



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



In the matter of:)
)
-----) ISCR Case No. 09-02467
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: Arnold H. Wuhrman, Esq.

October 13, 2010

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Questionnaire for Sensitive Positions on January 7, 2009. (Government Exhibit 1.) On July 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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 August 21, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 18, 2009. This case was assigned to me on September 25, 2009. DOHA issued notices of hearing on November 5 and November 23, 2009.¹ I convened the

¹The date of the hearing was changed from December 3 to December 2, 2009.

hearing as scheduled on December 2, 2009. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf, called one additional witness, and submitted Applicant Exhibits A through M, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. The Applicant submitted Applicant Exhibit N on December 12, 2009, and it was admitted without objection. DOHA received the transcript of the hearing on December 8, 2009. The record closed on December 12, 2009. 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 60 and divorced. She is employed by a defense contractor and seeks to retain a security clearance in connection with her employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because she is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admits all the factual allegations in the SOR. Those admissions are hereby deemed findings of fact.

Applicant testified that her financial problems began in 2005. At that time one of her daughters, and two grandchildren, began living with Applicant. Applicant was the sole wage earner, and was having to support four people. (Transcript at 61-65.)

In November 2007 the tenant in Applicant's rental property vacated the house. The property was severely damaged by the tenant, and it cost the Applicant over \$17,000 to get the house in a position to be sold. Once the house was in a saleable condition, the housing market had collapsed and the Applicant could not sell the house at a profit. It was eventually sold at a loss in April 2008. Even though the house was sold at a loss, since it was a rental property Applicant wound up owing capital gains tax in the amount of \$18,000 to the state and federal governments. In addition, the mortgage payment on Applicant's own home had gone up because it was a variable rate loan. (Transcript at 68-75; Applicant Exhibits I at 6, J and K.)

Applicant attempted unsuccessfully to work with her creditors during the remainder of 2008 and into 2009. Eventually, Applicant made the difficult decision to file for Chapter 13 bankruptcy protection. (Transcript at 75-77.) Her petition was filed on June 1, 2009. The Chapter 13 plan was approved by the Bankruptcy Court on July 7, 2009. All of the debts listed in the SOR are included in the bankruptcy, which proposes to pay non-priority unsecured creditors 18%. As of the date the record closed, Applicant had made all six of the required monthly payments to the Bankruptcy Trustee. As part of the bankruptcy process, Applicant successfully completed two financial counselling courses. (Transcript at 78-91; Government Exhibit 4; Applicant Exhibits A, B, C, D, F, G and H.)

In addition to making payments to the Bankruptcy Trustee, Applicant is current on her other debts. This includes making payments on her home mortgage, as is confirmed by records from the mortgage company website. (Transcript at 85-86, 91-95; Applicant Exhibits E and I.)

Mitigation

A co-worker of Applicant, who has known her over 20 years, testified on her behalf. In supporting her request for a security clearance he stated:

I have been her supervisor and I've been her manager throughout the years at various points in both of our careers. I saw [Applicant's] value when I promoted her several times while as her manager and supervisor, bringing her to the position where she's at. . . . [Applicant] is the kind of person that you simply show her the task and just completes it, does it, monitors it, does it very well. (Transcript at 27-28.)

Applicant also submitted her latest performance reviews, as well as examples of her work. (Applicant Exhibits L and M.) They show that she is a diligent and professional employee, who exceeds performance requirements.

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by her own admission, and supported by the documentary evidence, had substantial past-due debts. The evidence is sufficient to raise these potentially 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.” In addition, AG ¶ 20(b) states that the disqualifying conditions 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 financial difficulties arose primarily because several members of her family moved in with her, coupled with the difficulties involving selling her rental property. She showed serious attempts to resolve her past due debts. The record shows that she has included all her past due debts in bankruptcy, as well as paying all of her current debts. At all times she has acted responsibly. These two mitigating conditions apply.

Filing bankruptcy is an appropriate and legal way to resolve debts. Under the particular circumstances of this case, I find that Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant received the financial counselling that is required by the Bankruptcy Code. Her current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant had some financial problems, not of her making, but her current financial condition is stable. Under AG ¶ 2(a)(2), I have considered the facts of the Applicant’s debt history. As stated at length above, much of this was brought about because of a bad tenant, family issues,

and the recession. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial situation. On balance, I conclude that Applicant has successfully overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports granting her request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. through 1.k.: For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge