



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



In the matter of:)
)
) ISCR Case No. 09-01591
)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Michael Eisenstein, Esquire

August 10, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On February 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 6, 2010, and requested a hearing before an administrative judge. The case was assigned to me on May 28, 2010. DOHA issued a Notice of Hearing on June 7, 2010. I convened the hearing as scheduled on July 12, 2010. The Government offered Exhibits (GE) 1 through 6.

Applicant did not object and they were admitted. Applicant and a witness testified. Applicant offered Exhibits (AE) A through D, which were admitted without objections. The record remained open until July 19, 2010, to allow Applicant an opportunity to provide additional documents, which she did. They were marked as AE E though I. Department Counsel had no objections and they were admitted.¹ DOHA received the hearing transcript (Tr.) on July 20, 2010.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.e, and 1.f, and denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old. She is married, but she separated from her husband in September 2007. She has a 17-year-old son who is in high school. She has attended college and needs six more classes to complete her bachelor's degree. She attended college full-time until September 2003. She stopped when her husband no longer was working two jobs and she needed to work. From 2003 to 2006, she worked part-time. She has worked for federal contractors since 2006.²

Sometime in 2002, Applicant noticed a change in her husband's behavior. He was grief stricken after his father passed away and began to act differently. Each summer he would spend money excessively and cause financial problems. Applicant would then attempt to pay the bills and rehabilitate their financial situation. After several years of this pattern, she learned sometime in 2007 that her husband was not depositing his wages in their account and he was instead using the money to buy illegal drugs. After a domestic violence incident, the court became involved and garnished her husband's wages in October 2008, so Applicant would receive support before he spent his money on drugs. She received \$1,200 a month for support. He lost his job in April or May 2008, and did not pay support until February 2010, when he began paying \$500 a month. She did not receive support from March or April 2008 until February 2010. The current support she receives is not court-ordered. She stated when she was living with her husband they would concentrate on paying his debts. He was the family's primary source of income and she was a full-time student and stay-at-home parent.³

The debt in SOR ¶1.a (\$74) was a checking account that was closed in October 2005. Applicant was to make four payments of \$68 beginning in November 2006. She made three payments and did not make the fourth, and it went to collection in January

¹ Department Counsel's Memorandum was marked Hearing Exhibit I.

² Tr. 30-37, 43-44, 83.

³ Tr. 37-44, 83-86.

2009. She paid the balance owed in August 2009. Applicant stated her failure to make the last payment was an oversight. This is the same debt as alleged in SOR ¶ 1.d.⁴

The debt in SOR ¶ 1.b (\$1,418) was reported delinquent in 2003. Applicant stated in her answer to the SOR that she began to take action on the debt in November 2006. She agreed to make ten payments of \$25. She missed a payment and the collection company then wanted six lump sum payments, which she could not afford. The debt was sold to a collection firm who filed a claim in court. After to the claim, the firm dissolved and Applicant was waiting to hear the status of the court date. She made her last payment on the debt sometime in 2007. On March 22, 2010, the court case was dismissed. There is no further court action on this debt, and it is presumed to be resolved.⁵

The debt in SOR ¶ 1.c (\$24,000) is for a student loan. Applicant attended college from 1995 until 2003. She financed her education through student loans. Each semester she would get another student loan. Her total student loan debt is approximately \$79,313.⁶ She consolidated her student loans. She made two payments of \$480.77 in January and February 2010. She has an agreement with the student loan creditor to pay \$180 a month, which began in March 2010, and will continue until December 2010, and then her finances will be reevaluated to determine if the payments should be changed. She also stated some of her student loans are deferred until December 2010.⁷ Applicant provided a document from a student loan creditor stating her forbearance request was processed. One of her loans was granted a forbearance from April 2010 to May 2010, due to temporary hardship.⁸ It appears Applicant has rehabilitated some of her student loans and is making payments, and some are deferred and are no longer in a default status.⁹

The debt in SOR ¶1.e (\$1,033) was forwarded for collection in October 2006. Applicant made arrangements to pay \$25 a month.¹⁰ She was presented with a settlement offer in June 2009 to pay \$516.94 to settle the debt. She stated she made one or two payments of \$172 and then could not pay the remaining amount. She now has a new agreement with the creditor and she will make eight monthly payments of

⁴ Tr. 87-88, 94.

⁵ AE G; Tr. 79-80, 88-94.

⁶ GE 2; AE J page 2.

⁷ There appear to be three student loan debts. The one alleged is delinquent. The other two appear to be in a deferred status and due in December 2010.

⁸ AE D.

⁹ Tr. 46-78, 107-115; AE B, D, F

¹⁰ Answer to SOR.

\$114. She provided documentation that showed she paid \$114.67 in February, April, May, and June 2010.¹¹ Appellant is resolving this debt.

The debt in SOR ¶1.f (\$100) is a medical debt. Applicant incurred the debt in 2007, and it went to collection in 2008. She was unaware she owed the debt, and when she became aware, she paid it in February 2010. She provided a document showing \$100 was transferred to the creditor.¹²

Applicant earns approximately \$55,000 a year. She has submitted applications for a second job. The debts listed in the SOR are in her name only. Applicant attributes her financial problems to when her husband stopped paying her child support and would spend the family income on drugs before they separated. Applicant now has control over her personal finances. She is paying her current bills on time and living within her means. She anticipated a pay raise in July 2010.¹³

Applicant's direct supervisor testified on her behalf. She has worked for him for about a year-and-a-half. He is a graduate of a service academy. He considers Applicant dependable, honest, and he relies on her to provide him accurate and reliable information, both positive and negative. She is forthright in relaying critical information to him. This is an important aspect of her job and he depends on it to complete his job. She has a good reputation in the company. She supervises between 8 and 12 people. He has no concerns about granting her a security clearance.¹⁴

Policies

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

¹¹ Tr. 94-106; Answer to SOR; AE H.

¹² Tr. 106-107; Answer to SOR.

¹³ Tr. 80-82, 134-135.

¹⁴ Tr. 18-29.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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

Guideline F, Financial Considerations

The security concern 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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant had delinquent debts that were unpaid and unresolved for a period of time. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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 was unaware of one of her delinquent debts. When she became aware she paid it. She had difficulty paying her debts and student loans when her husband stopped working two jobs and squandered their money on drugs. He stopped paying child support and for a period of time caused additional financial problems for her. These conditions were beyond her control. Her largest debt is her student loans. She consolidated and rehabilitated them and they are no longer in default status. One debt was being resolved in a court action that has since been dismissed, and it does not appear there is further action on the debt. Applicant is making payments on a payment plan and has paid or resolved the remaining debts. I find mitigating condition AG ¶ 20(a) applies. The circumstances of Applicant's delinquent debts are unlikely to recur. She is no longer reliant on her husband's income and is paying her own bills. I find AG ¶ 20(b) applies because the conditions that resulted in the financial problems were largely beyond her control and she has acted responsibly under the circumstances in resolving them. She has her student loan debt and repayment plan under control and has paid or is in a payment plan resolving her remaining debts. Therefore, AG ¶¶ 20 (c) and 20 (d)

apply. Applicant was involved in a lawsuit regarding one of her debts because the creditor went out of business. The suit has been dismissed, and it does not appear the debt is being pursued. I find AG 20 ¶ (e) applies.

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. Applicant experienced financial difficulty when her husband stopped working his second job and began squandering his money on drugs. Applicant has paid, resolved, or is paying all of her debts. Overall, the record evidence leaves me with no questions or doubts about 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.

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.f:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge