



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



In the matter of:)	
)	
)	ISCR Case No. 09-06508
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

March 24, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On May 28, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 on September 1, 2006.

Applicant answered the SOR on July 28, 2010, and November 30, 2010, and requested a hearing before an administrative judge. The case was assigned to me on January 13, 2011. DOHA issued a Notice of Hearing on February 9, 2011. I convened the hearing as scheduled on March 3, 2011. The Government offered Exhibits (GE) 1 through 6. Applicant did not object and they were admitted into evidence. Applicant

testified on her own behalf and offered Exhibits (AE) A through G, which were admitted into evidence without objections. The record was held open until March 10, 2011, to allow Applicant to provide additional documents. She timely offered AE H, which was admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on March 9, 2010.

Findings of Fact

Applicant admitted all allegations in the SOR except ¶ 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 31 years old. She is not married and has no children. She graduated from college in 2001, earning a bachelor's degree. After college, she returned home and lived there until about 2003, when she moved to a new state. She was unemployed initially for about two to three months. She worked consistently until February 2009, when she was laid off. She remained unemployed until May 2009, at which time she was hired by her present employer. During her unemployment, she exhausted her savings and received unemployment benefits. Applicant stated that until she started with her present employer, she was underemployed.²

The debt in SOR ¶ 1.c (\$29,904) is for Applicant's student loans. She incurred student loan debts while attending college from 1997 to 2001. She began making payments on them in 2002. She made consistent payments on them during 2002 and 2003, while she was living at home. Sometime in 2003, she moved to a new state and her income was drastically reduced and her salary was used to pay living expenses. From 2003 to 2008, Applicant made payments on her student loans, but they were inconsistent and dependent on the amount of her other expenses. She estimated that she likely made about half of the payments each year. She later contacted the student loan creditor and entered a rehabilitation program, which she completed in April 2010. She was then required to make payments of \$202 a month. She admitted she made the payments through September 2010, when she stopped and did not make the monthly payment for October, November, December, and January. She had car problems and used the money to repair her car. She resumed making the monthly payments in February. Applicant intends on making consistent monthly payments until the debt is satisfied.³

Applicant decided to pay her smaller delinquent debts first and then make consistent monthly payments on the student loan debt. She paid the debt in SOR ¶ 1.a

¹ Department Counsel did not object to AE H. Hearing Exhibit I is the memorandum submitted.

² Tr. 48-52, 66-70.

³ Tr. 19-20, 32-43, 57; AE G, H.

(\$97). She stated she did not pay it earlier because she was unaware of it. She provided proof of payment.⁴

Applicant contacted the creditor for the credit card debt in SOR ¶ 1.b (\$509) and made a payment arrangement to pay \$150 twice a month to pay the debt in full. Her first payment was due in March 2011.⁵

Applicant provided documented proof that the debt in SOR ¶ 1.d was an error. The creditor has acknowledged the error and has advised the credit bureaus.⁶

The debt in SOR ¶ 1.e (\$1,553) is a credit card debt. Applicant stated that she defaulted on the debt around 2005 or 2006. She was underemployed at the time. She made sporadic payments on the debt when she was financially able. She contacted the creditor in June 2009 and made consistent payments to pay the debt. It has been paid.⁷

Applicant admitted she was immature and inexperienced in handling her finances after she moved and was living on her own. She was underemployed and it was difficult for her to pay her bills. She was not living beyond her means, but her earnings were low and she was unfamiliar with the daily expenses that are incurred when living on her own. She is now more financially stable. She chose to pay the smaller debts first and then the larger ones. She does not have any other delinquent debts. She started a budget in 2009 and tracks everything she spends. She has not had financial counseling. She keeps one credit card for business travel, but occasionally uses it for personal expenses. Now that her smaller debts are paid, she intends to make consistent monthly payments toward her student loan debt. She believes she is now in a better financial position to do so. She received notice from her employer that she will be receiving a merit increase in pay on March 22, 2011, which will help her financially.⁸

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

⁴ Tr. 22-24; AE C.

⁵ Tr. 29-32.

⁶ Tr. 28-29; AE D.

⁷ Tr. 24-28, 55; AE E

⁸ Tr. 45-47, 58-65; AE H.

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 responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

(a) inability or unwillingness to satisfy debts.

Applicant has debts that became delinquent and remained unpaid for a significant period of time. I find there is sufficient evidence to raise this disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

(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.

Applicant was inexperienced in handling her finances. She was paying her student loans for a period of time. She moved to a new state and was underemployed and unemployed for a period of time. She had difficulty making her monthly student loan payments and paying her monthly bills. Her payments on her student loans became sporadic, she fell behind in paying other bills, and some of her debts became delinquent. The behavior is recent because she still has a delinquent debt to resolve. I find AG ¶ 20(a) does not apply.

Applicant experienced periods of underemployment and unemployment that significantly affected her ability to pay her ongoing debts and financial obligations. She was inexperienced in handling her financial matters. She made inconsistent payments on her student loans and incurred other debts that became delinquent. She is now consistently repaying her student loans and has resolved all but one debt, for which she has a payment agreement with the creditor. Applicant has a budget and has not incurred any new delinquent debts. I find AG ¶ 20(b) applies because her underemployment and unemployment were conditions beyond her control. She has acted responsibly by paying her delinquent debts and resuming her student loan payments, as soon as financially practicable.

I find AG ¶¶ 20(c) and 20(d) apply because Applicant has made good-faith efforts to repay her creditors and there are clear indications the problems are under control. Other than her student loans, she has one debt that she has not paid, but is being resolved through a payment plan with the creditor. Applicant maintains a budget and, with her projected pay increase, she will be in a better financial situation. Applicant disputed the debt in SOR ¶ 1.e because it was not her debt. The creditor acknowledged its error and provided verification of it. I find AG ¶ 20(e) applies.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but others warrant additional comment.

Applicant was inexperienced in handling her finances when she moved out of her family home and some of her bills became delinquent. She was young and immature

and did not grasp the importance of being diligent in paying her bills. When she moved to a new state, the cost of living was higher and Applicant was unemployed and underemployed. She sporadically paid her student loans while attempting to pay her living expenses. She has a payment plan for her one remaining delinquent debt and has resumed paying her student loans. She has a budget to keep track of her expenses. Applicant has learned from this experience and is now acting responsibly and ensuring her finances are in order. I find Applicant was a credible witness. Applicant has met her burden of persuasion. Overall, the record evidence leaves me with no 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 under the guideline for 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-1.e: For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge