



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



In the matter of:)	
)	
)	ISCR Case No. 09-04371
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: Pro Se

March 5, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire on April 16, 2009. On August 26, 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 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 September 26, 2009, Applicant answered the SOR and requested that her case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on October 13, 2009. The FORM was forwarded to Applicant on October 15, 2009. Applicant received the FORM on October 30, 2009. She had 30 days to submit a response to the FORM. She timely submitted a response to the FORM. On November 30, 2009, Department Counsel submitted a reply to Applicant's response to the FORM. Department Counsel attached a copy of Applicant's bankruptcy filing. (Item

9) On December 1, 2009, the FORM was forwarded to the hearing office. The FORM was assigned to me on December 14, 2009.

Department Counsel did not serve Applicant with a copy of her bankruptcy filing which was attached to Department Counsel's reply to Applicant's response to the FORM. On January 27, 2010, I issued an order with an attached copy of the bankruptcy filing giving Applicant until March 1, 2010, to comment on the additional document. I also allowed Applicant the opportunity to provide evidence that her bankruptcy was discharged and to provide a copy of a post-bankruptcy budget. On February 22, 2010, Applicant provided a five page document which was marked as Item 10 and contained proof of her bankruptcy discharge. On March 2, 2010, Department Counsel responded to Applicant's response to the Order indicating they had no objection to Item 10.

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

Findings of Fact

In her answer to the SOR, Applicant admits to all of the allegations in SOR. (Item 3)

Applicant is a 43 year old quality assurance supervisor with a Department of Defense contractor seeking to maintain a security clearance. She has been employed with the company since April 1989. She is a high school graduate and has an associate's degree. She is single and has no children. (Item 4)

Applicant's security clearance background investigation revealed the following delinquent accounts: a \$3,100 credit card account that was charged off in November 2008 (SOR ¶ 1.a: Item 4 at 20; Item 6 at 1; Item 7 at 4); an \$8,368 credit card account that was charged off in February 2008 (SOR ¶ 1.b: Item 4 at 21, 38; Item 6 at 1-2; Item 7 at 13); a \$7,320 credit card account charged off in August 2008 (SOR ¶ 1.c: Item 4 at 20, 42-43; Item 6 at 2; Item 7 at 4); an \$802 credit card account that was charged off in October 2008 (SOR ¶ 1.d: Item 4 at 22, 39; Item 6 at 2; Item 7 at 8); and a \$547 department store credit card account that was charged off in November 2008 (SOR ¶ 1.e: Item 4 at 23; Item 6 at 2).

Additional delinquent accounts include: a \$6,807 credit card account that was charged off in September 2008 (SOR ¶ 1.f: Item 4 at 40-41; Item 5 at 19; Item 6 at 2; Item 7 at 4); a \$22,805 credit card account that was charged off in September 2008 (SOR ¶ 1.g: Item 4 at 32-33; Item 5 at 19; Item 6 at 2; Item 7 at 4); a \$1,045 home improvement store credit card account charged off in August 2008 (SOR ¶ 1.h: Item 4 at 24, 35; Item 7 at 13); a \$454 cell phone account that was placed for collection in January 2009 (SOR ¶ 1.i: Item 4 at 44-45; Item 7 at 7); and a \$983 hospital account placed for collection in February 2009 (SOR ¶ 1.j: Item 4 at 36-37; Item 5 at 7).

Applicant began to have financial problems after she purchased a house in 2004. She spent a lot of money repairing the house. She also incurred gambling debts. She went to a casino about four to six times a year. She would lose approximately \$700 each time. She began taking cash advances on her credit cards to cover her losses. She states that the last time she gambled was in June 2008. She does not intend to gamble in the future. Applicant states that she was unable to recover from her financial problems as a result of the economy in 2008 because of rising fuel and gas prices as well as the downturn in the real estate market. In response to interrogatories, dated July 29, 2009, Applicant indicated that she consulted a bankruptcy attorney and intended to file for bankruptcy. (Item 5 at 5, 7-8, 12; see also Item 4, section 26)

Applicant filed for Chapter 7 bankruptcy on October 14, 2009. Her total assets were listed as \$188,017. Her total liabilities were listed as \$270,849. Of that amount, \$213,120 consisted of Applicant's mortgage. Most of the debts were consumer accounts. The total amount of her unsecured nonpriority claims listed on Schedule F of the bankruptcy was \$52,221. On Schedule I of the bankruptcy, she listed her average monthly income as \$4,141.92. She listed \$4210.49 for her monthly expenditures on Schedule J. Her monthly expenses were more than her monthly income. Applicant attended financial counseling in conjunction with her bankruptcy filing. (Item 9)

Applicant's dischargeable debts were discharged on January 12, 2010. Applicant reaffirmed her mortgage during the bankruptcy proceedings. (Item 10)

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 must be considered when 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 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 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 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 over-extended 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 Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations); apply to Applicant’s case. Applicant incurred numerous delinquent debts. The SOR alleged ten delinquent accounts, an approximate total of \$52,231.

FC DC ¶ 19(f) (financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern) applies. Applicant admits that her gambling debts contributed to her financial problems.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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. Though Applicant has a history of not meeting her financial obligations, she demonstrated good judgment when she stopped gambling in 2008. When she realized that she could not pay her creditors, she demonstrated good judgment by filing for bankruptcy. This mitigating condition is given less weight because Applicant recently received a bankruptcy discharge. It is too soon to conclude that Applicant will maintain a financially stable lifestyle.

FC MC ¶ 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) does not apply. The record evidence indicates Applicant's financial problems were partially caused by gambling losses. Most of the debts consisted of expenses related to Applicant's purchase of a house in 2004. Applicant had no circumstances that were beyond her control which affected her ability to pay her bills.

FC MC ¶ 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) applies. Applicant attended financial counseling as part of a requirement when she filed for bankruptcy. The bankruptcy court discharged her debts in January 2010. Her financial situation has stabilized. She stopped gambling in June 2008.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies because Applicant resolved her delinquent debts by filing for bankruptcy. Filing for bankruptcy is a legitimate way to resolve one's debts. Applicant also reaffirmed her mortgage debt during the bankruptcy proceedings.

Applicant mitigated the security concerns raised under financial considerations.

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. While I have some concern that Applicant only recently resolved her delinquent debts by filing for bankruptcy, I considered Applicant's 20 year career with her employer. Applicant stopped gambling in June 2008 and appears to have learned a lesson. She is warned that any future financial irresponsibility will raise additional security concerns. Applicant mitigated the financial considerations concern.

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.j:	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.

ERIN C. HOGAN
Administrative Judge