



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



In the matter of:)	
)	
)	ISCR Case No. 09-07069
)	
)	
Applicant for Security Clearance)	

Appearances

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

May 9, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On December 3, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The action was taken 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 adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on January 25, 2011. A notice of hearing was issued on February 17, 2011, and the case was heard on April 1, 2011. Department Counsel offered six exhibits, which were admitted without objection as Government Exhibits (GE) 1-6. Applicant testified and submitted exhibits AE A through AE K (with attachments) at the hearing, which were admitted without objection. DOHA received the transcript (Tr.) on April 11, 2011. Based on a review of the pleadings, submissions, testimony, and exhibits, I find Applicant met her burden regarding the security concerns raised. Security clearance is granted.

Findings of Fact

In Applicant's answer to the SOR, she denied factual allegations in the SOR ¶¶ 1.c, 1.d, 1.e, 1.g, and 1.h with explanation. She admitted the remaining allegations. I incorporate her admissions to the SOR allegations into the findings of fact. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact.

Applicant is a 36-year-old employee for the Army National Guard. She graduated from high school in 1992. She has taken online college classes. Applicant married in 1993 and divorced in 2002. She is the custodial parent of her three biological children and two adopted children. She has worked for her current employer since February 2008. (GE 1)

In 1992, Applicant's oldest daughter was born with severe health problems. She was hospitalized many times. At 18 months old, Applicant's daughter was diagnosed with cardiomyopathy. (AE K) Applicant held a temporary job with no paid leave or health insurance. Her husband had a job earning \$8 an hour. Applicant lost time from work so that she could care for her daughter. Her husband had just started his job, and he did not have health insurance. Due to the many hospitalizations, medications, and emergency visits, the medical bills accumulated. When Applicant's daughter returned home from the hospital, she was on a medication that required Applicant to remain home. Applicant's loss of income and her husband's low income prevented them from paying all their expenses. (Tr. 25) They sought help by contacting an attorney who advised them to file a petition for bankruptcy. In April 2000, Applicant filed for Chapter 7 bankruptcy. The bankruptcy was discharged in July 2000. (GE 5)

Applicant and her husband divorced in August 2002. Applicant had a permanent position with the state. She was making a modest income. Her ex-husband paid \$225 a week in child support for their three children. He also agreed to pay the medical bills, but he did not do so. Applicant decided to purchase a home for her family. In 2003, she qualified for a mortgage and bought an older house. She paid \$130,000 for the home. Shortly after purchasing the home, Applicant decided to help foster children. She received the appropriate training in 2004. Applicant initially accepted two foster children. (Tr. 26)

After she moved into her home, Applicant learned that there were many repairs that needed to be addressed. The boiler and oil tank stopped working. Her utility bill was \$400. She had a flood in the kitchen due to a hot water tank malfunction. Applicant could not maintain the mortgage with the high repairs. She refinanced the house to obtain additional funds to pay her bills. Her mortgage increased by \$400 a month. At this point, Applicant could not maintain the mortgage. She contacted her creditors. Her plan was to pay a small amount on her bills. However, with her income not increasing, she was unable to continue with the plan. (GE 2)

Applicant decided to file for Chapter 13 bankruptcy in April 2005. (GE 6) All of her debts were included in the bankruptcy. Applicant paid \$295 monthly under the

bankruptcy plan until June 2006. At that time, she decided to sell her home. She was ill-advised and believed that if she had the bankruptcy dismissed, it would be easier to sell her home, and she could just pay her debts on her own. She acknowledges that this may not have been the best decision. When she attempted to contact the creditors on her own there was confusion because the accounts still appeared under the bankruptcy, and the creditors did not want to work with Applicant.

Applicant sold the home and used the profit to secure another home. One of her foster children suddenly became ill in 2006. The child died shortly after. This event was devastating for Applicant and may have influenced her to stop her bankruptcy payments. She acknowledged that she had difficulty focusing. She had been taking college classes online and had to stop due to lack of concentration. (Tr. 27)

The SOR lists eight delinquent accounts totaling approximately \$15,000. The debts include medical accounts, a vehicle repossession, and a judgment. The credit reports confirm them. (GE 3, 4, and 5) Applicant denied many of the debts because they were already paid or included in her 2005 bankruptcy. Thus, they were not new debts.

At the hearing, Applicant presented documentation that she has paid the accounts in SOR ¶ 1.c through 1.e, which totaled \$575; ¶ 1.h and ¶ 1.i. for a total of \$8,000. (AE B-H). She has two accounts in a payment plan for SOR ¶ 1. f and 1.j. The payment plan for SOR ¶ 1.f consisted of three payments to settle the account for \$3,700. The remaining payment of \$500 was to be paid in April when she receives her income tax refund.

At the hearing, Applicant explained that her current position pays almost \$20,000 more than her previous one. She has not been delinquent on any debts in three years. Applicant's monthly net income from her employment is \$5,600. She receives \$975 a month in child support. Applicant also receives an adoptive subsidy of approximately \$1,570 per month. Applicant has a budget and received financial counseling. She has a bank account and some savings. Applicant is current on her daily expenses and her car loan. She has a net monthly remainder of approximately \$2,000.

Applicant's employer describes her as an exemplary employee, who conducts herself with professionalism, and who is highly regarded by her peers. (AE A) She is a great asset to the company. Applicant is described as highly motivated with skills and abilities that highlight her maturity and integrity. Her employer is aware of the financial issues and approves of her efforts to address and resolve them. She is recommended for a security clearance. (AE A)

Applicant submitted numerous character references, attesting to her devotion to duty and her professionalism. A coworker describes Applicant as extremely competent, efficient, and organized. She is described as a true asset to any organization.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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." ⁴ "The clearly consistent standard indicates that security clearance

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant had numerous delinquent debts in the approximate amount of \$15,000 for a number of years. She filed for Chapter 7 Bankruptcy in April 2000, which was discharged in July 2000. She also filed for Chapter 13 bankruptcy in January 2005, but stopped the payments in June 2006. The bankruptcy was dismissed. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant’s first bankruptcy occurred as a result of the severe medical condition that her oldest daughter has. Combined with her husband’s low-paying work and her temporary income, Applicant could not pay her bills, and she filed for bankruptcy in 2000. The second bankruptcy in 2005 was the result of separation and divorce. She also bought a home that was old and needed many repairs. She could not maintain the home and pay the repairs. Applicant filed for Chapter 13 bankruptcy and paid the monthly payment until June 2006. She determined that she would pay the creditors on her own and stopped her bankruptcy payments. Since then she has no incurred new debt. She has no new debt. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) applies.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. As noted above, Applicant was faced with hardship due to her daughter's medical condition and her low income. Her separation and divorce caused more difficulty. She had a traumatic incident when she had a foster child who died. She was devastated and lost her focus for a period. These are circumstances beyond her control which impacted her finances, She filed for bankruptcy protection to manage her bills. When her bankruptcy was dismissed, she contacted her creditors. She acted reasonably under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant provided evidence of payments for her delinquent accounts. She is in the final stages of repayment for two accounts. Applicant completed financial counseling, developed a budget, and pays her monthly expenses. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) 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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the "whole-person" factors. Applicant is 36 years old. She is described by her current employer as an exemplary employee. She is a responsible parent of three biological and two adopted

children. Applicant has worked hard to improve her financial status through education and better employment. She has secured a position that enables her to pay all her expenses and save money.

The unexpected medical condition of her daughter and her separation and divorce were the main reasons she filed for bankruptcy twice. She never shirked her responsibilities. She may have been misguided by allowing the Chapter 13 bankruptcy to be dismissed after she had paid successfully for one year. However, she has worked diligently to pay her delinquent bills. She has also adopted two foster children. She has documented and testified credibly that she has worked since high school. She has taken responsibility for her situation. Applicant was candid and forthright in the entire security clearance process. She disclosed her financial delinquencies on her security clearance application. She was organized at the hearing and has shown her resolve. Applicant impressed me as a professional who is determined to resolve the final hurdle in her financial situation. I have no doubts about her sincerity and find that it is clearly consistent with the national interest to grant a security clearance.

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.j:	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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge