



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



In the matter of:)
)
) ISCR Case No. 09-05405
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: George C. Lobb, Esquire

March 18, 2011

Decision

HEINY, Claude R., Administrative Judge:

The SOR alleged three charged-off accounts totaling approximately \$50,000. The accounts have now been paid. Applicant has mitigated the security concerns under financial considerations. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department's (DoD) intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on April 21, 2010, detailing security concerns under

¹ 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 adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

financial considerations. On July 29, 2010, an amendment to the SOR was issued changing the name of the creditor listed in SOR 1.b and SOR 1.c.

On May 11, 2010, Applicant answered the SOR and requested a hearing. On June 24, 2010, she submitted a supplemental answer. On August 12, 2010, I was assigned the case. On August 24, 2010, DOHA issued a Notice of Hearing for the hearing held on September 14, 2010.

At the hearing, the Government offered Exhibits (Ex.) 1 through 9, which were admitted into evidence without objection. Applicant testified on her own behalf and submitted Exhibits A through G, which were admitted into evidence without objection. Her mother and husband also testified. Applicant's counsel asked that I take judicial notice of ten ISCR cases, which I have included as Hearing Exhibit (H Ex. 1). On September 21, 2010, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she denied the three debts listed in the SOR. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 45-year-old assistant facility security officer who has worked for a defense contractor since January 2009, and is seeking to obtain a security clearance.

From August 1989 through December 1996, Applicant attended evening and weekend university classes while working full time. In August 2006, Applicant's father died. Her mother required her and her husband's assistance in paying the funeral and burial expenses and running the family farm. Her mother uses a motorized wheelchair. (Tr. 26) Every week, Applicant and her husband make the 100-mile trip from their home to Applicant's mother's place. (Tr. 42) In April 2008, Applicant was laid-off by her employer due to downsizing and budget cuts. Before being laid-off, she was current on her debts and her annual salary was \$48,000 to \$50,000. (Tr. 48, Ex. 4)

In April 2008, her husband contacted a debt consolidation service to assist with their debt. (Ex. 4) The service stated the best way to negotiate a debt was to let it go to collection. (Tr. 21, Ex. A, and Ex. G). At the time he went to the service, he and Applicant were meeting their financial obligations. The service told him he needed to be 90 to 120 days delinquent on his accounts before the service could negotiate a payoff. (Tr. 40) In May 2008, Applicant started her own consulting firm and maintained two part-time jobs to help meet her financial obligations.

A \$31,182 credit card debt (SOR 1.a) was charged off. Applicant was an authorized user of the card. The creditor sued her husband, but she was not named in the suit. Even though the debt consolidation firm negotiated a settlement offer on the debt, the creditor obtained a judgment against Applicant's husband on this debt. (Ex. 5) The judgment is now paid. In June 2010, the creditor agreed to a payment of \$9,888.

(Ex. G) In July 2010, the judgment lien was released after it was compromised and settled. (Ex. F)

Applicant had two charged-off accounts (SOR 1.b, \$9,094 and SOR 1.c, \$9,583) with the same creditor. The accounts are now paid. In November 2009, she made two \$502 payments on each of the accounts. (Ex. 6) In December 2009, she made a \$1,220 and a \$1,245 payment on the accounts plus two additional \$702 payments on each account. In September 2010, she had paid \$4,373 and \$4,259 on the accounts and the creditor acknowledged the accounts were satisfied. (Ex. E)

Applicant and her husband have been married 20 years. (Tr. 34) Her husband has worked for his company since 1994 with an annual salary of \$35,000 to \$40,000. (Tr. 37) As of October 2009, Applicant's monthly income was \$4,656, her expenses were \$1,617, debt payment \$2,900, and monthly net remainder \$1,326. (Ex. 5, Ex. A) As of May 2010, Applicant's monthly household income was \$5,000 with monthly expenses of \$4,730, which left a net monthly remainder of \$270. (Ex. A, Ex. B) Applicant's credit bureau reports (CBR) indicate she is current on her other debts. (Tr. 21, Ex. A, and Ex. C) In the recent past, Applicant incurred \$2,000 to \$5,000 in fertility treatments and \$5,000 in adoption expenses. (Tr. 49-50) Applicant has a 1994 Cadillac and her husband drives an \$1,800 Ford pickup. (Tr. 59) Applicant has had financial counseling and listens to talk radio financial experts. (Tr. 61, Ex. 4)

In February 2009, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP), which listed various financial delinquencies. (Ex. 1) On her July 1995 Personnel Security Questionnaire, DD Form 398, she listed financial problems. In her March 1996 sworn statement, she stated she was not currently experiencing any financial problems, but previously had. (Ex. 9) Advice and assistance from the consumer's credit counseling service (CCCS) aided her in paying her debts and understanding her finances.

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 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(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 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 of 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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and

safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant had a history of financial problems. The SOR alleged three charged-off accounts totaling approximately \$50,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20 are potentially applicable:

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

Under AG ¶ 20(a), the Applicant's current financial problems were limited to three accounts, which is infrequent conduct. Her ability to repay her debts was affected by the cost of fertility treatments and adoption expenses. All three debts have been paid and it is unlikely she will again incur financial problems related to adoption. AG ¶ 20(a) applies.

The mitigating conditions listed in AG ¶ 20(b) apply. The three charged-off accounts were the result of her losing her job, which was a factor largely beyond her control. Under AG ¶ 20(c), Applicant has had financial counseling, listens to talk radio financial experts, and more importantly, her finances appear to be under control. AG ¶ 20(c) applies.

The mitigating factors in AG ¶ 20(d) apply. She has made a good-faith effort to repay her creditors. The three SOR debts have been paid. Her CBR indicates her other debts are being paid as agreed.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In 2008, Applicant was laid-off from her job paying \$48,000 to \$50,000 annually and started her own consulting firm. She also maintained two part-time jobs to help meet her financial obligations. Applicant and her husband followed the advice received from a debt consolidation service, which informed them the best way to negotiate the debts was to let them go to collection. The accounts were charged off. They have now been paid. Of course, the issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

Applicant is not living beyond her means. The SOR debts have been paid and her CBR indicates her other obligations are being paid in a timely manner. These factors show responsibility, rehabilitation, and mitigation. There is no reason not to trust her at this time. 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 mitigated the security concerns arising from her 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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a–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.

CLAUDE R. HEINY II
Administrative Judge