



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case: 10-00913
)
)
Applicant for Security Clearance)

For Government: Paul Delaney, Esquire, Department Counsel
For Applicant: *Pro se*

September 16, 2011

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On November 24, 2008, Applicant submitted a Questionnaire for Investigations Processing (e-QIP). On December 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on or about January 29, 2011, and requested a hearing before an administrative judge. On March 24, 2011, DOHA assigned the case to me. On June 10, 2011, DOHA issued a Notice of Hearing, setting the case for June 29, 2011. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified. She offered Applicant Exhibits (AE) A through D into evidence without objection. DOHA received the hearing transcript on July 11, 2011. The record remained open until July 29, 2011, to give Applicant an opportunity to submit additional documents. Applicant timely submitted a document containing 17 pages that I marked as AE E and admitted into the record without objection.

Findings of Fact

In her Answer to the SOR, Applicant admitted the allegations contained in ¶¶ 1.a, 1.b, 1.c, 1.e, and 1.f. She denied the allegations contained in ¶¶ 1.d, 1.g, and 1.h.

Applicant is 49 years old. She graduated from high school in 1980 and enlisted in the Air Force in 1981. She retired from active duty in October 2002 with an honorable discharge. She was a master sergeant and worked in medical logistics at the time of her retirement. After retiring, Applicant worked in real estate and construction. In March 2008 she started a position as a medical logistics superintendent for a defense contractor overseas, performing the same duties she did for the Air Force. (Tr. 24.)

Applicant has been married three times, and is now divorced. She was married to her first husband from 1982 to 1987. She has two children from that marriage, ages 25 and 28. She was married to her second husband from 1996 to 2008. She was married to her third husband from 2008 until 2011. She and her third husband lived separately, as he is a Peruvian citizen and resident, and she resided and worked in a foreign country shortly after they married. (GE at 10.)

In August 1996 Applicant and her second husband jointly purchased a home for about \$114,000. (Tr. 32.) In April 2004 they secured a \$90,000 home equity loan to remodel it. (Tr. 37.) In 2006 Applicant's second husband moved out of the country and stopped paying household bills. In February 2008 the home went into foreclosure because she could not pay the bills on her monthly income of \$2,500. (Tr. 32, 85.) In February 2008 they divorced. The house subsequently sold for about \$90,000, leaving a \$20,000 deficiency. According to the divorce decree, both Applicant and her second husband remain responsible for financial obligations not covered by the sale of the house. (Tr. 39, 41; Ex D.) She had been unable to locate him, until recently when he responded to an email, but provided no assistance in resolving the financial obligations. (Tr. 78, 85; GE at 13.)

Applicant stated that she has had difficulty resolving the mortgage or home equity problems because she lives in a foreign country and has been unable to personally speak to a representative of either creditor. (Tr. 45.) She attempted to hire

lawyers while overseas without success. (Tr. 84.) Immediately after the hearing, Applicant hired a lawyer to investigate and resolve both issues. He sent letters to both creditors. (AE E at 8, 13.)

Based on credit bureau reports (CBR) dated December 2008, November 2009, and November 2010, the SOR alleged eight delinquent debts totaling \$134,158 of which \$119,613 relates to the 1996 house purchase. These debts became delinquent between 2007 and 2009. The status of each allegation is as follows:

1. (¶ 1.a) The \$6,306 debt owed for a personal loan was paid in two installments in February and March 2011. (Tr. 27; AE A.) It is resolved.
2. (¶ 1.b) The \$91,310 home equity loan is being investigated by Applicant's lawyer. (Tr. 34; AE E at 8.) It is being resolved.
3. (¶ 1.c) The \$667 delinquent debt owed to a department store was paid in full in February 2011. (AE B.) It is resolved.
4. (¶ 1.d) The \$1,234 debt owed to a cellular company was paid on July 26, 2011. (AE E at 11.) She initially disputed the debt. (Tr. 55.) It is resolved.
5. (¶ 1.e) The \$1,752 debt owed to a bank for a credit card account was paid on July 22, 2011. (AE E at 11.) It is resolved.
6. (¶ 1.f) The \$28,303 unpaid mortgage amount was owed to a bank for delinquent mortgage payments on the home purchased in 1996 and later sold through a foreclosure proceeding. Applicant's lawyer is investigating the status of this account. (AE E at 13.) It is being resolved.
7. (¶ 1.g) The \$786 debt owed to an insurance company was paid on July 27, 2011. (AE E at 12.) It is resolved.
8. (¶ 1.h) The \$3,800 owed to a credit card company is being paid through monthly installments. Applicant paid \$1,000 on June 22, 2011, \$500 on July 16, 2011, and will continue to pay \$500 per month until it is paid in full. (AE E at 14.) It is being resolved.

Applicant submitted a budget as of October 2010. Her net monthly income is about \$5,400. She has about \$1,800 remaining at the end of the month. (Tr. 71.) She has not participated in financial management or counseling. (Tr. 82.) She testified candidly about her financial problems. She expressed strong dedication to her work.

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 and mitigating conditions, which are useful 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.

According to 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 the applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtaining a favorable clearance 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.

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."

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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a significant amount of delinquent debt from 2007 to 2009 that she did not begin to address until early 2011. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those potential disqualifications, the burden shifted to Applicant to produce evidence to rebut and prove mitigation. AG ¶ 20 provides four conditions that could potentially mitigate the above security concerns:

- (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.

There is evidence to support a partial application of AG ¶ 20(b). Applicant's delinquent debts arose after her second husband left in 2006 and stopped contributing to their joint financial obligations. Those circumstances may have been beyond her control. However, there is no evidence that she took responsible steps to manage those debts until 2011, which is necessary for the full application of this mitigating condition.

The facts warrant a limited application of AG ¶ 20(c). Applicant has not participated in financial counseling; however, she has taken actions, albeit recently, to resolve her financial obligations and bring them "under control." To-date, Applicant has paid five debts totaling \$10,745 and paid \$1,500 on the \$3,800 debt through monthly installments. Her budget will continue to accommodate any additional payments.

Based on those actions, AG ¶ 20(d) also has partial application as she demonstrated a good-faith effort to resolve six of the eight SOR-listed debts. In July 2011 she hired a lawyer to investigate and resolve the \$119,613 relating to the previous mortgage and home equity loan, supporting a limited application of AG ¶ 20(e). Full application of AG ¶ ¶ 20(c), (d) and (e) is not warranted because Applicant did not begin to address the financial concerns until recently.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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 include 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 facts and circumstances surrounding this case. Applicant is a mature individual, who honorably served this country for twenty years and has continued to serve the military in the same capacity for the past three years. Between 2007 and 2009 she began accumulating debt as a consequence of the deterioration of her second marriage and subsequent foreclosure of the marital home. At this time she has resolved \$14,545 of the SOR-listed debts. The remaining \$119,613 relates to the foreclosed property and is being investigated by her attorney. In the event said amount is due the creditors, she is responsible for half of it according to her divorce agreement. Given her budget, she should be able to manage the debt. While her lax attitude in aggressively addressing the financial security concerns is not condoned, her long military career and recent actions to resolve six of the eight debts, alleviate my concerns that she would engage in illegal activities to resolve the two outstanding debts. Furthermore, her knowledge that future financial delinquencies will jeopardize her employment diminishes the likelihood similar problems will occur in the future.

Overall, the record evidence does not create doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant fully mitigated the security concerns arising under Financial Considerations and the Whole-Person analysis.

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 - h: 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.

SHARI DAM
Administrative Judge