



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



In the matter of:)
)
) ISCR Case No. 09-07549
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

September 14, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

Applicant signed her Electronic Questionnaire for Investigations Processing (e-QIP) on July 23, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on January 26, 2010. 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) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on February 2, 2010. She answered the SOR in writing on February 20, 2010 and requested a hearing before an administrative judge. DOHA received the request on February 25, 2010, and

Department Counsel was prepared to proceed on March 30, 2010. I received the case assignment on April 20, 2010. DOHA issued a notice of hearing on May 7, 2010, and I convened the hearing as scheduled on May 26, 2010. The Government offered four exhibits (GE) 1 through 4, which were received and admitted into evidence without objection. Applicant and four witnesses testified on her behalf. She submitted four exhibits (AE) A through D, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on June 9, 2010. I held the record open until June 10, 2010, for Applicant to submit additional matters. Applicant timely submitted Exhibits AE E through AE Q, without objection. The record closed on June 10, 2010.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on May 13, 2010, less than 15 days before the hearing. (Tr. 8.) I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice. (Tr. 9).

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a- 1.i of the SOR. Her admissions are incorporated herein as findings of fact. She denied the the general allegation under Guideline F. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 29 years old, works on the help desk and in technical support for a Department of Defense contractor. She began her position in July 2009. Applicant graduated from high school in 1999. She attended a local university from November 2005 until May 2006, completing 12 credits of computer courses.¹

Applicant married her first husband in April 1999 and he died 15 months later. She married her second husband in November 2005. She has two grown stepchildren, who do not live with her. Her stepson is in college and her stepdaughter has married. Applicant is a member of a community emergency response team and works on a security team at church.²

After high school graduation, Applicant started working in the building industry, initially for a window business in their call center. The business promoted her to assistant manager of their call center. In January 2003, she started work for a paint business (Company A) in its corporate office in network administration and later as an

¹GE 1; Tr. 69.

²GE 1; Tr. 18-21.

office manager. Company A transferred her and another employee, who is now her husband, to another state to work as a team on marketing its paint product. She received a small pay raise and her husband received a \$25,000 raise.³

In 2004, Company A experienced operational problems. Company A talked with her husband about how to resolve its business problems. He suggested offering the nonperforming stores as a dealership to the store managers. The dealerships would be responsible for individual store operational and product costs. Company A agreed, and he and another employee worked with the various stores on transferring the business model from corporate-owned stores to individually owned and operated dealerships. The company did not ask these managers to contribute any initial financial costs to own the new dealership. In early 2005, her husband asked Company A about operating a dealership in his location. Because his store operated at a significant profit, Company A declined to offer the same opportunity to him as it offered to other store managers. Instead, Company A required him to pay \$125,000 for the dealership.⁴

Applicant's husband did not have the \$125,000. However, he entered into a partnership with an individual who owned an out-of-state construction company and had started a paint dealership with Company A in another state. The partner opened a satellite construction office near the paint store of Applicant's husband after obtaining all the necessary state licenses. The partner paid \$25,000 to Company A as a down payment on Applicant's husband's purchase price for the dealership. Her husband simultaneously sold a job, which profited \$25,000 and her husband was able to repay his partner for his share of the down payment. Company A and the partnership agreed to pay the remaining \$100,000 by assessing a 15% surcharge on each pallet of paint ordered by the partnership. The surcharge averaged \$1,500 a pallet.⁵

During the first year of this partnership's operation, Applicant's husband found himself managing the construction business as his partner spent more time at his out-of-state business location. The business partnership lasted about 12 months. In early 2006, the out-of-state partner suggested forming a state corporation for the construction business and persuaded Applicant's husband to title the trucks and equipment in the construction corporation's name and to insure the trucks and equipment under the corporate policy. Applicant's husband lost all ownership rights when the transfer occurred. Applicant and her husband's paint dealership would remain separate. In March 2006, without notice, the partner moved the trucks and equipment to his other business location more than 500 miles away. He also transferred all the business funds to his corporate account. He used this money to pay federal taxes his construction business owed. Applicant and her husband have not seen the partner since March 2006. Applicant and her husband have not pursued any claims against the partner.

³GE 1; Tr .22-23.

⁴Tr. 75-79, 126-128.

⁵*Id.* 78-79, 128-129.

Because the business was a partnership, they have few legal rights against the former partner.⁶

As a result of the partner's actions, the dealership did not have any cash. At this time, new work orders declined as the economy started to slow where Applicant lived. By late 2006, Applicant and her husband decided to close the business. Her husband asked Company A to purchase the business. Company A told him that he did not own the dealership and assumed control of the dealership. Applicant and her husband estimate they lost \$50,000 as a result. Her husband completed all work projects for the dealership in July 2007. He did not have another job.⁷

Applicant worked from August 2006 until July 2007 for a millwork company as an administrative assistant and computer repair person, as well as in sales. Applicant also owned a small computer repair business, which she began working part-time in 2005. In July 2007, she worked to develop this business. Outside of this business, Appellant and her husband had no source of income until her husband obtained a job in January 2008. Because they were considered consultants, they were not eligible for unemployment benefits. Applicant's husband worked from January 2008 until May or June 2008, when his employer laid him off due to lack of work. As of the May 2010 hearing, Applicant's husband had not obtained another job. Applicant worked part-time at their church as a data entry clerk from November 2008 until July 2009, earning \$11 an hour. In summary, beginning in July 2007, the only source of income for Applicant and her husband for six months was her small computer repair business. In 2008, her husband worked for about five months and she worked part-time for two months. Applicant began a full-time job in July 2009 and her husband still does not work.⁸

In 2004, Applicant and her husband decided to purchase a house. They looked for property that cost around \$200,000 and discovered little to buy. They eventually purchased a house for \$360,000. The mortgage broker did not require documentation when he processed their loan. They financed the house with a primary and secondary loan. Their monthly payment including taxes and insurance amounted to \$2,200. They had sufficient income to pay this payment. Their house increased in value. The mortgage broker approached them about refinancing the house to consolidate the two loans into one mortgage and suggested a home equity loan. They decided to refinance and acquired a debt of \$410,000 on the house. The \$50,000 equity paid the refinancing costs, purchased a \$10,000 truck for Applicant's stepson, paid for house repairs, and paid her tuition costs of \$5,000. After the refinance, the value house increased to more

⁶*Id.* 81-82, 129-130.

⁷*Id.* 78-79, 133.

⁸GE 1; Tr. 25, 132-133.

than \$500,000. When the real estate market and economy slumped, their house declined in value and is now worth approximately \$220,000.⁹

Their house suffered damage from a hurricane in 2005. Their property taxes increased after the hurricane. When he operated the dealership, Applicant and her husband purchased a truck. Their monthly payment was \$600. They sold the truck in January 2008 and purchased a used car for his new job. Their monthly payment decreased to \$450 and the cost of gasoline also declined significantly as the truck used diesel fuel, which was priced at \$5.00 a gallon. The construction business of her husband's former partner performed poor quality work for a neighbor and a friend of theirs. Her husband corrected the work defects at his own expense. He felt morally obligated to fix the deficiencies because he had recommended the construction company for the work. The repairs cost him about \$10,000. He and Applicant formed a storm shutter business in 2006, but it lost money so they closed it. Since 2008, her husband tried to develop several in-home businesses, but stopped as the businesses cost him more money in product purchases than he earned.¹⁰

The above events severely impacted the Applicant's finances. Applicant's tax returns reflect the following changes in her income and her husband's income, including their business income and expenses, before they married:

Year	Applicant's gross income	Applicant's taxable income	Husband's gross income	Husband's taxable income
2002 ¹¹	\$ 24,809	\$ 17,109	\$ 93,463	\$ 60,346
2003 ¹²	\$ 27,114	\$ 17,752	\$ 69,541 ¹³	\$ 43,385
2004 ¹⁴	\$ 27,906	\$ 14,888	\$126,797	\$ 79,492

Beginning with the tax year 2005, Applicant and her husband filed joint returns which showed the following income:

⁹Tr. 35-40, 135-138.

¹⁰Tr. 28, 67, 79-81, 146-147, 150.

¹¹AE I.

¹²AE J.

¹³Company A promised Applicant's husband an income of nearly \$50,000 more when they moved. GE 2.

¹⁴AE K.

- a) Gross income for 2005: \$100,339 minus \$606 for business income loss for an adjusted gross income of \$99,733. After itemizing their deductions, their taxable income in 2005 was \$40,349.¹⁵
- b) Gross income for 2006 after subtracting business losses and including an IRA distribution and other income: \$62,622. Their taxable income was \$14,057.¹⁶
- c) Gross income for 2007 after subtracting business losses and including other income: \$42,969. Their taxable income was zero.¹⁷
- d) Gross income for 2008 after including business income and other income: \$3,634. Their taxable income was zero.¹⁸

Applicant obtained an extension until August 2010 to file her 2009 income tax return. Her husband earned \$3,700 and she earned \$31,896 in 2009. Her husband turned 62 in December 2009. He applied for Social Security and received his first retirement check of \$1,500 in May 2010.¹⁹ Applicant currently earns approximately \$39,000 a year and her husband receives \$1,500 a month in Social Security retirement.²⁰

Applicant provided a revised budget after the hearing. Based on her income and her husband's retirement income, their total net household income is now \$4,018. Their monthly expenses total \$1,945, leaving a net remainder of \$1,648. Without her husband's Social Security income, their net remainder would be \$134.²¹

In 2008, Applicant contacted her mortgage company and asked about applying for a loan modification because of their financial situation. The mortgage company rejected her request because she was paying the mortgage. When her husband was laid off in the spring 2008, they could not continue their mortgage payments. They made this last mortgage payment in July 2008. Her mortgage and house went to foreclosure, although she and her husband still live in the house.²²

¹⁵AE L.

¹⁶AE M; AE N..

¹⁷AE O.

¹⁸AE P.

¹⁹Tr. 32-33, 142; AE F.

²⁰GE 2; AE F; AE Q.

²¹AE F.

²²GE 2; Tr. 42-43.

Applicant and her husband hired an attorney in December 2008 to help them with their financial problems. Family members lent them the money for the attorney's stated flat fee. Shortly after, the mortgage company served them with the foreclosure complaint. In August 2009, she and her husband appeared in court for what they thought was the final hearing in reference to the foreclosure. Instead, the judge sent them to mediation with the mortgage company. At the time of the hearing, the mediation was scheduled for July 16, 2010. Applicant hoped to rework her mortgage and develop a reasonable monthly payment. In preparation for the mediation, Applicant and her husband attended a financial counseling session as required for the mediation.²³

In 2006, Applicant's husband cashed in his 401K valued at \$20,000 to pay expenses. After July 2007, Applicant and her husband had little income to pay their expenses. They used credit cards to buy food, pay utilities, pay for gasoline, and to pay other living expenses. They cancelled the health insurance as they could not afford the \$800 a month payment. The car noteholder repossessed the Lexus in 2009. Family and friends provided money to help them with their expenses. When they first met with the attorney in December 2008, they intended to file for bankruptcy. The attorney advised them to stop payments on their credit cards and car note, which they did. Until late 2008, they made monthly payments on their credit cards.²⁴

Through the creditor in SOR §1.a, Applicant obtained credit protection benefit in case of job loss. When her financial situation deteriorated, she contacted the creditor to activate the credit protection benefits. The creditor activated the benefits for a few months, not the maximum of 24 months permitted. The creditor cancelled her benefit, saying it could not read the information she faxed to them about her unemployment.²⁵

The debts listed in the SOR became delinquent in 2008. Applicant stopped making monthly payments on the credit cards on the advice of her attorney. The attorney suggested she consider filing for bankruptcy under Chapter 7. She has not filed bankruptcy. If the foreclosure mediation fails, she will file bankruptcy. If it is successful, she would like to resolve her unpaid credit cards through monthly payments.²⁶

Three witnesses testified. They described Applicant as honest and trustworthy. She worked on their computers, which gave her access to their personal information. She never betrayed their trust. She and her husband rented commercial space from one witness and always paid their rent. She is honest in her dealings with friends and business associates. They consider her a person of integrity. Three church members

²³GE 2; AE A; AE E; Tr. 43-44, 52-54.

²⁴GE 3; AE A; Tr. 61-65, 94, 146-147.

²⁵AE H; Tr. 30-31, 49-51.

²⁶AE A; Tr. 45, 48, 54,

wrote letters of recommendation, describing her as reliable, dependable, and trustworthy.²⁷

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 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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or 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.

²⁷AE B; AE C; AE D; Tr. 107-123.

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 relating to the guideline 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated significant delinquent debt recently and has been unable to pay towards these obligations. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when “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.” Applicant’s current financial problems began in 2007 and continue. As her debts are recent, they are current. This mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant’s financial problems initially arose from her husband’s business. In 2005, he formed a partnership to purchase a Company A dealership. One year later, the partner transferred the title to partnership trucks and equipment to a corporation he formed, then left town with the trucks, equipment, and all the partnership checking account funds, leaving Applicant without money and equipment. Around this time, business contracts slowed as the economy in their area slowed. By the end of 2006, Applicant and her husband decided to close the business, which they did in July 2007. The economic downturn in 2007 seriously impacted their business and ability to find other employment. Since July 2007,

her husband has worked about five months. He has been unable to find a job. From July 2007 until November 2008, Applicant also did not work for a salary, although she tried to develop her computer business. From November 2008 until July 2009, she worked part-time earning \$11 an hour. For one year, she paid her bills, relying on savings, family help and credit cards. She contacted her mortgage company to modify her loan, but it refused to talk with her because her mortgage was current. She spoke with an attorney about her financial problems, then hired the attorney to help her resolve her financial problems. She contacted one creditor and activated her credit protection plan, which the company later revoked without a rational reason. She is currently trying to rewrite her mortgage loan through a court-directed mediation. Job loss, economic downturn, and an unscrupulous business partner created Applicant's current financial problems. She used all her resources to pay her bills and contacted her mortgagor. She acted responsibly under the circumstances. This mitigating condition applies in this case.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Applicant and her husband participated in financial counseling as part of the foreclosure mediation process. Their current finances are under control as they earn sufficient income to pay their living expenses and are not accumulating unpaid credit debt. Their SOR debts are not resolved or under control at this time. This mitigating condition has some applicability.

AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant contacted her mortgagor in an effort to renegotiate her mortgage loan, but since her payments were current, it refused. She benefitted from her credit protection coverage for a period of time. She made some good-faith efforts in 2008 to resolve some of her debts, but has not done so since. This mitigating condition does not apply.

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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has significant unpaid debt which arose from job loss, long-term unemployment, the economic downturn, and an unscrupulous business partner. Her husband started a paint business, which was profitable when the economy was good. His business partner and former employer took advantage of this fact. Unlike other dealerships, Company A required him to pay a significant fee to attain the dealership. He formed a business partnership with an individual who paid the initial money for the dealership, money Applicant's husband quickly repaid. Within a year, the business partner took all the trucks, equipment, and money from the partnership, leaving Applicant's husband without funds to operate his dealership. In addition, the business partner's construction crews performed poor work for Applicant's neighbor and another individual known to Applicant's husband. He felt obligated to fix the problems and did so at his expense. This action showed the type of individual he is.

Applicant tried to reduce her expenses and did so. They sold the truck and purchased a car, which used less expensive gasoline. The purchase lowered their monthly car payment by \$150 in 2008. For more than a year, she paid her monthly payment on her credit cards. In 2008, she sought the benefits of the credit protection she had purchased. She stopped her credit card payments on the advice of her attorney. Applicant is a hardworking and honest individual. She and her husband were naive when they entered the business partnership, and their business partner took advantage of them. Her husband honored construction contracts, which his former business partner performed poorly. They made every effort to resolve their credit problems, but lacked the income because her husband could not find work. In the last three years, he has worked five months. She and her husband are respected by their neighbors for their community work and by church members for their work with the church. While Applicant has financial problems, she is working to resolve the debts through her attorney. Under the circumstances of this case, Applicant has shown good judgment in her efforts to pay her bills and manage her finances under extremely difficult conditions. Her debts are not a security concern as she is a responsible and honest individual who can be trusted.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances under Guideline F.

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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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.

MARY E. HENRY
Administrative Judge