



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-04858
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

August 19, 2010

Decision

HENRY, Mary E., Administrative Judge:

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

Applicant signed her Electronic Questionnaire for Investigations Processing (e-QIP) on May 12, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on October 6, 2009 detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny her a security clearance. 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) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on October 13, 2009. She answered the SOR in writing on October 30, 2009. Applicant requested a hearing before an

administrative judge. DOHA received the request and Department Counsel was prepared to proceed on March 30, 2010. DOHA assigned the case to me on April 20, 2010. DOHA issued a notice of hearing on May 7, 2010, and I convened the hearing as scheduled on May 26, 2010. The Government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant testified on her own behalf. She submitted three exhibits (AE) A through C, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on June 9, 2010. I held the record open until June 10, 2010, for Applicant to submit additional matters. Following a telephone conference with Applicant and Department Counsel regarding additional time to submit necessary documentation, I extended the time for submission of documentation until July 1, 2010. Applicant timely submitted five additional exhibits, AE D through AE H, without objection. The record closed on July 1, 2010.

Findings of Fact

In her Answer to the SOR, Applicant admitted all factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 27 years old, works as an administrative assistant for a Department of Defense contractor. She began this position in March 2009. Her managers describe her as a valuable asset to their office. She demonstrates an excellent work ethic, performs her duties in an exemplary manner, and assumes additional responsibilities as needed. She shows good judgment and integrity. They recommend her for a clearance and want to keep her as an employee.¹

Applicant graduated from high school in 2001 and attended college for one year. In February 2003, she enlisted in the Air Force. Applicant attended college part-time while in the Air Force. In February 2007, she received an honorable discharge. She immediately began working for a contractor doing the same job she last performed when she was in the Air Force. Her then employer decided to contract her position on a month-to-month basis at the end of her first year of employment. She left the position in March 2008 because of the uncertainty of stable employment with the new contracting procedure. She worked in a jewelry store from April 2008 until March 2009, when the jewelry company went bankrupt. She continued to attend college part-time, using the GI bill to pay for her education.²

In October 2006, Applicant purchased a house for \$138,000. She financed the entire purchase through two mortgages. Her primary mortgage was for \$137,000 and her second mortgage was for \$6,900. Including taxes and insurance, her monthly

¹GE 1; AE A; AE B.

²GE 1; Tr. 29-31.

mortgage payments on the house totaled \$1,042. Her then boyfriend lived with her, and they evenly split the costs for living in the house. On May 1, 2007, he ended their relationship. Her boyfriend lived in the house for three more months. Starting in August 2007, she paid all the expenses for the house. By July 2008, Applicant could no longer afford to live in her house on her own. In August 2008, she submitted a hardship application to her mortgagee seeking to reduce her monthly mortgage payments. The mortgagee offered to reduce her monthly payment by \$80 to \$100. Since this amount did not help her financially, Applicant moved out of the house on October 1, 2008 and allowed the house to go into foreclosure. To her knowledge, the house has not been sold. She has not had any correspondence from the mortgagee in some time. After the hearing, she attempted to contact the mortgagee and its lawyer to determine the status of the foreclosure on her house. They have not responded to her.³

When Applicant purchased her house in 2006, her net monthly income from the Air Force totaled \$2,600. Her net monthly income as a civilian for the same job totaled \$2,200. When she left the Air Force, Applicant had approximately \$2,000 in savings. She exhausted these funds by July 2008, trying to pay her bills. At the present time, she has \$8 in her savings account.⁴

In 2004, Applicant's father underwent treatment for cancer. In 2007, his cancer returned. Over the next 18 months, she made four plane trips to visit her dying father. She paid \$250 to \$300 for each ticket and lost between \$1,800 and \$2,000 in income because she had exhausted her leave and was required to use leave without pay. The expenses to travel to visit her dying father impaired her ability to keep up with her mortgage payments.⁵

Applicant is engaged and living with her fiancé. She earns \$1,173 in gross pay bi-weekly and \$976 in net income bi-weekly for a net monthly income of \$1,952. She shares living expenses with her boyfriend. Her monthly expenses include \$470 for utilities including a cell phone, \$160 for car insurance and gasoline, \$250 for food, \$60 for prescription medicine, and \$200 for miscellaneous expenses and clothing. At the hearing, Applicant stated that she was paying at least the minimum payment on her credit cards and working towards paying off her credit cards one at a time.⁶ She retained a debt management company in May 2010. She consolidated all her credit card debt into one payment, including one credit card which was past due. She pays this company \$291 a month, and made her first payment in May 2010. The company

³GE 2; AE H; Tr. 14-16, 23-26.

⁴Tr. 15, 22-24.

⁵GE 1; Tr. 14, 27-28.

⁶The SOR does not allege any delinquent credit cards and Applicant testified that she was paying her credit card debt monthly. See SOR; Tr. 34-36.

makes a payment each month to each of the five creditors in the plan. Her monthly expenses total \$1,431, leaving approximately \$520 a month for debt repayment.⁷

Outside of her mortgage debt, the SOR listed one other unpaid debt, a utility bill for \$106. Applicant was unaware of this bill until she met with the investigator. She paid this bill after the hearing. Her mortgage debt remains unresolved. She has not signed the deed to this property over to the mortgagee nor has the mortgagee responded to her recent requests for information.⁸

Applicant's cousin wrote a letter of recommendation. She writes about their life-long friendship. She admires Applicant's dedication, strength and resilience, especially since both of Applicant's parents have died. Applicant is dependable, reliable, and trustworthy.⁹

Policies

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 used 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. 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, an applicant is

⁷GE 5; AE E; AE F; AE G.

⁸GE 2; GE 3; AE H.

⁹AE C.

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An 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 an 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

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

19(a) inability or unwillingness to satisfy debts; and

19(c) a history of not meeting financial obligations.

Applicant developed significant financial problems when her first engagement ended and she could not afford her monthly mortgage payment on her own. Her property is in the foreclosure process and this debt is not resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 20(a) through 20(f), and especially the following:

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,¹⁰

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, and

20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant purchased her house, intending to marry her then boyfriend and fiancé. Seven months later, he ended their relationship. He remained in the house for three more months and continued to split the housing costs with her. After he left, she paid the monthly mortgage on her own for more than a year, exhausting her savings while doing so. In August 2008, she submitted a hardship package to her mortgagee in an effort to reduce her monthly expenses on the house. The mortgagee offered to reduce her payment a mere \$80 to \$100 a month, which did not significantly help her financial situation. She decided to let the house go into foreclosure. She moved from the house to less expensive housing and continued to pay her other bills.

While Applicant has not resolved her mortgagee debt issue, she pays all her other debts and her share of her current monthly living expenses. In May 2010, she contacted a debt solution company for assistance with paying her credit cards. She was behind in the payment on one credit card only. With the help of this organization, she is working to pay her five credit card debts in full. Her finances are under control. She paid the one delinquent utility bill listed in the SOR. She has attempted to contact her mortgagee and its attorney, but neither have returned her calls or made an effort to talk with her. At this time, this creditor is refusing to work with her through no fault of her own. Because of the creditor's actions, she cannot resolve this debt. She has mitigated the Government's security concerns about her finances under AG ¶¶ 20(b), 20(c), and 20(d).

¹⁰Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching

a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. As of May 2010, Applicant was liable for the balances on both the primary and secondary mortgages on a home that she bought with her then boyfriend. With both incomes, she paid the monthly mortgage payment on both loans. After their relationship ended and he moved out, Applicant paid the full monthly payment for a time. However, with lost income and travel expenses related to visiting her dying father, she was prevented from continuing her mortgage payments. She moved out of the house and it is now in foreclosure.

Applicant attempted unsuccessfully to resolve the mortgage loans. Apart from an initial offer to reduce her mortgage obligation by \$80 to \$100 per month, the mortgagee has not been willing to work with her. But her mortgage debt is not likely to be a source of improper pressure or duress. Applicant lives within her financial means. She pays her credit card bills and her current living expenses on time, and she is working through a debt solution company to reduce her overall credit card debt. Her employer considers her a valuable worker and someone who performs her job extremely well. She is respected for her work ethic. Her cousin presents a similar picture of Applicant as a reliable, dependable, and trustworthy person. In financial cases, the issue is not simply whether all the debts are paid: it is whether an applicant’s financial circumstances raise concerns about his or her fitness to hold a security clearance. Applicant is a financially responsible individual who entered into the mortgage debts in good faith, and the circumstances surrounding her default do not raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

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 mitigated the security concerns arising under Guideline F.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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.

MARY E. HENRY
Administrative Judge