



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



In the matter of:)	
)	
)	ISCR Case No. 10-04008
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Ali Muhammad, Esquire

January 31, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On October 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 2, 2010, and requested a hearing before an administrative judge. The case was assigned to me on December 6, 2010. DOHA issued a Notice of Hearing on December 16, 2010. I convened the hearing as scheduled on January 6, 2011. The Government offered Exhibits (GE) 1 through 7. Applicant did not object and they were admitted. Applicant testified on her own behalf

and offered Exhibits (AE) A through M, which were admitted without objections. DOHA received the hearing transcript (Tr.) on January 13, 2010.

Findings of Fact

Applicant denied the allegation in the SOR ¶ 1.a and admitted the allegation in ¶ 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 30 years old. She is not married and has no children. She graduated from college in 2002, earning a bachelor's degree. In 2010, she earned her second bachelor's degree. Applicant financed her first degree through scholarships, loans, and by working. She incurred \$16,000 in student loan debt at the time and has paid it in full. She worked full-time while earning her second bachelor's degree, and paid for it with her earnings. Applicant has worked for a federal contractor since 2007, and has held a Secret security clearance for three years. Her current annual salary is \$94,000.¹

In 2004, when she was 24 years old, she purchased her own home. She pays her mortgage on time and has never been delinquent. She pays her car note loan on time and has never been delinquent. She has some store credit cards that she pays in full each month, with no remaining balance or interest payments. She pays all of her other bills on time. She has investments in two retirement accounts, two mutual funds, one stock investment, and she has a savings account. She began investing her money at age 23 and estimated her investments value at about \$70,000.²

In 2007, she was asked by a close family friend (Mr. X) to help him buy a house in another state. He could not obtain a loan with his own credit. She told him no. He then begged her to help him buy the house. She discussed it with her mother and her mother initially also did not think it was a good idea. Mr. X's realtor contacted Applicant repeatedly and told her that if she helped Mr. X purchase the house, the realtor would be able to refinance the house in six months, and would remove Applicant's name from the title and mortgage. Believing she was helping a close family friend and again in consultation with her mother, who now supported Applicant helping the friend, Applicant agreed to purchase the house in her name. The agreement was for Applicant to use her name and credit to purchase the house, and Mr. X would make all of the mortgage payments. Applicant never lived in the house and never made any mortgage payments on the house. She secured two mortgages to purchase the house (SOR ¶¶ 1.a and 1.b). She was lead to believe that she was helping a friend and that this was a temporary transaction that would be completed in six months when the house was refinanced. She was assured by the realtor that this was a common practice.³

¹ Tr. 27-37, 40.

² Tr. 26, 28-39, 69-70.

³ Tr. 41-56, 72.

After six-months the realtor attempted to refinance the mortgages that were secured under Applicant's name and transfer them to Mr. X. He again was unable to qualify for the loans and the refinancing did not take place. Because of this, Applicant remained the sole owner of the mortgages on the house where Mr. X resided. He continued to make the house payments.

In April 2009, Applicant was contacted by the creditor in SOR ¶ 1.a and was advised that the payment for that month was overdue by 30 days. Mr. X had not told Applicant that he failed to make the payment. Applicant contacted Mr. X and he told her he could not pay the mortgages because the monthly payments had increased and his business was not doing well.⁴ Applicant immediately began researching for someone in the state where the house is located to help her obtain a loan modification. During the same month of April, she was able to secure a company to assist her.⁵ She submitted the required documents and was advised in July 2009, that she did not qualify for a loan modification. She was further advised to consider a short sale of the property. The loan modification company was not able to help her with the short sale and recommended she contact a realtor in the state where the property is located. Applicant again researched to find a realtor and finally one was recommended to her by a coworker. She secured the assistance of a realtor for the short sale in October 2009.⁶

In November 2009, Applicant and her realtor attempted to "short sale" the property, but it was denied due to the assessment. A second short sale was attempted in May 2010, with the same buyer and it was accepted in July 2010. The second mortgage was sold to the creditor in SOR ¶1.b. Applicant was required to pay this creditor \$6,000 so they would release the lien on the property and allow the short sale to go through. This was subject to the creditor still being permitted to seek reimbursement from Applicant for the second mortgage. After the \$6,000 payment, the amount owed on the second mortgage is \$46,600 (SOR ¶1.b).⁷

Applicant was advised she owed \$10,000 for the deficiency on the first mortgage (SOR ¶1.a). She executed a promissory note in September 2010 to pay \$100 a month on the debt. She has made four payments through automatic withdrawal and stated she will continue to make the payments until the debt is satisfied.⁸

Applicant attempted to settle or modify the loan on the second mortgage with the creditor, but was unable. She hired an attorney in September 2010, to help her negotiate and settle the debt. An offer was made in October 2010 to the creditor and

⁴ AE B.

⁵ AE K.

⁶ Tr. 41-56; AE C.

⁷ Tr. 55-63, 68-69.

⁸ Tr. 62-64, 79-80.

she has not received a response. She intends to repay the debt, but is waiting for her attorney to advise her as to what amount has been decided.⁹

Applicant contacted Mr. X for reimbursement, but she has been unsuccessful. He has not assisted her in paying the outstanding debts. Applicant no longer communicates with him.¹⁰

Applicant is financially solvent and lives within her means. Because she is now responsible to pay these debts she has been unable to save her money as she did in the past. She exercises financial responsibility by paying her bills on time and not using credit, except for her house and car. She estimated she had \$1,000 in her checking account, \$2,000 in savings, and about \$21,000 in a money market account. If her attorney cannot negotiate a lower amount on the second mortgage, she understands she is required to pay the debt in full. She fully intends to pay the debt.

Applicant provided a character letter from a person who has known her for more than ten years. She is described as an honest, trustworthy and reliable person. He is aware of the financial situation she was confronted with and that she acted responsibly throughout the ordeal.¹¹

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 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, 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

⁹ Tr. 64-66, 79-80; AE A, K.

¹⁰ AE B; Tr. 66-68.

¹¹ AE D.

on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under 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 applicant or proven by Department Counsel and 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 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.” 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

(a) inability or unwillingness to satisfy debts.

Applicant has approximately \$56,600 in delinquent debts that are unpaid. I find there is sufficient evidence to raise this disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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 has been a financially responsible person throughout her life. With the concurrence of her mother, the promise of a realtor, and the assurances of a close family friend, she agreed to use her credit to finance a house. As the facts support, she was misled by the realtor and the family friend did not comply with his promise to pay the mortgage. This led to Applicant being financially responsible for a house she never wanted to finance and has never lived in. Despite this she has taken full responsibility for her legal obligations. When she became aware there was a problem, she immediately sought assistance, and attempted to modify the loan or find a resolution. She hired an attorney to assist in resolving and settling the debts. Applicant has established a payment plan and has been making automatic withdrawal monthly payments. Her attorney is attempting to negotiate a settlement on the remaining debt and has made an offer. They are waiting for a response. I find the circumstances of the two debts Applicant is responsible for occurred under conditions that are unlikely to recur and they do not cast doubt on her current reliability, trustworthiness, or good judgment. Therefore, I find AG ¶ 20(a) applies.

Applicant made a poor decision in allowing a friend to use her credit. Although she did not have to agree to do it, she was under considerable pressure by her mother, the realtor, and Mr. X. Despite those factors I cannot find that the financial problems were largely beyond her control. I find AG ¶ 20(b) does not apply. However, despite her ill advised decision, Applicant has acted responsibly in addressing the debts, throughout the entire ordeal. She immediately took action once she learned there was a problem. She has worked diligently to resolve the debts. She has a payment plan on one debt and is waiting to hear from the creditor on the other. Applicant has initiated good-faith

efforts to repay the creditors and resolve the debts. There are also clear indications the problem is being resolved and is under control. I find AG ¶¶ 20(c) and 20(d) apply.

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 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.

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. Applicant has a long history of being financially responsible. She has consistently paid her bills on time and not incurred delinquent debt. Her financial problems arose when she agreed to help a friend. When she became aware that there were problems, she took immediate action and has been working diligently to resolve the debts. Applicant understands her legal obligations and has addressed them. Applicant has met her burden of persuasion. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for 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-1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge