



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-01356  
)  
)  
Applicant for Security Clearance )

For Government Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

November 22, 2010

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 October 14, 2009, Applicant submitted a Questionnaire for Investigations Processing Investigation Request (e-QIP). On June 28, 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 for Determining Eligibility for Access to Classified Information* that went into effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on July 27, 2010, and requested a hearing before an administrative judge. On August 11, 2010, DOHA assigned the case

to me. On September 7, 2010, DOHA issued a Notice of Hearing, setting the case for September 21, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence without objection. Applicant testified. She offered Applicant Exhibits (AE) A through H into evidence without objection. The record remained open until October 15, 2010, in order to provide her time to submit additional documents. DOHA received the hearing transcript on September 28, 2010. She timely submitted AE I through L.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted all allegations. Those admissions are incorporated herein.

Applicant is 30 years old and married. She and her husband have two children, ages nine and five. In September 1998, Applicant enlisted in the U.S. Navy to establish a better life. After 13 years of active service, she received an honorable discharge in May 2008 due to a medical condition. She received a 40% disability. She was an E-5, working as an operations specialist. She deployed four times and received numerous achievement awards and commendations for her service. (AE H.) She held a Secret clearance while in the Navy. She earned an associate's degree in 2007 and is pursuing a bachelor's degree in human resources. Her husband is on active duty in the Navy and is hoping to receive a promotion to E-6.

After being discharged in May 2008, Applicant was unemployed until June 2009 when she began a position as a college recruiter for a defense contractor. During that period of unemployment, she worked as a volunteer with Operation Home Front, a service organization providing assistance to families of deployed servicemen. She received the President's Volunteer Service Award for her work. (Tr. 26.) She has continued to volunteer a few hours a week since obtaining full time employment. (Tr. 51.)

Applicant began accumulating delinquent while deployed for long periods of time and she was unable to monitor her debts. The situation was exacerbated during the year she was unemployed. After paying taxes on a \$54,000 severance package she received after leaving the Navy, she used the remaining monies for advance payments on her mortgage and other bills. Despite making advance payments, she was unable to pay her delinquent debts and on-going obligations from just her husband's salary. (Tr. 38.) She acknowledged that she may have made a poor decision in choosing to pay current living expenses rather than delinquent debts while unemployed, but she did not want her family to become homeless.

On October 5, 2010, Applicant and her husband met a financial counselor and entered into a repayment plan to resolve two debts: Military Star (SOR ¶ 1.c, \$8,215) and Sears (not SOR alleged, \$3,852). Her first monthly payment of \$288 was due on October 15, 2010. According to the plan, those debts will be paid within 60 months from

her current family income. (AE J.) She has every intention of complying with the terms of her agreement. (Tr. 42.)

The SOR alleged that between 2004 and 2009, Applicant accumulated six delinquent debts totaling \$10,591. A summary of the status of the debts is as follows:

1. (a) The \$476 debt owed to Cavalry/Sprint is paid. (AE B; Tr. 29.)
2. (b) The \$1,019 debt owed to CitiBank/Dell is paid. (AE C; Tr. 30.)
3. (c) The \$6,500 debt owed to Military Star is included in a repayment plan. She began accruing this debt after she left the Navy and the bill was mailed to her former address. Prior to that, it was current. This debt will be paid through a debt consolidation plan. (AE J; Tr. 31-33.)
4. (d) The \$1,447 debt owed to NationalCred/Citibank is resolved. With the assistance of the financial counselor Applicant sent a letter to the creditor for validation of the account before beginning payments. On October 13, 2010, she received information indicating that it was not validated and would be removed from the credit reporting companies report. (AE K.)
5. (e) The \$1,006 debt owed to Midland Credit/Citibank debt is paid. (AE D; Tr. 33.)
6. (f) The \$143 debt owed to Defense/DFSA-CL is paid. (AE E; Tr. 38.)

Applicant has resolved all six debts. She paid \$3,187 to resolve the debts in SOR ¶¶ 1.a, 1.b, 1.e, and 1.f. The debt in SOR ¶ 1.d was disputed and removed from her file. The debt in SOR ¶ 1.c is included in a debt consolidation plan, along with a non-listed SOR debt.

Applicant submitted a budget that she and her husband established with the help of the financial counselor. Their net monthly income is \$5,951 and monthly expenses are \$5,229, leaving enough money to make the \$288 payment to the debt consolidation plan. (AE K.)

Applicant submitted eight letters of recommendation from supervisors and co-workers. (AE F; AE L.) Applicant's Division Head considers her to be a "valued member" of their team. (AE F at 1.) A co-worker for two years wrote that Applicant is a "hard-working, conscientious employee who will go out of her way to accommodate the needs of her customers." (AE F at 7.) Another co-worker commented on her ability to handle confidential information. (AE F at 3.) A Branch Chief, who served with Applicant for two years, stated that Applicant "was trusted with the responsibility of several compartments on the ship including classified spaces. She was also relied upon to draft and transmit classified messages and did so with integrity, never compromising the information entrusted to her." (AE L.)

Applicant testified candidly about her financial situation. She expressed deep loyalty to the United States and a strong dedication to the Navy. She would have remained in the Navy if she had not experienced medical issues. She would never compromise national security for money, because she “has too many friends in the military to compromise anything.” (Tr. 48.) She presented her case in an organized and methodical manner, documenting her attempts to resolve her delinquent debts and demonstrating financial responsibility.

## **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 (AG) 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 obtain 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 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.”

## **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 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

Applicant accumulated delinquent debt during deployments, and after she left the Navy in May 2008 and was unemployed for a year. She and her husband did not have sufficient money to meet all of their expenses until she regained employment in June 2009. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 set forth conditions that could mitigate financial security concerns:

- (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;
- (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;

(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; and

(f) the affluence resulted from a legal source of income.

AG ¶ 20(a) has some application. Applicant's financial problems arose during deployments and a year of unemployment. Because she is no longer in the Navy and is gainfully employed, those circumstances are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, or good judgment. Similarly, those circumstances were beyond her control and warrant a partial application of AG ¶ 20(b).

Applicant presented sufficient evidence to trigger the application of AG ¶ 20(c). She and her husband recently met with a financial counselor and established a budget and repayment plan for the largest delinquent debt. All other debts are resolved, indicating that her financial problems are under control. She documented payment of four debts, warranting the application of AG ¶ 20(d).

Applicant presented evidence that she disputed one debt, resulting in its deletion from her credit report and triggering the application of AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

### **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) 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 the facts and circumstances surrounding this case. Applicant is a 30-year-old woman, who honorably served this country for 13 years in the Navy, during which time she held a security clearance. After leaving military service, she was unemployed for one year during which time she volunteered to assist military families with some of their problems. In her current position, she continues to work for the armed forces. Her co-workers and a former naval colleague attest to her hard work, dedication, and ability to responsibly manage classified information. Since becoming employed, she has begun responsibly resolving delinquent debt and maintaining a budget. Her husband is aware of these financial concerns.

Given her awareness and budget, similar financial problems are unlikely to recur. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ‘. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonable consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>1</sup>

Applicant has addressed five of the six SOR-listed debts and is addressing the remaining debt totaling about \$8,200 through a repayment plan. Her delinquent debt no longer poses a security concern. Overall, the record evidence leaves me without

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<sup>1</sup>ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 under Financial Considerations.

### **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.f: 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.

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SHARI DAM  
Administrative Judge