



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



In the matter of:)	
)	
)	ISCR Case No. 09-05786
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

October 29, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant has paid two of her delinquent accounts and entered into a repayment agreement on the remaining obligation. She has mitigated the security concerns under financial considerations. Clearance is granted.

Statement of the Case

Applicant contests the Department of Defense'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 March 17, 2010, detailing security concerns under financial considerations.

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.

On April 14, 2010, Applicant answered the SOR and requested a hearing. On May 28, 2010, I was assigned the case. On June 10, 2010, DOHA issued a Notice of Hearing for the hearing held on June 30, 2010.

The Government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence without objection. Applicant testified and submitted Exhibit A, which was admitted into evidence without objection. I held the record open to receive additional information from Applicant. On July 6 and July 25, 2010, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. B and C. On July 9, 2010, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she admitted the three debts listed in the SOR. Her admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact.

Applicant is a 28-year-old logistics specialist who has worked for a defense contractor since January 9, 2010, and is seeking to obtain a security clearance. (Tr. 29) In 2001, she enlisted in the United States Army and was assigned as a fueler and then as a supply clerk. (Tr. 22) From March 2003 to December 2003, she was deployed to Iraq. (Tr. 22)

Applicant married in February 2001, just before entering the Army. She and her husband have two children ages 7 and 13. (Tr. 22), In October 2008, they divorced after separating in March 2008. She has not received any child support because she is unable to locate her ex-husband. (Tr. 23) As a result of that divorce, she became liable for a number of delinquent marital debts. In January 2009, she obtained her current job and starting repaying her debts.

When the marital problems escalated, Applicant moved out of the family home and into a rental. (Tr. 33) The one-year lease required \$1,295 monthly payments. (Ex. 3) After living in the rental house for eight months, the divorce became final, her ex-husband vacated the family home, and she moved back into the home. When she did so, she broke the rental lease. (Tr. 25) At the time she moved out of the rental, there was no inspection. The landlord demanded \$5,180 in damages. In November 2009, she signed a \$5,180 promissory note agreeing to pay \$50 monthly on the debt. (Ex. 4, Tr. 21) She accelerated her payments on the debt, and it is now paid. (Tr. 27)

In June 2008, Applicant was involved in an automobile accident and injured her neck and left shoulder. (Tr. 24) Medical bills were incurred for treatment. Applicant hired an attorney to help her resolve problems related to the accident. (Ex. 3) A \$475 medical debt (SOR ¶ 1.a) was incurred, which she paid in December 2009. (Ex. 4, Ex. B)

Applicant's yearly income is approximately \$48,000. (Tr. 29) As of December 2009, her net monthly income was approximately \$4,900, her monthly expenses were approximately \$2,400, and her monthly debt payment was approximately \$1,750. She has a monthly net remainder of \$700. (Ex. 4) Her monthly income includes approximately \$1,500 in Veteran's Administration (VA) disability payments she receives for post traumatic stress disorder (PTSD). (Tr. 31)

Applicant incurred a credit card debt of \$11,007 (SOR ¶ 1.b) that was charged off. She had originally purchased furniture on the account. (Tr. 33) She has made numerous attempts to negotiate a repayment arrangement with the creditor. (Tr. 21) However, she has been unable to offer a large enough monthly amount for the creditor to agree to a repayment plan. She has been communicating with them for over a year. (Tr. 32) Applicant offered to pay \$250 per month, but the creditor demanded \$1,000 per month, which she could not afford. (Tr. 32) On July 14, 2010, the creditor had agreed to accept \$188 monthly payments on this debt starting on July 25, 2010. (Ex. C)

In October 2006, the family home was purchased by Applicant and her then spouse for \$160,000 with monthly mortgage payments of \$1,318. (Tr. 34) She was awarded the home in the divorce and is currently living in the home. She is current on her monthly mortgage payments on which \$155,000 remains to be paid. (Tr., 34) Applicant has about \$1,000 in savings. (Tr. 35)

Applicant owns a 2003 Lincoln town car, which is paid for. (Tr. 30) She is not being contacted by creditors for past-due obligations. Applicant has paid a number of debts not listed in the SOR. (Ex. 4) She is also current on a \$22,000 credit card debt. She initially had the account and put her husband on the account as an authorized user. In March 2008, when they separated, her husband took the card and went on a spending spree without her approval. He spent more than \$22,000 on the card. (Ex. 3, 4) In March 2009, she arranged a \$237 monthly repayment agreement with the creditor. (Ex. 3, Tr. 32) She is current on her repayment of this debt.

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 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

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 as agreed. Absent substantial evidence of 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 three delinquent accounts totaling approximately \$16,600. She paid two of the accounts and reached a repayment plan for the remaining debt. 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.

The debts were limited to a medical bill, a credit card account, and damages after she left a rental apartment. The debts were occurred under circumstances that are not likely to be repeated. She is living in her own home and is current on her mortgage. It is unlikely she will have to rent another place to live. It is possible Applicant may remarry

and that marriage end in divorce, but it is unlikely she will give any new spouse control over her credit cards. The mitigating conditions in AG ¶ 20(a) apply.

Applicant's financial problems were contributed to by her 2008 divorce and her ex-husband's shopping spree with her credit card. She receives no child support because she has been unable to locate her ex-husband. Her separation and divorce, along with the financial burden associated with each, were conditions beyond her control. The mitigating conditions in AG ¶ 20(b) apply.

The mitigating conditions under AG ¶20(c) apply. Applicant is making monthly payments on the sole remaining SOR obligations. She is paying all of her financial obligations as agreed. Her car is paid for, she has \$1,000 in savings, she is current on her mortgage payments, has \$5,000 equity in her home, and is current on her debts. The mitigating condition in AG ¶ 20(d) applies to the debts.

For a year Applicant was communicating with the remaining SOR creditor. The creditor wanted monthly payments of \$1,000 per month, which was beyond her ability to pay. Following the hearing, a repayment agreement was reached. Even though Applicant has not documented payment in accord with the agreement, I believe she will honor the repayment agreement based on her conduct related to other debts. She entered into a repayment agreement on the debt listed in SOR ¶1.c. She then accelerated payment on the debt, paying it faster than required. Since March 2009, she entered into a repayment plan on another credit card debt, not listed in the SOR, and has honored that agreement. She has paid off other debts not listed in the SOR. In viewing Applicant's demeanor and deportment, I believe she will pay this debt 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 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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Applicant has paid two of the SOR debts and negotiated a repayment agreement on the remaining debt. 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).)

I had ample opportunity to evaluate the demeanor of Applicant and observe her manner and deportment. I believe she will honor the repayment agreement on the remaining debt.

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