



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



In the matter of:)	
)	
)	ISCR Case No. 09-04220
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

May 19, 2010

Decision

HOGAN, Erin C., Chief Administrative Judge:

Applicant submitted a security clearance questionnaire (e-QIP) on August 1, 2008. On September 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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) which became effective within the Department of Defense on September 1, 2006.

On September 23, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 3, 2009. The case was assigned to me on November 17, 2009. The hearing was originally scheduled for February 9, 2010, but was cancelled because of inclement weather. On February 24, 2010, a Notice of Hearing was issued scheduling the hearing for March 19, 2010. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant testified and offered eight exhibits which were admitted as Applicant Exhibits (AE) A - H. The record was held open until April 2, 2010, to allow Applicant to submit additional

documents. She timely submitted eight documents that were admitted as AE I - P. Department Counsel's response to the post-hearing submissions is marked as Hearing Exhibit (HE) I. Applicant submitted an additional document after the record closed which was admitted as AE Q. Department Counsel's response to AE Q is marked as HE II. The transcript (Tr.) was received on April 1, 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 admits to all SOR allegations.

Applicant is a 26-year-old employee with a Department of Defense contractor seeking to maintain a security clearance. She has worked for her current employer for approximately five months. She previously worked for another Department of Defense contractor from July 2008 to December 2009. She served on active duty in the United States Navy from 2001 to 2006. She separated at the grade of E-4 with an honorable discharge. She holds a TOP SECRET clearance. She is separated from her husband and her divorce proceedings are pending. Two children were born of the marriage, a five-year-old son and a two-and-a-half-year-old daughter. (Tr. 5-8, 42; Gov 1)

Applicant's security clearance background investigation revealed that she has nine delinquent accounts which total approximately \$81,458. Of that amount, \$75,030 relates to the first and second mortgages on a home Applicant purchased while on active duty in the military. (SOR ¶¶ 1.h, 1.i) The seven remaining accounts are medical bills, which total approximately \$6,428. (SOR ¶¶ 1.a – 1.g)

When Applicant was on active duty and stationed in another state, she and her husband purchased a home. When she separated from the military, the real estate market took a downturn and she was unable to sell the house. The house was rented. The tenant did not pay rent and damaged the house. They could not afford to pay the mortgage payment without a tenant paying rent. Eventually, the home was foreclosed. The \$19,575 debt alleged in SOR ¶ 1.h is the amount owed on the first mortgage after the foreclosure sale. Applicant believed that the first mortgage was paid off during the foreclosure sale. She believed that she owed nothing for the first mortgage. She will attempt to work out a payment plan. (Tr. 31-33, 77; Gov 2 at 9)

The \$55,455 debt alleged in SOR ¶ 1.i is for a second mortgage on the home that was foreclosed. The account has been charged off. Applicant attempted to contact the creditor to work out a payment plan, but was unsuccessful. (Tr. 31-33; Gov 2 at 9)

Most of the medical bills are for her children. Both of her children have been diagnosed with a rare genetic disorder that may affect their eyesight. She takes the children for a medical assessment every four to six months. Her son has had 17 surgeries. She has medical insurance. She paid approximately \$3,000 to \$4,000 in medical bills over the past two years. (Tr. 39-40; Gov 2 at 6)

Applicant is in a dispute with a former employer regarding the \$766 medical debt alleged in SOR ¶ 1.f. There was a gas leak at the office where Applicant worked. She was hospitalized as a result. She believes workman's compensation should cover this bill. She was not provided the correct information initially on how to file a claim. She is currently filing the workman's compensation claim. She is concerned they will deny the claim because she is filing after more than a year after the incident. She will make arrangements to pay the bill if workman's compensation does not pay the bill. (Tr. 54-57; Gov 2 at 6)

The medical debt alleged in SOR ¶ 1.a for \$2,964 are for medical expenses Applicant suffered as a result of a car accident in March 2008. Another driver caused a four-to-five vehicle accident. Applicant was paid by the insurance company. She was responsible for paying the hospital. She did not pay the hospital because around the time that she was reimbursed by the insurance company, her husband's physical abuse towards her began to escalate. She used the insurance payment for expenses related to her separation from her husband. (Tr. 34-37; Gov 2 at 9)

In May 2008, her husband was arrested. He did not move back into the marital residence after his arrest. Applicant and her husband formally separated in September 2008. They share joint custody but she has physical custody of the children. Applicant was unemployed from March 2008 to July 2008. After separating from her husband, she soon found a job. Her husband does not pay child support. Applicant believes her husband does not make enough to pay child support. He also has alcohol problems. The divorce will be final in late May 2010. (Tr. 38, 43-44; Gov 2 at 9; AE A)

Applicant's net monthly income is \$2,800. At the time of the hearing, she was paying \$800 in rent. She recently moved in with her parents to save money and pay bills. When she was renting, she had approximately \$350 left over each month after expenses. None of her monthly expenses were frivolous. She has one open credit card account which had a limit of \$300, but had a balance of \$600. Applicant was two months past due on the card. She has not been making charges on the account. The balance has been increasing because of the high interest rates. (Tr. 62-75; AE Q)

Applicant claimed that she was caught up with the medical bills from the university hospital where she takes her children for medical appointments. She is making payment arrangements with another local hospital. (Tr. 10, 29-30, 37; Gov 2 at 6) While Applicant admits responsibility for these medical accounts, it is noted that the credit reports do not provide the name of a specific creditor, which makes it difficult to find the original creditor. (Gov 3; Gov 4; Gov 5)

After the hearing, Applicant provided billing statements from the university hospital. The statements reveal Applicant has been making payments on the accounts. One statement has a balance of \$682.20 (AE M); one statement has a balance of \$182.56 (AE N); and one statement has zero balance. (AE O)

In April 2010, Applicant found a part-time job which will pay her \$13 an hour. She will work 20 hours a week for a period of eight weeks. She intends to use the extra money to pay debt. (AE P)

Applicant's references speak highly of her character and work ethic. Her former team captain states that Applicant is an exceptional individual. He is aware of her personal challenges. He states, "It is apparent that she has developed the life skills necessary to cope with hardship of any kind without impact on her work, or more importantly, her integrity." He trusts her ability to handle classified information and personal information without concern or compromise. (AE B) A fellow co-worker states Applicant is dedicated and diligent towards her security responsibilities. (AE C) Her immediate supervisor at her previous employer found her "to be consistently pleasant, tackling all assignments with dedication and a smile." He indicates Applicant is an excellent worker and a model employee. (AE D) A performance evaluation completed in August 2009 was highly favorable. (AE E)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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.

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 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

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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has had financial difficulties since at least 2008. The SOR alleged Applicant has over \$75,030 in delinquent accounts.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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. While Applicant has not completely resolved her delinquent debts, the nature of these debts should be considered. The two largest debts relate to a home foreclosure. Applicant had the misfortune of needing to sell a house when the housing

market experienced a significant downturn. The seven remaining debts consist of medical bills. Most of the medical bills relate to the care for her two children's chronic medical conditions. One medical bill should have been covered by workman's compensation for injuries Applicant suffered as a result of an on-the-job gas leak. There are no significant delinquent consumer debts. Applicant lives within her means. She decided to reduce her living expenses by moving in with her parents. She found a part-time job. She is a single mother supporting two children with chronic medical conditions. Her financial situation does not raise questions about her reliability, trustworthiness, and good judgment.

AG ¶ 20(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) applies. Applicant's largest debts resulted from the downturn of the housing market. Her two children's medical conditions and her pending divorce are factors beyond her control. While she could have immediately paid off the medical bills related to her car accident when she received the insurance money, considering that she was in the process of leaving an abusive relationship and used the insurance money to relocate herself and children is understandable. Applicant has one credit card account that is above the limit, but aside from her medical bills and mortgage foreclosure, her financial situation is relatively stable. I find circumstances beyond Applicant's control contributed to her financial situation and she has acted responsibly under the circumstances.

AG ¶ 20(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) does not apply. Applicant has not attended financial counseling. She is making progress on her medical debts. The mortgage foreclosure debts are unlikely to be resolved in the future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the medical debts. Applicant has not paid all of the medical debts but she is working on paying them in full.

AG ¶ 20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue) applies to the medical debt which arose because of a gas leak at Applicant's place of employment. Applicant is filing a workman's compensation claim. It appears to be a legitimate claim.

Overall, Applicant has acted responsibly towards her finances considering the nature of the delinquent debt and the factors beyond her control that contributed to her financial problems. She has mitigated the concerns raised under Guideline F.

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 considered Applicant's active duty service in the U.S. Navy. I considered that Applicant purchased a home while on active duty and stationed in another state far from her home of record. I considered her attempts to sell and rent her house during a time when the housing market took a downturn. I considered that the other delinquent accounts are medical bills. Applicant has taken reasonable efforts to manage her finances. She recently became a single mother, caring for two children who have chronic medical conditions while receiving no child support. She paid several medical accounts and is filing a workman's compensation claim for one of the medical accounts. She lives within her means and does not have an excessive amount of credit card debt. After the hearing, she moved back in with her parents to save money and obtained a part-time job. Applicant has encountered a lot of adversity over the past two years. While it may be a while for Applicant to fully resolve her remaining delinquent accounts, the nature of these accounts do not raise questions about her trustworthiness, judgment, and reliability. I find Applicant mitigated the concerns raised under financial considerations and met her ultimate burden of persuasion to obtain a favorable clearance decision.

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

Subparagraph 1.a – 1.i: 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.

ERIN C. HOGAN
Chief Administrative Judge