When she received funds from her mother, she used them to pay bills. She obtained a modification of her mortgage, which reduced her monthly payment considerably. Her salary, along with the income from her husband's new job, has brought her from a negative monthly remainder to a positive remainder within approximately 18 months. Applicant has provided sufficient evidence that she has not ignored her financial obligations and has acted responsibly over the past year-and-a-half. AG ¶ 20(b) applies (*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).

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the 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.

AG ¶ 2(c) requires that 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. Under each guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's delinquencies stem from factors beyond her control. Until 2008, Applicant had no delinquent debts. However, she and her husband chose to start a mortgage business just before the start of the national mortgage crisis. Along with millions of others, they did not foresee what was coming. Another unforeseeable event occurred when Applicant's husband was injured in an automobile accident and required several months of therapy. Trying to support her family initially on the income from a failing mortgage business, and with an unemployed spouse, and later, on one salary of \$30,000 per year, was not possible without incurring delinquencies.

Over the past year-and-a-half, Applicant has taken numerous steps to resolve the situation: she obtained employment to ensure steady income and to obtain medical benefits. When it did not pay enough, she secured a higher paying job. Currently, she is using the free tuition benefit to earn a degree to further increase her future earning potential. Her husband is employed in a new field, and plans to use the free tuition benefit through his current employer to complete his nursing degree. Applicant negotiated a mortgage loan modification, and is now paying lower monthly payments. She has, with her husband, turned their negative net remainder to a positive cash flow. Finally, she hired an attorney to assist her in resolving her debts through bankruptcy. Applicant has made significant improvements in her financial situation in the past 18

months, despite supporting four people on approximately \$50,000 per year. Applicant was also candid and forthright with her security manager about her financial problems, and her coworkers attest to her reliability and sense of responsibility.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	FOR Applicant
Subparagraphs 1.a. – 1.f.	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, It is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge