



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



In the matter of:)
)
-----) ISCR Case No. 09-04597
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Jon L. Roberts, Esquire

March 23, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

On October 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 revised adjudicative guidelines (AG) effective within the Department on September 1, 2006.

On December 7, 2009, Applicant answered the SOR, and requested a hearing. She denied, with explanations, the factual allegations in SOR ¶ 1.a through 1.aa. DOHA assigned the case to me on January 8, 2010. DOHA issued a Notice of Hearing on February 17, 2010, and I convened the hearing as scheduled on March 5, 2010. Department Counsel offered seven exhibits, which were admitted as Government Exhibits (GE) 1-7, without objection. Applicant testified on her own behalf and presented the testimony of one witness. She offered 12 exhibits, which were admitted as Applicant Exhibits (AE) A-L. DOHA received the transcript (Tr.) on March 15, 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 a 33-year-old employee of a defense contractor. After graduating from high school in 1994, she earned an undergraduate degree in 1998. She is currently completing a Master of Science degree in Information Security Management. Applicant has been employed with various contractors. She is single and has no children. She has been with her current employer since September 2005 (AE D). Applicant has held a security clearance since approximately 2004 (Tr. 51).

When Applicant was 21 years old, she co-signed a car note for her boyfriend. Applicant did not have possession of the vehicle. She now acknowledges that this was poor judgment on her part. Her boyfriend did not maintain payments on the car. She was not aware of his default. The vehicle was repossessed. Applicant disputed this item when she learned it was on her credit report. It has been deleted from her credit report (AE J). SOR ¶ 1.s

In April 2005, Applicant broke her arm and was unable to work (AE E). She was on short term disability for two to three months. As a result, she had a reduced income of \$500 a month and she could not pay some bills, including her apartment rent (GE 2). She alerted the apartment manager that she could not pay the rent. Applicant left her apartment and returned to her parents' home to live (Tr. 141). However, a judgment was entered at some point (SOR ¶ 1. aa). Applicant's father helped Applicant pay the \$2,476 in 2006 (AE J).

In 2005, Applicant's employer obtained her credit report as part of a security check. Her employer asked Applicant about various accounts that appeared delinquent on her credit report (Tr. 53). Applicant did not recognize the accounts (Tr. 125). She had no credit cards and many of the accounts were from department stores or cell phone providers. She requested advice from a colleague who had insight and knowledge into financial affairs (Tr. 39). He helped her read the credit report. Applicant realized that she needed some professional help to resolve the issue.

She immediately obtained the services of Credit Counselors of America (Tr. 54). She signed an agreement with them and made payments of \$400 for a period of three months (Tr. 55). However, she was not happy with the results. She then obtained the services of Consolidated Credit Counselor Services in late 2005. She received some counseling from them. Applicant did not like their methods and believed they were not producing results. Applicant tried to research the accounts and deal with creditors on her own, but she realized that she was not meeting with any success (Tr. 136).

In March 2009, Applicant obtained the services of Credit Restoration Bureau (CRB) (AE G). She again realized that many accounts listed as delinquent did not belong to her. She contacted the local police (Tr. 73) and they referred her back to the

CRB. She paid \$4,000 over a four month period so that CRB could investigate the derogatory accounts and have them deleted from her credit reports. She realized that identity fraud was an issue. She is still working with CRB to ensure that her credit reports are accurate.

The SOR alleges 27 delinquent debts in excess of \$50,000 (GE 6). The current status of Applicant's delinquent debts is described below.

The debts alleged in SOR ¶¶ 1.a-d, 1.f-r, 1.u-v, and 1.y-z were formally disputed due to identity fraud. The accounts have either been deleted from Applicant's latest credit bureau report or satisfied (AE K, AE J). Many of the accounts were duplicates. Applicant worked with two credit agencies, but they did nothing to help her situation. After paying them with no results, she tried independently to dispute the unknown accounts. When she discovered possible identity fraud, she obtained the services of CRB. The process has taken several years to research the accounts.

The debt alleged in SOR ¶ 1.e for \$1,451 is for a rental car. An accident occurred and Applicant had the necessary insurance. She filed a dispute and the item has been deleted from her credit report.

The debt alleged in SOR ¶ 1.t for \$588 has been paid. This was an account for cable television. She was not aware of the bill until recently (Tr. 104). She paid the account in full in September 2009.

The debt alleged in SOR ¶ 1.w for \$75 is a medical account. Applicant does not have any information about the account. She filed a protest with the credit bureaus through CRB.

The debt alleged in SOR ¶ 1.x for \$609 was for a local county tax. The issue is resolved (AE J).

Applicant's net monthly income is approximately \$6,000 (GE 2). She is current with her monthly expenses. Her net monthly remainder is approximately \$3,000. Applicant has no credit cards. She is current on her car loan (Tr. 113). Her recent credit reports confirm that she pays as agrees on her accounts.

Applicant's former colleague described her as a trustworthy individual. He worked with her in a classified environment from 2005 until 2007. He has maintained contact with her over the years (AE C). He praises her dedication. He observed that he has never seen Applicant act in a foolish or extravagant manner when dealing with finances.

Applicant's former supervisor considered her a valuable asset to any organization (AE L). She is a dedicated worker. Her ability, work ethic, and accomplishments are unparalleled. She is a "take-charge" person. She successfully develops plans and implements them.

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 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 to obtain 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 (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 debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated delinquent debts on several accounts. Her credit reports confirm the debts. The evidence is sufficient to raise these 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." Applicant has no unresolved delinquent debts. She is in a stable financial situation. There is no likelihood that future debt will occur. The vast majority of the delinquent debts reported on her credit reports was a result of identity fraud. She now monitors her credit reports on a regular basis. This mitigating condition applies.

Under AG ¶ 20(b), the disqualifying condition 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 had a 2005 judgment that resulted from her loss in pay when she broke her arm and was on disability for several months. She was not able to pay her rent. She alerted the manager and moved home to prevent incurring more debt. With her father's help, she resolved the judgment that the apartment complex obtained. Applicant acted responsibly in paying her accounts under the circumstances. This mitigating condition applies in part.

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 control" 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.” Applicant received formal financial counseling. She worked with several firms to help her research her accounts. She continued over the years to locate creditors and pay an account if it belonged to her. Her efforts are sufficient to carry her burden on those debts which are hers. I conclude these mitigating conditions apply.

AG ¶ 20(e) applies where the evidence shows “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.” Applicant formally disputed the majority of the delinquent accounts on her credit reports. She contacted the local police when she realized that there might be identity fraud. The police advised her to work with CRB to resolve the issue. She immediately did so. CRB worked on her behalf to correct inaccurate information. Each item was researched. Applicant produced documentation to substantiate the negative information. Her current credit reports reflect this.

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 is a well-educated professional. She has favorable recommendations from her employers. She has held a security clearance for a number of years without incident. She earns a good salary and is financially stable. She has no delinquent debt. She now has the skills to keep abreast of her credit through CRB. She acknowledged poor judgment in 1998 when she co-signed the car loan with a boyfriend.

Applicant learned that her credit reports reflected many delinquent accounts. She sought advice from three agencies so that she could protest or dispute accounts about which she had no knowledge. She contacted the local police when she suspected identity fraud. She obtained the services of CRB, after trying to resolve the issues on her own for several years. CRB has contacted the three credit bureau reporters and accounts have been deleted.

Overall, the record evidence leaves me without questions or doubts about 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.aa: 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