



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



In the matter of:)	
)	
)	ISCR Case No. 09-07415
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: William O'Neil, Esquire, Department Counsel
For Applicant: *Pro se*

December 15, 2010

Decision

CREAN, Thomas M., Administrative Judge:

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

On July 31, 2009, Applicant submitted a Questionnaire for Investigations Processing (e-QIP) as a requirement for a position with a government contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), dated July 8, 2010, to Applicant detailing security concerns for financial considerations 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 26, 2010, admitting the one allegation under Guideline F. Department Counsel was prepared to proceed on August 20, 2010, and the case was assigned to me on September 8, 2010. DOHA issued a Notice of

Hearing on September 14, 2010, scheduling a hearing for October 4, 2010. I convened the hearing as scheduled. The Government offered seven exhibits, marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 7. Applicant testified, and offered two exhibits admitted into the record without objection as Applicant Exhibits (App. Ex.) A and B. DOHA received the transcript of the hearing (Tr.) on October 12, 2010.

Findings of Fact

Applicant admitted the one factual allegation in the SOR. I included Applicant's admission in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 37 years old and has been employed by a government contractor as a senior project manager building an information management system for approximately 18 months. She is a college graduate with a bachelor's degree, but is taking courses to continue her education. She is a single parent with a daughter. Applicant's monthly income is \$6,900, with monthly expenses of approximately \$5,330, leaving \$1,570 in monthly discretionary funds. Applicant presented a letter of recommendation from her supervisor showing that she is a highly respected and dedicated employee who is reliable, honest, and trustworthy. (Tr. 21-24, Gov. Ex. 1, e-QIP, dated July 31, 2009, Gov. Ex. 2, Response to Interrogatories, dated January 12, 2010, at 3; App. Ex. A, Letter, dated October 1, 2010)

The SOR alleges one debt of \$26,213 in collection for a bank. Applicant admits the debt is a credit card debt. Credit reports (Gov. Ex. 4, dated July 1, 2010; Gov. Ex. 5, dated April 19, 2010; Gov. Ex. 6, dated November 25, 2009, and Gov. Ex. 7, dated August 14, 2009) show and Applicant admits she had two other credit card debts of over \$13,000 and \$18,000.

Prior to 2003, Applicant was living with a boyfriend. He requested, and she agreed, to use credit cards in her name to purchase items for him. He was to repay her for the purchases, but he never reimbursed her. The total credit card debt on all credit cards that she used was approximately \$40,000. Applicant estimated that 50% of the debt was for her boyfriend and 50% was for her own purchases. At the time, Applicant's salary was about \$41,000 annually. In addition, she permitted her boyfriend's relatives access to her apartment. Unknown to her, they used the apartment for illegal drug activities. When police raided the apartment, she had to spend over \$25,000 in legal fees to establish that she was unaware of the illegal activities. (Tr. 24-46)

In 2007, Applicant employed a law firm to assist her in paying her delinquent debts. Since then, the law firm has been successful in negotiating and paying all but the one debt alleged in the SOR. The law firm believes that the debt should be no more than \$13,444. Applicant states that the original debt was for about \$9,000, and the law firm is negotiating a settlement with the creditor for this amount. Applicant has been paying \$500 monthly into an account that the firm can use to settle the debt. The account

has a balance of approximately \$6,500. Applicant has over \$3,000 of her own funds to also use for a settlement. Applicant believes the account with the law firm will have sufficient funds by the end of 2010 to pay any settlement. (Tr. 20-24, 50-56; App. Ex. B, Law firm Letter, dated September 8, 2010)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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.

Analysis

Financial Considerations:

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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect 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 his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Applicant's delinquent debt, as reported in credit reports and admitted by Applicant, is a security concern raising Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Applicant incurred delinquent debts when she purchased items by credit card for both her and her boyfriend. She did not have the funds at the time to pay the credit card debts.

I considered Financial Considerations Mitigating Condition (FC MC) 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) and FC MC AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions do not apply. Applicant's delinquent debts were incurred when she voluntarily used credit cards to make purchases. These circumstances are likely to recur and they were completely within her control. However, Applicant acted responsibly under the circumstances by using a law firm specializing in debtor assistance to pay her debts. She paid all but one of the debts and the law firm is negotiating settlement of the remaining debt.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence"

of a good-faith effort to repay. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish that she paid each and every debt listed. All that is required is that Applicant demonstrates an established plan to resolve her financial problems and shows she has taken significant actions to implement that plan.

Applicant's financial problems were caused by her own actions in using credit cards to make purchases for herself and her boyfriend. However, she has a concrete plan to resolve her financial issues. She has a debtor assistance law firm assisting her, and paid all but one debt. The law firm is negotiating a settlement of that debt and Applicant has been and continues to make monthly payments to a fund to use to settle the debt. There are sufficient resources to pay the anticipated settlement. Applicant's actions in paying and resolving her delinquent debts provide significant and credible information to establish a meaningful track record of debt payment and a good-faith effort to repay her creditors or resolve debt. Her actions show she acted reasonably and responsibly under the circumstances. Her finances no longer reflect adversely on her trustworthiness, honesty, and good judgment.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered that Applicant is a valued and trusted employee. Applicant established a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. Applicant presented sufficient information to show she took reasonable and responsible action to resolve all but one of her delinquent debts. That debt is in the process of being

resolved. Applicant's management of her finances and payment of past obligations indicates she will be concerned, responsible, and careful regarding classified information. Applicant mitigated security concerns based on her finances. The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations and should be granted access to classified information.

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

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.

THOMAS M. CREAN
Administrative Judge