



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



In the matter of:)	
)	
)	ISCR Case No. 10-01967
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

March 7, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 5, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 by the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 1, 2010, and November 18, 2010, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2010. DOHA issued a notice of hearing on December 30, 2010, and the hearing was convened as scheduled on January 31, 2011. The Government offered

Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified and submitted Exhibits (AE) A through J, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents that were marked AE K through Q and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on February 15, 2010.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. She has worked for her current employer since October 2009. She held a security clearance several years ago in conjunction with another job. She is applying for another clearance for her current job. She is a high school graduate. She is single, and she has a 23-year-old daughter.¹

Applicant's finances were stable before certain events. A credit report from 2006 showed no delinquent accounts. Applicant worked at a military base in a different state than she currently resides. She bought a house in about 2005. She put a down payment on the house and financed the rest with an adjustable rate mortgage (ARM). She took out a second mortgage and also used credit cards to pay for improvements on the home. She obtained a second job with a national beverage chain to help pay her mortgages and other expenses. Applicant's mother and daughter lived with her. Her mother had medical problems, was unemployed, and did not contribute financially. Her daughter was in school. Her daughter was struggling to pay her own debts and also did not contribute financially. Applicant's adjustable rate mortgage increased, raising her monthly mortgage payments. Applicant left her position at the military base to work full-time for the beverage chain. She hoped to become a store manager, which would compensate her sufficiently to pay her debts. The country-wide economic slowdown affected the national chain. It downsized, closed stores, and laid people off. The store manager position never materialized. Applicant submitted Internal Revenue Service (IRS) tax return transcripts that showed her wages for tax year 2009, which included several months working for her current employer, were less than 25% of what she earned in tax year 2008. A number of debts became delinquent, and she lost her home to foreclosure.²

The SOR alleges Applicant's 12 delinquent debts totaling about \$14,445. Applicant admitted owing all the debts. Three of the debts, totaling about \$6,233, had been reduced to judgments.

Applicant decided additional changes were required. She moved to the state where her sister lives and obtained a job with a defense contractor. She paid some debts that were not alleged in the SOR. She attempted to contact several of her creditors after her income increased, but many of her debts were transferred to

¹ Tr. at 23-28, 55-56; GE 1.

² Tr. at 27-37, 67; Applicant's response to SOR; GE 1, 3, 4; AE E-I.

collection companies that were difficult to deal with. Applicant felt her best recourse was to file bankruptcy.³

Applicant filed Chapter 7 bankruptcy on February 15, 2011. The bankruptcy petition listed under Schedule D – Creditors Holding Secured Claims, a \$9,875 car loan. The car is in her brother’s name, and she makes the payments on the car loan. There were no claims under Schedule E – Creditors Holding Unsecured Priority Claims. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed 11 debts totaling \$17,865. The bankruptcy listed all the debts that were in a credit report obtained by her attorney. It included all the debts in the SOR with the exception of the \$605 and \$182 debts alleged in SOR ¶¶ 1.i and 1.j.⁴

Applicant has received the financial counseling required by her bankruptcy. Her finances have stabilized since she moved to her current state and returned to working for a defense contractor. She has closed all her credit card accounts, and she has not accrued additional delinquent debt since moving and starting her new job. Once her debts are discharged in bankruptcy, she is confident that she will be able to stay on top of her finances and remain current on all her debts.⁵

Applicant submitted several letters attesting to her outstanding job performance, ethics, professionalism, and integrity. Her manager at the beverage chain where she worked stated that Applicant was responsible for six cash registers and \$4,000 to \$8,000 in cash in day. She wrote that in “the entire time [Applicant] was a shift supervisor for [her] not once did she have a bad register drop or bank deposit.” Applicant’s sister is married to a senior enlisted service member in the pay grade E-9. He is stationed in the city where Applicant now lives. He has been married to Applicant’s sister for 17 years. He testified that Applicant is reliable, honest, trustworthy, and truthful. He is convinced she is sincere in her desire to rectify her financial problems.⁶

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 to be 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, administrative judges apply the guidelines in

³ Tr. at 26-27, 35-40, 47; Applicant’s response to SOR; GE 3, 4.

⁴ Tr. at 38-46, 52, 68; Applicant’s response to SOR; AE A, D, J-Q.

⁵ Tr. at 45, 49-55, 67; Applicant’s response to SOR; AE O.

⁶ Tr. at 60-66; AE B, C.

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 the 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant filed bankruptcy, but her debts have not been discharged. Her financial issues are recent. AG ¶ 20(a) is not applicable.

Applicant's finances were stable until a few years ago. She bought a house and took out a second mortgage so she could make renovations. She worked on a military installation and had a second job at a national beverage chain. She was supporting her ill mother and her daughter. She thought her best opportunity was to work full-time for the beverage chain in hopes of becoming a store manager. The economy went downhill, the national chain downsized, and Applicant was never promoted to store manager. The economic slowdown and her mother's health issues were outside Applicant's control, but the decision to leave her job at the military base was within her control. AG ¶ 20(b) has minimal applicability.⁷

⁷ See ISCR Case No. 09-08108 at 5-6 (App. Bd. Feb. 15, 2011).

Applicant received financial counseling as part of her bankruptcy. She is a hardworking, honest woman who took a chance with the national chain in hopes of eventually bettering herself. That failed to materialize. She moved to a city where she has family support. She has a decent job working for a defense contractor. It is unlikely that she will make the same mistakes again. Once her debts are discharged in bankruptcy, she will be able to live within her means and stay current on her debts. Applicant's financial problems have not yet been resolved. However, the bankruptcy provides a clear indication that the problem is in the process of being resolved and is under control. AG ¶ 20(c) is applicable.

Applicant's actions do not qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts.⁸ AG ¶ 20(d) is not applicable.

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):

- (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.

⁸ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence. Applicant is using the legal remedy of bankruptcy to resolve debts incurred when she misjudged her upward mobility at a national beverage chain. The subsequent economic downturn and downsizing of the chain eliminated that possibility. She is not attempting to absolve herself of excessive credit card debt caused by frivolous or irresponsible spending. She is attempting to rectify a career choice that did not turn out as she planned. She has convinced me that she is on the right track financially.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated Financial Considerations security concerns.

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-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.

Edward W. Loughran
Administrative Judge