



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



In the matter of:)
)
-----) ISCR Case No. 09-04505
)
)
Applicant for Security Clearance)

Appearances

For Government:
Jeff A. Nagel, Esq., Department Counsel

For Applicant:
Pro se

January 11, 2011

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing on December 19, 2006. (Government Exhibit 1.) On January 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on February 12, 2010, and requested a hearing before an administrative judge (Answer). Department Counsel was prepared to proceed on March 16, 2010. This case was assigned to me on March 22, 2010. DOHA issued a notice of hearing on March 29, 2010. I convened the hearing as scheduled on

April 22, 2010. The Government offered Government Exhibits 1 through 10, which were received without objection. Applicant testified on her own behalf, and submitted Applicant Exhibits A and B, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. The Applicant submitted Applicant Exhibit C on May 7, 2010, and it was admitted without objection. DOHA received the transcript of the hearing on May 4, 2010. The record closed on May 7, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 51 and married. She is employed by a defense contractor and seeks to retain a security clearance in connection with her employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because she is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admits all the factual allegations in the SOR except allegations 1.p. and 1.s., which she denies. The admissions are deemed findings of fact. She also submitted additional information to support her request for a security clearance.

Applicant's financial problems began in 2006-2007. At that time, due to the financial downturn in the economy, and over extension on credit cards, their refinanced mortgage became increasingly difficult to pay. In order to pay the mortgage, other debts went unpaid. Finally, in November 2007, Applicant contacted a debt relief company (DRC) and began working through them to resolve her delinquencies. She has consistently been paying the DRC \$1,519 a month to pay her past due debts. (Government Exhibit 6 at 5; Transcript at 32-33, 37.)

The SOR alleges, Applicant admits, and credit reports in the record show that Applicant owed approximately \$87,998 in past due debt. (Government Exhibits 2, 4, 5, 8, 9 and 10.) The amount rises to \$123,655 including allegations 1.p. and 1.s., which Applicant disputes. The current status of the debts in the SOR is:

1.a. Applicant admitted owing this \$1,460 credit card debt. She has privately negotiated a payment arrangement with the collection agency, and has paid this debt down to approximately \$860. (Answer; Government Exhibit 10; Applicant Exhibit B.)

1.b. Applicant admitted owing this \$2,114 credit card debt. The DRC has reached a negotiated settlement with the collection agency, and payments are being made. (Answer; Applicant Exhibit B at 2.)

1.c. Applicant admitted owing this \$4,566 credit card debt. The DRC is negotiating a settlement with the collection agency. (Answer; Applicant Exhibit B at 2.)

1.d. Applicant admitted owing this \$4,220 credit card debt. The DRC reached a negotiated settlement with the collection agency, and the settlement amount has been paid in full. (Applicant Exhibit C at 19.)

1.e. Applicant admitted owing this \$738 credit card debt. The DRC reached a negotiated settlement with the collection agency, and the settlement amount has been paid in full. (Government Exhibit 8 at 3; Applicant Exhibits B at 2, and C at 15.)

1.f. Applicant admitted owing this \$555 credit card debt. The DRC reached a negotiated settlement with the collection agency, and the settlement amount has been paid in full. (Government Exhibit 8 at 1; Applicant Exhibits B at 3, and C at 25.)

1.g. Applicant admitted owing this \$11,468 credit card debt. She has privately negotiated a payment arrangement with the collection agency, and is paying this debt down at the rate of \$300 a month. (Answer; Applicant Exhibit B.)

1.h. Applicant admitted owing this \$1,218 credit card debt. The DRC is negotiating a settlement with the collection agency. (Answer; Applicant Exhibit B at 2.)

1.i. Applicant admitted owing this \$11,855 credit card debt. The DRC has reached a negotiated settlement with the collection agency, and payments are being made. (Applicant Exhibit B at 2.)

1.j. Applicant admitted owing this \$3,756 credit card debt. The DRC is negotiating a settlement with the collection agency. (Answer; Applicant Exhibit B at 2.)

1.k. Applicant admitted owing this \$1,257 credit card debt. The DRC reached a negotiated settlement with the collection agency, and the settlement amount has been paid in full. (Government Exhibit 10 at 3; Applicant Exhibits B at 2, and C at 24.)

1.l. Applicant admitted owing this \$12,215 credit card debt. The DRC has reached a negotiated settlement with the collection agency, and payments are being made. (Applicant Exhibit B at 3.)

1.m. Applicant admitted owing this \$1,166 credit card debt. The DRC is negotiating a settlement with the collection agency. (Answer; Applicant Exhibit B at 2.)

1.n. Applicant admitted owing this \$8,935 credit card debt. The DRC has reached a negotiated settlement with the collection agency, and payments are being made. (Applicant Exhibit B at 2.)

1.o. Applicant admitted owing this \$6,657 credit card debt. The DRC is negotiating a settlement with the collection agency. (Answer; Applicant Exhibit B at 2.)

1.p. Applicant admits that she had a \$34,637 second mortgage on her house. When she refinanced, the second was rolled into the first. When the house was foreclosed on by the lender, all deficiencies were wiped out by her state's anti-

deficiency statute. In fact, Applicant received a Form 1099 stating that debt in the amount of \$262,578.79 was cancelled. The Government's most recent credit report does not show a deficiency on this account, and states that the member bank should be contacted for details. Based on all of the available information, I find that this debt has been resolved. (Transcript at 34-36; Government Exhibit 10 at 4; Applicant Exhibit C at 28-30.)

1.q. Applicant admitted owing this \$6,824 credit card debt. The DRC has reached a negotiated settlement with the collection agency, and payments are being made. (Applicant Exhibit B at 3.)

1.r. Applicant admitted owing this \$2,563 credit card debt. The DRC reached a negotiated settlement with the collection agency, and the settlement amount has been paid in full. (Applicant Exhibits B at 2, and C at 22.)

1.s. Applicant denied any knowledge of this \$984 credit card debt. After thoroughly reviewing the Government's evidence, I am unable to find any entry in any of the credit reports that match this creditor for the amount alleged. Accordingly, this allegation is found for the Applicant.

1.t. Applicant admitted owing this \$744 credit card debt. The DRC reached a negotiated settlement with the collection agency, and the settlement amount has been paid in full. (Government Exhibit 10 at 3.)

1.u. Applicant admitted owing this \$688 credit card debt. The DRC reached a negotiated settlement with the collection agency, and the settlement amount has been paid in full. (Government Exhibit 10 at 2; Applicant Exhibits B at 2, and C at 23.)

1.v. Applicant admitted owing this \$1,733 credit card debt. The DRC reached a negotiated settlement with the collection agency, and the settlement amount has been paid in full. (Applicant Exhibits B at 2, and C at 17.)

1.w. Applicant submits that this debt is the same as that alleged in allegation 1.k. The available evidence supports this finding. As stated above, this debt is paid.

1.x. Applicant admitted owing this \$2,424 credit card debt. The DRC reached a negotiated settlement with the collection agency, and the settlement amount has been paid in full. (Applicant Exhibits B at 2, and C at 16.)

In addition to the debts described above, Applicant submitted documentary evidence showing that the DRC had negotiated settlements with four other creditors, not alleged in the SOR, whose debts amount to \$19,484, and that these amounts had been paid in full. (Applicant Exhibit C at 18, 20, 21 and 26.) Nine debts alleged in the SOR have been paid off, seven debts are currently being paid, and the DRC is negotiating with the other five creditors. Applicant stated that she believed her total indebtedness at the time of the hearing was approximately \$31,000, and that this amount could be totally paid off within nine or ten months of the hearing. (Transcript at 33-34.)

Mitigation

Applicant's current supervisor submitted a letter on her behalf. He states that Applicant has always been open about her financial situation with the company, and its security office. (See Government Exhibit 3.) This individual, who has had a Top Secret security clearance for almost 40 years, states that he is "absolutely confident that [Applicant] is honest, reliable and not a security risk." (Applicant Exhibit A.)

Two current work associates also submitted letters on Applicant's behalf. The writers both find the Applicant to be honest, reliable and not a security risk. (Applicant Exhibit C at 3-4.)

Applicant also submitted her performance reviews. They show that she is an "Outstanding" employee, who exceeds performance requirements. (Applicant Exhibit C at 5-14.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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 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, by her own admission, and supported by the documentary evidence, had substantial past-due debts. 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), 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.” In addition, AG ¶ 20(b) states that the disqualifying conditions may be mitigated 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." Applicant's financial difficulties arose primarily because of the downturn in the housing market, which made it difficult for Applicant to pay her bills and her mortgage. Once that occurred, she immediately began working with the DRC. Over the past two plus years Applicant has diligently paid the DRC, which has successfully resolved many of the Applicant's debts. These two mitigating conditions apply.

Applicant has not received financial counselling. However, as found above, her current financial situation is stable. I find 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," as required by AG ¶ 20(c).

Applicant has been paying her past due debts in a consistent fashion, through the use of the DRC. Under the particular circumstances of this case, I find that Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d). As the Appeal Board ruled concerning the successful mitigation of security concerns arising from financial considerations, "[a]n applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has 'taken significant actions to implement that plan.'" ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Applicant has done that here.

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 relevant circumstances. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant had some serious financial problems, but her current financial condition is stable. Under AG ¶ 2(a)(2), I

have considered the facts of the Applicant's debt history. As stated at length above, much of this was brought about because of the economic downturn. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no 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 from her financial situation. On balance, I conclude that Applicant has successfully overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports granting her request for a security clearance.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. through 1.x.:	For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge