



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



In the matter of:)
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)
SSN:) ISCR Case No. 09-02658
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro se*

April 14, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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).

Applicant answered the SOR in writing on October 13, 2009, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 8, 2009. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an

opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant responded to the FORM on January 3, 2010. She did not object to the admission of the items attached to the FORM, and they are admitted. Department Counsel did not object to the documents attached to Applicant's response, and they are admitted as Exhibits (AE) A through C. The case was assigned to me on March 19, 2010.

Findings of Fact

Applicant is a 45-year-old truck driver for a defense contractor. She is seeking to obtain a security clearance. She received a diploma from a vocational college. She married in 1985 and divorced in 1998. She married again in 1998. She has three surviving children, ages 26, 22, and 19, and two stepchildren, ages 21 and 19.¹

Applicant and her husband have been a truck driving team since 1996. Their finances were stable until she injured her back while working in 2005. She was unable to drive and received Workers' Compensation. The company they worked for was going out of business. Her husband purchased his own truck in about March 2006. Applicant's weight gain after the injury was adversely affecting her back. Her doctors recommended gastric bypass surgery. She borrowed \$25,000 to pay for the surgery, and it was performed in about November 2006. Her husband's business did fine for about seven months, but then the truck required an expensive repair, business slowed substantially, and gas prices rose. They used credit cards to keep the business afloat but were unable to maintain the payments. Applicant admitted that they "use[d] credit in an irresponsible manner." Other debts, including their mortgage, also became delinquent. Applicant returned to work as a truck driver for her husband's company in August 2007, but they were unable to catch up on their bills. In November 2007, they paid \$11,000 to attempt to bring their mortgage current, but they were still \$10,000 in arrears. Their house was sold in a short sale in June 2008. Applicant and her husband concluded bankruptcy was their only recourse.²

The SOR alleges 31 delinquent debts, with balances totaling approximately \$130,000. Applicant admitted owing all the debts alleged in the SOR, except she stated the \$13,493 debt alleged in SOR ¶ 1.q was a medical debt and not for a repossessed vehicle. Applicant is correct. This debt is the balance on the loan she obtained for her gastric bypass surgery. The debts in the SOR range from \$62 (SOR ¶ 1.h) to \$23,599 owed for a student loan (SOR ¶ 1.u), and include an additional student loan (SOR ¶ 1.r - \$21,941), two deficiencies on car loans after the vehicles were repossessed (SOR ¶¶ 1.s - \$7,601 and 1.t - \$3,669), medical debts, credit cards, and a \$6,500 tax debt (SOR ¶ 1.ee) to the Internal Revenue Service (IRS).

Applicant listed her delinquent debts when she submitted a Questionnaire for National Security Positions (SF 86) in November 2008, including \$6,500 owed to the

¹ Item 5.

² Items 4-7; Applicant's response to FORM; AE A.

IRS. She wrote that she was preparing to file bankruptcy, which she anticipated being filed in November 2008. When she was interviewed for her background investigation in February 2009, she told the investigator that the bankruptcy would be filed within the next 60 days. When she responded to DOHA interrogatories in May 2009, she wrote that she found an attorney, but was unable to raise the \$1,600 for attorney and filing fees. DOHA requested the status of the \$6,500 debt to the IRS. She wrote that the balance on the debt was \$6,500 and she and her husband “will be clearing this debt and intend on making payment arrangements with the IRS.” Applicant’s husband filed Chapter 7 bankruptcy, and his debts were discharged in May 2009. Applicant filed Chapter 7 bankruptcy in October 2009. Under Schedule E – Creditors Holding Unsecured Priority Claims, the petition listed \$17,738 in unpaid federal taxes from 2007 and 2008, and \$12,357 in unpaid state taxes from 2008. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed \$141,837 in debts and included student loans of \$22,700 and \$24,096. Under Schedule I – Current Income of Individual Debtor(s), the petition listed Applicant as unemployed.³

Applicant received financial counseling as required by her bankruptcy. She did not discuss how she plans to address any debts not discharged in bankruptcy. Applicant does not have a criminal record. She stated that she is an “honest, loyal, hardworking woman.” She felt that the denial of her security clearance questioned her patriotism, trustworthiness, and honesty.⁴

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 to be 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, administrative judges apply the guidelines 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.

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

³ Items 4-7, 11.

⁴ Items 4-7; Applicant’s response to FORM; AE B, C.

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 the 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 EO 10865 provides that adverse 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, as follows:

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has filed bankruptcy, but her debts have not yet been discharged. Her financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant attributed her financial problems to her missing work due to her back problems, expensive truck repairs, high gas prices, and the trucking company's lack of business. These qualify as conditions that were outside her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant also admitted that she "use[d] credit in an irresponsible manner." Applicant wrote that she owed the IRS \$6,500 when she submitted her SF 86 in November 2008. Her bankruptcy petition listed \$17,738 in unpaid federal taxes from 2007 and 2008, and \$12,357 in unpaid state taxes from 2008. Applicant incurred additional tax liability after she stated that she planned to file bankruptcy. Student loans are generally not discharged in bankruptcy, and it is doubtful that Applicant's unpaid taxes will be discharged. She did not submit evidence of how she will address any debts that are not discharged in bankruptcy. I am unable to make a determination that she acted completely responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling as part of her bankruptcy. There are indications that the problem is being addressed through bankruptcy. However, the unpaid student loans and taxes remain a concern. AG ¶ 20(c) is partially applicable. Bankruptcy is a legal means of addressing one's unduly burdensome debts, but it does

not qualify as a good-faith effort to pay or resolve her debts.⁵ AG ¶ 20(d) is not applicable.

In sum, I conclude that financial concerns are still present despite some mitigation.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. I considered Applicant's clean criminal record. I believe she is a loyal, patriotic, honest American citizen. However, at this time, there is not enough evidence in the record for me to conclude that her finances are in order.

⁵ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

