



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-01780
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

May 12, 2010

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on December 1, 2008. On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for the 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant acknowledged receipt of the SOR on September 9, 2009. She answered the SOR in writing on September 28, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on December 1, 2009, and I received the case assignment that same day. DOHA issued a notice of hearing on December 7, 2009, and I convened the hearing as scheduled on January 28, 2010.

The Government offered Exhibits (GXs) 1 through 6, which were received without objection. The Applicant testified on her own behalf. DOHA received the transcript of the hearing (TR) on February 4, 2010. I granted the Applicant's request to keep the record open until March 1, 2010, to submit additional matters. On March 1, 2010, she submitted Exhibits (AppXs) 1 through 8 and 10¹, with some objection by Department Counsel. AppX 1 had ten "Letters of character / recommendation"; and not "thirteen," as averred to by the Applicant. They were otherwise admitted, as represented by the Applicant. The record closed on March 1, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, the Applicant admitted all of the factual allegations in of the SOR, except for Subparagraph 1.g., with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Financial Considerations

The Applicant's mother passed away in 1997. (TR at page 25 lines 6~22, and AppX 4.) The Applicant and her husband "had to help with funeral costs 'cause she didn't have life insurance." (*Id.*) In 2002, her "father-in-law passed away," which caused a further financial burden. (TR at page 25 lines 6~22, and AppX 4.) Also, in 2002, her husband also retired from the Navy, and was unemployed for "three to four months," which caused them further financial difficulties. (TR at page 26 lines 7~14, and AppX 4.)

1.a. The Applicant filed for the protection of a Chapter 13 Bankruptcy in October of 1999, and complied with its payment provisions. (TR at page 29 lines 12~25, and GX 3.) As a result, in December of 2002, her Bankruptcy was successfully discharged, as evidenced by the Trustee's Interim Final Report. (AppX 4.)

1.b. It is alleged that the Applicant is indebted to Creditor B in the amount of about \$123. (GX 4 at page 9.) The Applicant admits this debt, and since January of 2010 has been paying \$20 each month towards this delinquency, as evidenced by correspondence to the creditor and by two cancelled checks drawn to the creditor. (TR at page 32 line 17 to page 33 line 17, AppX 5 at page 1, and AppX 6 at pages 5 and 9.)

1.c. It is alleged that the Applicant is indebted to Creditor C in the amount of about \$100. (GX 6 at page 2.) The Applicant admits this debt, and has initiated a monthly payment of \$20 towards this delinquency, as evidenced by correspondence to the creditor and by a cancelled check drawn to the creditor. (TR at page 33 line 18 to page 35 line 5, AppX 5 at page 2, and AppX 6 at page 10.)

¹AppX 9, "Copy of my TransUnion Credit Report" was cited by the Applicant, but the document was not included in her packet. As such, it was not admitted into evidence.

1.d. It is alleged that the Applicant is indebted to Creditor D in the amount of about \$76. (GX 4 at page 4.) The Applicant admits this debt, and since January has been paying \$20 each month towards this delinquency, as evidenced by correspondence to the creditor and by two cancelled checks drawn to the creditor. (TR at page 35 line 15 to page 39 line 8, AppX 5 at page 3, and AppX 6 at pages 3 and 4.)

1.e. It is alleged that the Applicant is indebted to Creditor E in the amount of about \$100. (GX 6 at page 2.) The Applicant admits this debt, and since January has been paying \$20 each month towards this delinquency, as evidenced by correspondence to the creditor and by two cancelled checks drawn to the creditor. (TR at page 39 line 9 to page 40 line 4, AppX 5 at page 4, and AppX 6 at pages 7 and 9.)

1.f. It is alleged that the Applicant is indebted to Creditor F in the amount of about \$377. (GX 6 at page 2.) The Applicant admits this debt, and since January has been paying \$20 each month towards this delinquency, as evidenced by correspondence to the creditor and by two cancelled checks drawn to the creditor. (TR at page 40 line 16 to page 41 line 20, AppX 5 at page 5, and AppX 6 at pages 6 and 9.)

1.g. It is alleged that the Applicant is indebted to Creditor G in the amount of about \$1,710. (GX 5 at page 2.) The Applicant initially denied this debt as having been charged off; and as such, no longer appeared as a delinquency on her credit report. (TR at page 41 line 21 to page 43 line 24.) However, at her hearing she admitted this charged off debt, and has vowed to exercise due diligence in addressing the debt. (*Id.*) Her diligence and good character is attested to by her family, friends, and those who know her in the work place. (AppX 1.)

1.h. It is alleged that the Applicant is indebted to Creditor H in the amount of about \$813. (GX 6 at page 2.) The Applicant admits this debt, and since January has been paying \$40 each month towards this delinquency, as evidenced by correspondence to the creditor and by two cancelled checks drawn to the creditor. (TR at page 43 line 25 to page 46 line 2, AppX 5 at page 7, and AppX 6 at pages 8 and 10.)

1.i. It is alleged that the Applicant is indebted to Creditor I in the amount of about \$4,998. (GX 5 at page 2.) The Applicant admits this debt, and since January has been paying \$50 each month towards this delinquency, as evidenced by correspondence to the creditor and by three cancelled checks drawn to the creditor. (TR at page 46 line 3 to page 47 line 15, AppX 5 at page 6, and AppX 6 at pages 1,2 and 10.)

1.j. and 1.k. It is alleged that the Applicant is indebted to Creditor J in the amount of about \$22,703, for college loans for her daughter. (GX 5 at page 2.) The Applicant admits these debt, and these loans have been "In Forbearance" from "2/21/2007 to 8/21/2010," as evidenced by documentation from the creditor. (AppX 8.)

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 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 Paragraph 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 Subparagraph 19(a), an *"inability or unwillingness to satisfy debts"* is potentially disqualifying. Similarly under Subparagraph 19(c), *"a history of not meeting financial obligations"* may raise security concerns. The Applicant owes about \$8,297 in past due indebtedness.

These are countered by the Mitigating Conditions found in Subparagraphs 20(b) and 20 (d). Under Subparagraph 20(b), it may be mitigating where *"the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment . . . or a death), and the individual acted responsibly under the circumstances."* Furthermore, Subparagraph 20(d) applies where the evidence shows *"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."* The loss of the Applicant's mother in 1997, her father-in-law in 2002, and her husband's unemployment in 2002, caused her financial difficulties. Given these circumstances, I find that she has acted responsibly. She has now addressed all but one of her past due debts through monthly payments, and vows due diligence in addressing the \$1,700 charged off debt.

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. Under Paragraph 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. Here, she has the unqualified support of her family, friends and colleagues, who attest to her due diligence and good character. (AppX 1.)

The Administrative Judge should also 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her 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

Subparagraph 1.a.~1.k: 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.

Richard A. Cefola
Administrative Judge