



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-04060
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Robert S. Perry, Esquire

January 29, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed her Security Clearance Application (SF-86) on January 23, 2009. On October 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant 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 revised 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.

On November 19, 2009, Applicant answered the SOR and requested a hearing. DOHA received the request and assigned the case to me on December 17, 2009. On December 31, 2009, a Notice of Hearing was issued, scheduling the hearing for January 14, 2010. The hearing was convened as scheduled. Department Counsel submitted six exhibits (GE) 1-6, without objection. Applicant presented three exhibits (AE) A-C, without objection. She testified on her own behalf and presented the

testimony of three witnesses. The transcript (Tr.) was received on January 21, 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, Applicant admitted the factual allegation in ¶ 1.a. She denied the allegations in ¶¶ 1.b and 1.c of the SOR.

Applicant is a 46-year-old employee of a defense contractor. She graduated from high school in 1981, and started working for the federal government. She has taken several college courses (Tr. 58). Applicant held a security clearance from 1981 until 1989. She has worked for her current employer since December 2008 (GE 1).

Applicant married her first husband in October 1987. As a result of the marriage, she has two children. She divorced in November 1997. Applicant remarried in 2003. She and her second husband have a young son. At that time, Applicant was not working outside the home because she was caring for her son. She and her second husband separated in June 2005. She did not have any financial difficulties before their separation (GE 2).

Applicant moved to another state after her separation. She lived with her mother while she was looking for employment. She was unemployed from June 2005 until April 2007. Applicant began to experience financial difficulties (Tr. 62). She was not receiving any child support for her children from her first or second husband. She had difficulty paying her bills. She depleted her savings. Applicant and her husband remained separated until they reconciled in 2008 (Tr. 38).

When Applicant left the family home in 2005, her husband remained. Her husband tried to sell the house but was not successful. The house finally sold for \$78,000. However, the result was a foreclosure because the sale of the house did not cover the amount of the mortgage. The difference is approximately \$30,586 (GE 2).

The SOR alleges three delinquent debts, including a state tax lien and a judgment. The approximate total for Applicant's debts is \$36,000 as listed on her credit report (GE 3). The current status of Applicant's delinquent debts is described below.

The debt alleged in SOR ¶ 1.a is for a judgment for a collection account in the amount of \$3,846. The judgment was entered in February 2009. Applicant made arrangements to pay the collection account before a judgment was entered. She made the first payment of \$200 in January 2009. The balance is approximately \$1,600. Applicant pays \$200 a month. The projected payoff date is August 2010 (AE A).

Applicant satisfied the state tax lien in SOR ¶ 1.b for \$1,623 in May 2009 (AE B). The tax lien was the result of a joint tax filing. Applicant's estranged husband received

the tax bill and made several payments. Applicant was not aware of the lien until the couple got back together in 2008 (Tr. 45).

The debt alleged in SOR ¶ 1.c in the amount of \$30,586, is for the past due mortgage to the bank. Applicant researched this debt as soon as she learned about it. She paid \$3,000 to an attorney who discovered that there was no judgment (Tr. 48). The home property sold at auction in approximately 2008. The bank reported to the credit bureaus that the loan is foreclosed and the collateral was sold to settle the default. The bank has not attempted to collect any money from Applicant. Applicant has not received a deficiency notice from the bank (AE C). She is prepared to make payments on this account if she receives any notifications (Tr. 51).

Applicant's net monthly income is approximately \$3,600 (GE 2). She is current with her monthly expenses. Her net monthly remainder is approximately \$1,935. She has no credit cards. She is current on her all her accounts. She began repayment of her debts as soon as she obtained full-time employment.

Applicant's former supervisor hired her for her current position and worked closely with her for approximately one year (Tr 17). He describes her as a well qualified individual who exceeded expectations. She seeks challenges and handles responsibility. He recommends her for a security clearance (Tr. 18).

Applicant's direct supervisor describes her as an excellent employee. She is assertive and proactive. She has gained the respect of her coworkers. She is the best administrative executive assistant in the program (Tr. 22). Applicant's supervisor is aware of the financial issues involved in the case.

The program manager has known Applicant and her family for many years. He describes Applicant as an honest individual. He recommended that she apply for the position that she now occupies. He affirms that Applicant is dealing with her finances and demonstrates accountability in her endeavors (Tr. 31).

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 required 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, 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, 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 (EO) 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 debts⁶ is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations⁶ may raise security concerns. Applicant accumulated delinquent debts on several accounts for a period of time. Her credit reports confirm the debts. The evidence is sufficient to raise these disqualifying conditions, requiring a closer examination.

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.⁶ Applicant had no financial difficulties until her marital separation. She did not receive child support from either father. She worked as much as she could, but was unemployed when she moved to another state to live with her mother. These conditions were beyond her control and not likely to recur. This mitigating condition applies in part.

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.⁶ Before 2005, Applicant did not have financial difficulties. When she found employment, she began repaying her delinquent debts. Applicant has acted responsibly in paying her accounts under the circumstances. This mitigating condition applies.

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 control⁶ is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.⁶ Applicant has not received formal financial counseling. She satisfied the tax lien. She started repayments on the collection account and has been consistent with the payments. She has resolved her debts and is not shirking payments on the \$30,586 amount listed as a past-due mortgage. She is actively working on resolving the issue. Her efforts are sufficient to carry her burden in this case. I conclude these mitigating conditions apply.

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 and conclude they are sufficient to overcome the government's case. Applicant has worked and provided for her family all her life. She never had financial difficulties before her separation. She acted responsibly in handling the delinquent debts when she obtained permanent employment. She satisfied the tax lien. She has established a meaningful track record of debt payment. Applicant presented sufficient information to show that she is taking reasonable and responsible action to resolve her financial issues. Applicant's management of her finances and past obligations indicates she will be concerned, responsible, and careful regarding classified information. Applicant mitigated security concerns based on her finances.

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 has mitigated the security concerns arising under 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

Subparagraphs 1.a: through 1.c: 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.

NOREEN A. LYNCH
Administrative Judge