



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-08533
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

October 25, 2010

Remand Decision

LYNCH, Noreen, A. Administrative Judge:

On March 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG), effective for SORs issued after September 1, 2006.

On March 22, 2010 in a notarized response, Applicant requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated April 15, 2010.¹ Applicant received the FORM on April 21, 2010. On

¹The Government submitted nine items in support of its case.

April 23, 2010, Applicant submitted a Response to the FORM. On July 16, 2010, the Director, DOHA, forwarded the case for assignment to an administrative judge. The case was assigned to me on the same day.

I issued a decision on July 30, 2010. I found that Applicant did not mitigate the security concerns under Guideline F, Financial Considerations. I concluded that it was not clearly consistent with the national interest to continue Applicant's access to classified information.

On August 4, 2010, Applicant appealed my decision through counsel. Applicant's counsel filed an Appeal brief on September 3, 2010. Department Counsel did not file a Reply brief. On October 6, 2010, the Appeal Board remanded the case for further processing based on a review of mitigating factors under the financial considerations guideline. I received the case file of relevant material (FORM) on October 21, 2010, and after further review, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. She graduated from college in May 2002. She is divorced, and has two children from her marriage. Applicant held a security clearance from 1991 through 1998 while employed with the Air Force. (Item 1) She has worked for her current employer since October 2009. (Item 5)

Applicant explained that her financial problems began in May 2008 when her husband suffered a "mental breakdown." He abandoned the family and he quit his job. Applicant was not working at the time. She relocated to her family home in another state and sought full-time employment. She was unemployed for approximately ten months. (Item 1)

The Statement of Reasons (SOR) alleged 11 delinquent debts for unpaid credit card accounts totaling \$41,871. In addition, Applicant reported a defaulted home mortgage loan that was past-due in the amount of \$162,000. (Item 1) Applicant admitted the allegations in SOR ¶ 1.a through k. Applicant denied having "poor self-control."

In 2008, her husband abandoned her and her two children. He was later institutionalized for mental-health issues. (Item 4) She finally obtained a divorce on January 26, 2010. She incurred additional expenses to pay for the divorce. She is now in the process of filing bankruptcy. Her financial problems are directly related to her ex-husband. (Item 5) Applicant receives sporadic, limited financial support from her former spouse. She claims that bankruptcy is her only option because she has been unsuccessful in selling her home. (Item 4) Applicant hopes that a short sale will occur soon. She fully intends to pay her delinquent debts.

Applicant submitted documentation in response to the FORM to include her July 23, 2010, Chapter 7 bankruptcy petition filed by her attorney. In addition, she completed the required financial counseling on April 7, 2010. On May 25, 2010, she completed a

personal financial management course via the internet. She paid the filing fees and the attorney fee. Applicant stressed that now that she is divorced, she will be liable only for her bills, which she is able to pay.

The household's income, which included her husband's income was more than \$200,000. As a result of the marital settlement agreement and divorce, Applicant expects to receive child support in the amount of \$1,500 a month. She was candid in relating that she is not sure if she will in fact receive the child support from her ex-husband. (Item 7) Applicant's current net monthly income is \$3,394. After expenses, she has a negative net remainder of approximately \$200.

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 U. S. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 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.

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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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

The Appeal Board remanded this case for reconsideration of my application of the Guideline F mitigating conditions. The Board concluded that I erred when I did not apply AG MC ¶ 20(a). It further concluded that I erred when I partially applied AG MC ¶ 20(b). The Board further explained that the “facts cited by the Judge do not render the mitigating condition inapplicable given other evidence in the record.”

Guideline F, Financial Considerations

The security concern relating to the guideline 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 has approximately \$41,000 in delinquent credit card debt. In addition, she has defaulted on a home loan and is past-due in the amount of \$162,000. She filed a petition for bankruptcy in June 2010. However, Applicant’s financial troubles were the

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

result of her husband's abandonment, her unemployment and eventual divorce. She is divorced and gainfully employed. It is unlikely that the circumstances which created the financial problems will recur and does not cast doubt on her current reliability, trustworthiness, or good judgment. 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.

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. Applicant's husband's breakdown and hospitalization were beyond her control. As noted, Applicant's sudden separation and divorce impacted her family finances. She received limited financial support from her husband. She supported her children. Applicant was unemployed for ten months. She did not pay any of her delinquent debts due to her lack of income. She attempted to sell her home but was unsuccessful. She filed for bankruptcy in July 2010, and the debts have not been discharged. She acted responsibly before filing for the bankruptcy. However the bankruptcy was not discharged at the close of the record.

While a discharge in bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance. See, e.g., DISCR Case No. 87-1800 (February 14, 1989) at p. 3 n.2 ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the Examiner must consider the possible security implications of the history of financial debts and problems that led to the filing of the bankruptcy.") In this unique and severe set of circumstances, Applicant's decision to file bankruptcy was reasonable.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. After trying to sell her home, Applicant filed for Chapter 7 bankruptcy in June 2010. This is a legal means of resolving debts. Applicant believes that her debts will be split due to her recent marital settlement and divorce decree. However, she does not believe that her husband will comply with the court-ordered child support. Applicant has been steadily employed since October 2009. Now that she is divorced and has filed for bankruptcy, she believes her debts will be resolved in the near future. Applicant received the required financial counseling as part of her bankruptcy petition. She took reasonable actions when she found herself in this grave situation. Despite the fact that she now has a negative \$200 monthly remainder, Applicant, is gainfully employed. There is no indication that similar financial problems will recur. 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) partially 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 an educated, recently divorced mother of two children. She held a security clearance for a period of time when she worked for the Air Force. She suffered financial difficulty when her husband abandoned the family in 2008. Applicant has not been able to sell her home, and she filed for Chapter 7 bankruptcy in June 2010. She has been steadily employed since October 2009. Applicant's case is very sympathetic and she acted as responsibly as she could given the challenging circumstance. She requested an administrative decision in this case and did not expand the record as she might have had she requested a hearing. Based on the unique facts in this case, I find that Applicant has met her burden. She has mitigated the security concerns under the Financial Considerations Guideline.

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.k:	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