



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



In the matter of:)	
)	
)	ISCR Case No. 09-02736
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

May 24, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant’s eligibility for access to classified information is granted.

Applicant signed her Electronic Questionnaire for Investigations Processing (e-QIP) on January 27, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on August 27, 2009. 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) implemented on September 1, 2006.

Applicant received the SOR, and answered it in writing on October 9, 2009. DOHA received her answer on October 16, 2009. She requested a hearing before an administrative judge, which DOHA received on November 23, 2009. Department

Counsel was prepared to proceed on January 12, 2010, and I received the case assignment on January 14, 2010. DOHA issued a notice of hearing on February 2, 2010, and I convened the hearing as scheduled on February 24, 2010. The Government offered seven exhibits (GE) 1 through 7, which were admitted into evidence without objection. Applicant testified on her own behalf. She submitted five exhibits (AE) A through E, which were admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on March 11, 2010. I held the record open until March 24, 2010, for Applicant to submit additional matters. She requested an additional seven days to submit the requested information, which was granted by an order dated March 25, 2010. She timely submitted seven exhibits, AE F through AE L, without objection from the government. The record closed on March 31, 2010.

Procedural and Evidentiary Rulings

Notice

At the hearing, I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice. (Tr. 9.)

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b-1.n and 1.p of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.a, 1.o, and 1.q-1.s of the SOR.¹ After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 34 years old, repairs military aircraft for a Department of Defense contractor. She began her employment in February 2009. Her supervisor describes her as dependable, trustworthy, and efficient in all aspects of her job. She also assumes additional duties as his training coordinator and administrative assistant. She manages her professional and personal life well. He is aware that her finances are the reason for a security concern, as she has spoken openly with him about her financial problems. He recommends her for a security clearance.²

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²GE 1; AE F.

Applicant graduated from high school in 1994 and married in August 1994. She enlisted in the United States Marine Corps in 1996. She divorced in 1998. She has three children. Her daughter is 16 years old and lives with her former husband, who receives child support from Applicant. She has a 12-year-old and a 4-year-old son, for whom she is the primary support. Applicant served 10 years with the Marines. During her years of service, she received three Good Conduct Medals, the Global War on Terrorism Medal, the National Defense Service Medal, three Sea Service Deployment Ribbons, and other awards and certificates. The Marines honorably discharged her in August 2006.³

In June 2006, her then 6-month-old son fell, injuring his head while under the babysitter's care. Emergency personnel transported him to a nearby hospital. Because he was unresponsive, but breathing, physicians decided to transfer to him to a larger and better medically equipped hospital. For five days, he remained in this hospital, receiving needed medical care. Her son did not and does not require ongoing medical care as a result of his injury.⁴

After her discharge from the Marines, Applicant relocated to another area of the country. She lived with her sister and sister's boyfriend, sharing housing costs with them. She found employment with a company, earning \$19 an hour. Because of the high cost of living in this area, she experienced difficulties paying her regular living expenses and her child support. Within 18 months, the bank foreclosed on her sister's home, forcing everyone to move.⁵

Applicant decided to move back to the area where she had lived while in the Marines. She knew the cost of living was less; however, she encountered difficulty finding employment. She initially stayed with friends, as she could not afford housing. About two months after moving, she found work at a call center earning \$8 an hour. The job lasted three months, ending following a customer complaint. She was unemployed for a couple of months, then began working at a cleaners in the fall 2008. This job ended when she started her current employment.⁶

Applicant earned \$38,317 in 2007 and \$15,792 in 2008. In 2009, she earned \$47,318, a more than \$30,000 increase in gross income. Applicant is paid twice a month. Her gross monthly income totals \$3,875, including, \$536 for health and welfare pay. Her net monthly income totals \$1,577 plus additional income from overtime work. She receives \$455 a month in child support for her youngest son, but she does not receive any child support for her older son. Her overtime income varies, but can increase her monthly net income by \$200. Through payroll deductions, Applicant pays

³GE 1; GE 7; Tr. 19-21.

⁴Tr. 23-24.

⁵*Id.* 18, 38-40.

⁶*Id.* 39-42.

\$900 in child support and \$973 in medical, vision, and dental insurance in addition to income taxes, social security, life insurance, and disability insurance. Her health insurance payments include coverage for her 16-year-old daughter. Applicant's living expenses include \$375 for her trailer rent, \$250 for electric, \$480 for child care, \$400 for food, \$150 for cell phone, \$115 for cable and internet, and \$60 for school. Her total expenses are approximately \$1,800. Her checking account reflects that she does not overdraw her account. I find that she meets her monthly expenses. She does not own a car and does not use credit cards. Friends provide her with rides to work and when needed. Her children wear hand-me-down clothes. Applicant lives frugally and within her monthly income.⁷

When she lived with her sister and after separating from the Marines, Applicant did not earn sufficient income to keep current with her child support payments. She tried to reduce the payments, but her former husband refused to cooperate. She made the repayment of her back child support a priority. She pays an additional \$264 a month on her arrearage, and has documented these payments since July 2009. She anticipates her tax refund will be applied to her arrearage.⁸

Applicant paid the debts in SOR allegations 1.r and 1.s. She paid the SOR debt in 1.o, but did not verify her payment. She denied owing the debt in SOR allegation 1.l, indicating this debt should have been paid in full through her military allotments. She has not verified her belief. She also denied the debts in SOR allegations 1.n and 1.q. She acknowledged that she needed to dispute these debts. SOR allegation 1.p related to training she started while living with her sister. Because of the foreclosure, she did not complete the training and did not receive a refund on her tuition costs. She acknowledged this debt and the debt in SOR allegation 1.f. Both remain unpaid.⁹

Applicant's former husband asked her to co-sign a truck loan. After much discussion, Applicant signed the note and later learned that he did not sign the note. He did not always make the monthly payments or often made the monthly payments late. She eventually requested the note holder (creditor) to take the truck, which it did. The creditor obtained a deficiency judgment against Applicant. She did not receive notice of the court action or judgment. Her former husband has refused to pay the judgment and Applicant has not, as she lacks the funds at this time to pay the judgement alleged in SOR allegation 1.b.¹⁰

The debts in SOR allegations 1.c to 1.e and 1.g to 1.k relate to her son's medical treatment in June 2006. When Applicant's then infant son sustained his head injury in June 2006, Tricare provided health insurance to Applicant, as she was a member of the

⁷AE G; AE J; AE K; Tr. 24, 43-46.

⁸AE K; Tr. 28-29, , 33-34.

⁹SOR; Tr. 29-35.

¹⁰Tr. 21-23, 27, 48, 72.

United States military. She provided her insurance information to the health care providers. For unknown reasons, the medical bills were not submitted to Tricare for payment. Applicant acknowledged receiving copies of statement bills, but since she believed that Tricare would pay the bills, she did not consider the statements a request for payment. As she worked through the security clearance process, she contacted Tricare and discussed the bills. She completed required paper work and Tricare has started the process of reviewing at the bills. Applicant acknowledged that because of family issues and or matters, she had not pursued the resolution of these bills as she should.¹¹

Applicant has not sought formal financial counseling or debt consolidation. She did review her finances with friends. She has accumulated only one significant debt since leaving the Marines in 2006, the unpaid training loan. She does not want to file bankruptcy. She accepted responsibility for her debts.¹²

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.

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,

¹¹AE L; Tr. 21, 23-24, 29-30, 35-37, 52-55.

¹²Tr. 69-70, 74.

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for 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 an 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 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 accumulated delinquent debt and has been unable to pay some obligations for a period of time. 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), mitigation may occur when “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.” Applicant’s financial worries

started after she left the Marines in 2006. Her financial problems continue to the present. This mitigating condition does not apply.

Under AG ¶ 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, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” A significant portion of Applicant’s financial problems occurred when her infant son fell and injured his head, which required expensive medical treatment. The medical providers failed to or improperly billed Tricare, her health insurance carrier. Applicant fell behind in her child support after leaving the Marines because she was underemployed, earning at times not even enough income to pay her living expenses. When she returned to her present location, she lived with friends as she could not afford housing. During the years of underemployment, she did not incur a lot of debt which she could not pay. She acknowledged that she did not pursue payment of the medical bills because she thought Tricare was paying them. A year ago, She obtained employment which would help pay her bills. I find this mitigating condition is partially applicable.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Applicant is not receiving financial counseling nor is she working with a credit solution company. With her current net income and careful financial management, financial counseling is not as essential as it would be for a less disciplined Applicant. She has resolved two bills and has a payment plan for her child arrearage. She is working with Tricare to resolve the medical bills. Applicant has resolved, is resolving, or taken steps to resolve about 75% of the debts listed in the SOR because her medical debts are now being processed at Tricare. She manages her current expenses and has managed her day-to-day living expenses for sometime, despite limited resources. This mitigating condition is partially applicable.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant developed a repayment plan for her child support arrearage and began making payments in July 2009 before the SOR was issued. She pays an extra \$264 a month towards her arrearage. This mitigating applies to SOR allegation 1.m. only.¹³

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 an applicant’s conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

¹³AG ¶¶ 20(e) and 20(f) are not applicable in this case.

(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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has significant unpaid debts, the majority of which are medical. She agreed to co-sign a truck loan with her former husband in exchange for more contact with her daughter. He failed to keep his end of this bargain by not signing the truck loan, by not making his payments, and continuing to limit access to her daughter. The result of his conduct is a judgment against her for the unpaid balance on his truck. He refuses to pay her any money towards the debt.

Applicant is not required and cannot pay all her debts at one-time. She is paying her child support arrearage first and will work on the other debts when this is resolved. She started her child support arrearage payment plan in July 2009 and has complied with it. Her compliance on this plan shows a track record and her determination to resolve her debts one at a time. She has started the Tricare process for resolving the medical bills for her son's head injury now that she understands the bills had not been paid as she assumed. She will continue to work with Tricare until this matter is resolved and will pay any remaining amount she owes. Following her discharge from the Marines, Applicant encountered financial problems because her first job did not provide enough income to pay both her living expenses and other debts. She paid her living expenses, such as food and housing, as she had to provide these necessities of life for her two sons. When living circumstances change, she moved to a less expensive area, but found it difficult to obtain a good paying job. She obtained her current job about a year ago, and with this income, she started to resolve her debts, one-by-one. She must support her sons. She lives frugally, paying for the necessities of life, but not much more. She does not own a car, nor does she use credit cards to buy what she cannot afford. She must make choices about how to use her limited resources to support of her sons, her primary concern. She has medical insurance, which is expensive, but provides coverage for her and her three children. About one-half of her pay is used to pay child support and health care insurance. She is a reliable and dependable employee, who would not compromise classified information to pay these debts. While debts remain unpaid, a security concern is not raised, as Applicant has demonstrated that she cannot be coerced, exploited, or pressured into releasing classified information. She has never acted contrary to law and has shown that she is honest. (See AG ¶ 2(a)(1).)

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 finances under Guideline F.

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.s: For Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge