



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



In the matter of:)	
)	
)	ISCR Case No. 09-03941
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

January 25, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On August 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her security clearance application, citing security concerns under Guideline F (Financial Considerations). DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6; *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DoD in September 2006.

Applicant timely requested a hearing before an administrative judge. DOHA assigned the case to me on October 18, 2010. DOHA issued a notice of hearing on November 8, 2010. I convened the hearing as scheduled on December 8, 2010. Government Exhibits (GE) 1 through 9, and Applicant Exhibit (AE) (A-M) were stipulated into evidence. Applicant testified on her own behalf. DOHA received the transcript (Tr.) on December 16, 2010. At Applicant's request, I kept the record open for additional documents until December 29, 2010. Applicant submitted a packet of 12 financial

documents for the record, which were marked as AE N, and admitted into the record without objection. Eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in ¶ 1.a through 1.h with the exception of 1.c. and 1.g. At the hearing, Applicant acknowledged all the debts alleged in the SOR. Applicant's admissions are accepted as findings of fact. I make the following findings.

Applicant is a 46-year-old employee of a defense contractor. She graduated from high school in May 1982. (GE 1) She is not married and has no children. She has been with her current employer since July 2008.

Financial

Applicant was unemployed in 2002 due to a corporate restructure. (AE J) Before her unemployment, she earned a good income and had no financial difficulties. (Tr. 21) She found it difficult to find similar employment. She took various jobs to maintain her monthly payments. However, her salary was approximately \$13 an hour. (Tr. 28) She decided to sell her home and move into a small apartment. (Tr. 29) Applicant began to fall behind in her obligations. She immediately called her creditors to explain her predicament. She attempted to make smaller payments, but the creditors did not work with her. She considered a loan consolidation program, but that was not feasible.

Applicant again found herself unemployed in 2004 until January 2005. During that time she attended driving school to enhance her employment prospects. She completed the course and obtained a commercial driver license (CDL). Applicant worked for approximately ten weeks after completion of the course. However, her father was diagnosed with cancer and became ill very quickly. She moved to her parents' home in another state, and helped care for her father until his death in 2004. She now lives with her mother. Applicant supports her mother and helps with rent, food, and medications. (AE J)

From 2005 until February 2007, Applicant took a job paying \$9 an hour. She left that position for a higher paying job in March 2007. This lasted until February 2008. She was earning about \$13 an hour. In February 2008, she was again unemployed through no fault of her own. She received unemployment from March 2008 until July 2008. She received \$598 every two weeks. She decided then to refinance her car loan; however, Applicant could not afford the monthly car payment so she voluntarily surrendered her car to the dealer.

The SOR alleges eight delinquent debts, including a vehicle repossession and collection accounts. The total amount of indebtedness is approximately \$46,732. Applicant's credit reports confirm her debts. (GE 6-9) When Applicant received the SOR, other accounts were listed. She has since paid those accounts. (AE L) Over the past two

years, Applicant estimates that she has paid almost \$5,000 on her delinquent debts. She used her savings and income. (Tr. 26) In July 2008, her brother died and she had to assume the responsibility for his funeral expenses. She borrowed money from a friend of her mother to pay for the funeral. She paid back the loan.

Applicant contacted a credit counseling agency to obtain counseling and to resolve her delinquent debts. In 2009, she paid them for three months (\$1,039). However, they did not make any payments toward her accounts or verify the accounts on her credit report. (Tr. 11) In addition Applicant contacted a law firm to verify accounts that she had of which she had no knowledge. They officially disputed several accounts. (AE B) She researched the other debts and proceeded on her own to address them.

Applicant has already paid the debts alleged in SOR 1.d and 1.h. She has a repayment plan for the debt alleged in SOR 1.f. Since July 2009, Applicant has paid \$50 monthly. (AE F) The alleged debt in SOR 1.e for the repossessed auto is in a repayment plan. (AE O) Applicant owed a deficiency amount of approximately \$8,000. She settled the debt for \$3,532. She is making monthly payments of \$100 for which she submitted receipts showing number of payments.

Applicant successfully disputed the alleged debt in SOR 1.a and it has been removed from her credit report. (AE I) Before the dispute was resolved in her favor, she made three months of payments. (AE A) The debt alleged in SOR 1.b has also been successfully disputed, and the account removed from the credit report. (AE B) Applicant had also made payments on the account until the favorable resolution. A final debt in SOR 1.c has been resolved in Applicant's favor. (AE C)

The debt alleged in SOR 1.g for a medical account in the amount of \$301 is still not fully resolved. Applicant denied the debt and did not recognize it. She had medical services but had insurance and had not been contacted concerning any medical account. She submitted a letter after the hearing revealing that the account has been closed. (AE O)

Applicant's net monthly income is \$2,280. After expenses, she has approximately \$600 net remainder. Applicant completed financial counseling and received a certificate of completion in November 2010. (AE M) She has a budget and is saving some money each month to pay more on her repayment plans. Applicant plans to allocate her tax refund to her repayment plans. She has not incurred any new debt. She does not have any credit cards. She continues to financially help her mother.

Applicant submitted seven character statements. (AE K) Her lead manager describes her as a person who handles responsibility and is a dedicated and loyal member of the team. Her work is no less than perfect. Her colleagues and friends describe Applicant as intelligent, capable, dedicated, and personable. She is recommended as an enthusiastic and trustworthy person.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon an applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of an applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination of the loyalty of an applicant. It is merely an indication an applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of an applicant that may disqualify an applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). 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. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant incurred delinquent debts in the amount of \$46,732. She was unable to pay her delinquent accounts for a period of time. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant had no financial difficulties until 2002 when she lost her job. She attempted to make changes in her lifestyle so that she could maintain her expenses. She again experienced unemployment in 2004 and underemployment in 2007. She again strategized to reduce her expenses by selling her home and moving into a small apartment in an attempt to pay her bills. She was not earning enough money to pay her rent and car payments. She eventually surrendered her car. She also moved home so that she could help her ill father. She has a steady job and has addressed all her delinquent accounts. She has no new debt. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. As noted above, Applicant experienced unemployment and underemployment on several occasions. These circumstances were out of her control and adversely impacted her

finances. She also paid for her brother's funeral when he suddenly died in 2008. She paid accounts that are not listed on the SOR. She took actions to reduce her expenses and pay accounts that she could. She even voluntarily surrendered her car. She has acted responsibly under the circumstances. Applicant went back to school in 2004 so that she could have enhanced employment opportunities to pay her bills.

FC MC AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies to her delinquent debts. She has paid or is in a repayment plan for her debts. She completed counseling and has followed a plan to resolve her delinquent debt. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies. FC MC AG ¶ 20(e) also applies as Applicant successfully disputed and documented her effort to dispute certain debts.

Whole-Person Concept

Under the whole-person concept, an 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. An 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. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a single person who has shown incredible resolve against adversity. She was gainfully employed and financially solvent until 2002 when she lost her job. She took steps to reduce her expenses so that she could pay her accounts that were becoming unmanageable. Applicant suffered more unemployment. She went back to school to enhance employment opportunities. She again acted responsibly and tried everything to keep afloat. She cared for her ill father and when he died, she remained to care for her mother. She paid for her brother's funeral expenses.

Applicant sought counseling and even paid money to a credit counseling agency that really did not help her. She disputed debts that she did not recognize. She continued to pay what she could on other accounts over the past years. Applicant has addressed

all the delinquent debt that is noted on her SOR. She has no other debt. She lives modestly. Applicant has a steady income. She saves her money. She relies on the knowledge that she gained from her financial counseling to guide her. She is described as a trustworthy and reliable individual. She has mitigated the security concerns under the financial considerations guideline.

Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information under the financial considerations guideline.

Formal Findings

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

Paragraph 1, Financial: FOR APPLICANT

Subparagraphs 1.a-h: 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.

Noreen A. Lynch
Administrative Judge