



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



In the matter of:)
)
) ISCR Case No. 10-01972
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro se*

March 7, 2010

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On July, 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. DOHA acted 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 August 9, 2010, and requested a hearing before an administrative judge. The case was assigned to me on August 25, 2010. DOHA issued a notice of hearing on August 31, 2010, and the hearing was convened as scheduled on September 16, 2010. The Government offered exhibits (GE) 1 through 4,

which were received without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibits (AE) A and B that were admitted into evidence. The record was left open until October 1, 2010, for Applicant to submit additional evidence. Applicant submitted exhibits AE C through I that were admitted into evidence. DOHA received the hearing transcript (Tr.) on September 22, 2010.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor and works as an assistant program manager. She has worked for her current employer for about one year. She has a bachelor's degree in social science. She is married and has no children. She does not currently hold a security clearance.¹

The SOR alleges 33 delinquent debts totaling just over \$15,000 and a prior bankruptcy in 2003. Applicant admits all the debts in her answer to the SOR. The debts were listed on credit reports obtained on November 13, 2009, and May 27, 2010.²

Many of the delinquent accounts are for utility charges, medical expenses, consumer accounts, and bad checks (SOR ¶¶ 1.a-1.s, 1.z-1.a.c). Applicant also has a number of delinquent student loan accounts listed in the SOR that account for over \$7,000 of the total debt (SOR ¶¶ 1.t, 1.v-1.y; 1.a.d-1.a.g). She also had a past due car loan in the amount of \$1,426 (SOR ¶ 1.u). She ran up credit card accounts and used poor checkbook management when she was in college which led to her 2003 bankruptcy.³

Applicant married her husband in February 2009. They were dating and in a committed relationship for about ten years before their marriage. Her husband is medically retired from the Army. In 2006, on his second deployment to Iraq, he was severely injured losing both of his legs. Because of his injuries, he receives retirement income of \$3,447 per month, as well as social security disability of \$866 per month. He also receives \$1,917 per month in educational benefits.⁴

Applicant was unemployed from June 2008 through August 2009 because she was assisting with her husband's treatment and transition at Walter Reed Army Medical Center. This affected her ability to pay many of the debts listed in the SOR. She also finished her college degree which led to her current position.⁵

¹ Tr. at 6, 21-24; GE 1.

² GE 2, 3.

³ Tr. at 49.

⁴ Tr. at 24-27.

⁵ Tr. at 27-28.

Applicant made strides to get her largest financial obligations under control. She is current on her student loans that were consolidated for ease of payment (SOR ¶¶ 1.t, 1.v-1.y; 1.a.d-1.a.g). She is current on her car loan (SOR ¶ 1.u). She pointed out that one debt was paid (SOR ¶ 1.z). The remaining debts remain unpaid, but Applicant has the means and the desire to pay them. A veteran's organization is building a specially designed home for Applicant and her husband. No payments are required for this home; therefore the \$2,600 they are currently paying in rent can be applied toward their debt. She also provided a budget that shows there is disposable income that can be applied to her remaining debt.⁶

Applicant's job performance appraisals reflect the highest possible ratings for dependability, attitude, and initiative. She is seen as a leader and a superb organizer. Her overall rating was commendable, the highest category possible. Although at the time of the hearing Applicant had not seen a financial counselor, she and her husband will seek such assistance in the future.⁷

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 that 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 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 decision.

⁶ Tr. 57-60; AE A, F, G, I.

⁷ AE B; Tr. at 47.

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 about 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* Executive Order 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 fell delinquent on the debts listed in the SOR and had earlier debts discharged in bankruptcy. She was unable or unwilling to satisfy those obligations. The evidence raises the above disqualifying conditions.

Several 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's debt repayment was stymied when her husband lost his legs in combat in service to his country and she quit her job to help with his rehabilitation. This is a circumstance that is unlikely to recur. Applicant's bankruptcy is remote and not a factor. Additionally, these debts do not cast doubt on her current, reliability, trustworthiness, or good judgment. This conclusion is supported by her job performance appraisals. AG ¶ 20(a) is applicable.

Applicant's financial difficulties were severely affected by her husband's combat injuries and the resulting rehabilitation time. She was unemployed for over a year while she assisted her husband's convalescence recovery. She also used this time to obtain her college degree which led to a better paying job. Once in the new job, she consolidated her student loans and brought them out of delinquent status. She paid one debt and was able to get current on her car loan. She faced a condition that was outside her control and she acted responsibly under the circumstances. AG ¶ 20(b) is applicable.

Although Applicant has yet to receive financial counseling, she is planning to do so in the future. Her finances are not resolved, but they are under control. She is making a good faith effort to resolve the remaining debt. AG ¶¶ 20(c) and 20(d) are applicable.

Applicant met her burden to establish sufficient mitigation evidence under AG ¶¶ 20(a), (c), and (d) on the debt listed in the SOR.

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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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 excellent work record, and the difficulty she faced dealing with her husband's combat injuries. I also found Applicant to be honest and candid about her finances. She resolved the majority of her debt by getting current on her car loan and her student loans. She has enough disposable income to pay the remaining outstanding debts and I am satisfied that she will follow through with payments.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the 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 |
| Subparagraph 1.a – 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.

Robert E. Coacher
Administrative Judge