



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



In the matter of:)
)
) ISCR Case No. 10-04093
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: Dan Cron, Esq.

March 30, 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 29, 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 22, 2010, and requested a hearing before an administrative judge. The case was assigned to me on December 23, 2010. DOHA issued a notice of hearing on January 11, 2011, and the hearing was convened as scheduled on February 2, 2011. The Government offered exhibits (GE) 1 through 6,

which were admitted without objection. Applicant testified and submitted exhibits (AE) A through K, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents that were marked AE M through Q and admitted without objection. The correspondence about Applicant's exhibits is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on February 10, 2011.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. She has worked for her current employer for more than 11 years. She seeks to retain her security clearance, which she has held for most of her employment with the defense contractor. She attended college for a period but did not obtain a degree. She has been married for 20 years. She has two children, ages 16 and 12.¹

Applicant came from humble beginnings. Her parents dream for her was that she would some day become a secretary. Applicant had greater aspirations. Her husband enlisted in the Navy and served on active duty for eight years, including a deployment to Operation Desert Storm, before he was honorably discharged. He earned a bachelor's degree. They both had good jobs and their finances were sound before he decided to explore a new area. Lured by the booming real estate market in their area and the number of television shows that depicted the profits to be made by buying and selling, known as "flipping," properties, he invested in the real estate market. He would research an area and buy a house at a good price, usually through a foreclosure sale. He then renovated the property before placing it for sale. He bought his first house at about the end of 2005. He funded the expenses through credit cards and lines of credit, most of which he opened in his own name. On several of the accounts, without her knowledge, he listed his wife as an authorized user and the creditor would give him a higher line of credit.²

Applicant's husband successfully sold the first six houses he purchased, within one to two weeks of placing them on the market. With the profits earned from the sales, he would pay the credit cards and lines of credit. By the time he had renovated and placed the seventh, and last, house for sale, the real estate market had started its decline before its collapse. The house was on the market for a year and did not sell. He used the credit cards and lines of credit to pay the mortgage. The interest rates and the balances on the accounts kept increasing to the point where he was unable to pay the accounts, and they became delinquent. He handled the family finances and paid their bills. Out of shame and fear, he kept the status of their finances from his wife. He attempted to keep current any of the accounts on which she was a joint holder, because he did not want collection companies contacting her.³

¹ Tr. at 66-71; GE 1.

² Tr. at 25-37, 41-43, 57, 61-63, 67-70, 73-74, 79; GE 4; AE A.

³ Tr. at 31-43, 49-51; Applicant's response to SOR; GE 4.

In December 2009, Applicant was completing her Questionnaire for National Security Positions (SF 86) for her periodic background investigation. Before she answered the financial questions, she went to her husband and asked him if their finances were in order. That is when he broke down and told her about the true state of their finances. After considerable anguish, they went through all their finances. She listed all their delinquent debts on her SF 86.⁴

Applicant and her husband consulted a bankruptcy attorney. He told them that because most of the debts were in his name that he could file bankruptcy individually. He also told them that in their state, joint debts would also be discharged in the bankruptcy. Applicant's husband filed Chapter 7 bankruptcy, and his debts were discharged in June 2010. Applicant and her husband both took the financial counseling required for his bankruptcy.⁵

The SOR alleges six delinquent debts totaling about \$170,000. The debts alleged in SOR ¶¶ 1.b (\$45,644), 1.c (\$38,429), 1.d (past-due \$263), and 1.e (\$36,917) were solely in Applicant's husband's name. She was only listed on the accounts as an authorized user. She has no legal responsibility for these debts. They were discharged in her husband's bankruptcy.⁶

Applicant was determined to pay the debts that were in her name. In May 2010, she entered a payment agreement to pay a past-due debt. The debt, which had a balance of \$13,990 when the agreement started, was paid in full by October 2010. She settled a \$5,725 debt for \$1,832 in May 2010. These two debts were not alleged in the SOR. She settled the \$8,364 debt alleged in SOR ¶ 1.f during or before January 2011.⁷

Based upon the advice of the bankruptcy attorney, Applicant and her husband believed the \$40,497 debt alleged in SOR ¶ 1.a was discharged in his bankruptcy. This military credit union account was opened in the 1990s and remained without a significant balance for most of the time they had it. They both thought she was an authorized user on the account. After the hearing, they requested the credit union to investigate whether Applicant was a co-applicant on the account or an authorized user. The credit union researched their archives and determined that it is a joint account, with Applicant and her husband both on the application. Applicant has made payment arrangements with the credit union to pay the account. She paid \$5,000 on March 7, 2011, and another \$5,000 on March 8, 2011. She has agreed to pay a minimum of 2% of the remaining balance every month until the debt is paid.⁸

⁴ Tr. at 41-42, 63, 74-75; GE 1, 4.

⁵ Tr. at 51-54, 71; Applicant's response to SOR; GE 5; AE C, D.

⁶ Applicant's response to SOR; GE 2.

⁷ Tr. at 72-73; GE 2, 3; AE E-G, J, K.

⁸ Tr. at 43-47, 71-72; Applicant's response to SOR; GE 2, 3; AE J, K, N-Q.

After the bankruptcy, in order to get their finances back on track, Applicant's husband accepted a good-paying job in another state. He earned more than \$150,000 last year. They have a large surplus each month that can be used to pay their remaining delinquent debt. Applicant and her husband both credibly testified that they will take the steps necessary to resolve the debt. Applicant's husband never sold the seventh house. He has a tenant in the house on a contract to purchase the house by December 2012. They are now in a position where they can carry the mortgage until the house is sold. Applicant has become more involved in the family's finances. Her husband does not intend to re-enter the real estate market after the seventh house is sold.⁹

Applicant is highly regarded by her employer. Her performance appraisals reflected excellent work. She has been recognized with a number of awards, including a recent global award, which is given to only 1% of the company. She submitted two character letters and two supervisors attested to her outstanding job performance, work ethic, reliability, judgment, trustworthiness, responsibility, and integrity.¹⁰

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 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.

⁹ Tr. at 55-60, 72-84; AE A, B.

¹⁰ Tr. at 92-100; AE H, I, L, M.

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.

Five 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;

(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.

Applicant and her husband had good jobs and were financially secure before he decided to enter the real estate business and "flip" houses. He financed the purchases and renovations through credit cards and lines of credit. Six houses were successfully bought and sold. The real estate market collapsed, and he was unable to sell the seventh house. The actions of Applicant's husband qualify as conditions that were outside her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant's husband kept the dismal state of their finances from her until she submitted her SF 86 and asked him if their finances were in order. He admitted their problems, and they set out to rectify the situation. He declared bankruptcy, and all the debts that were solely in his name were discharged. They both obtained financial counseling.

Before the SOR was issued, Applicant started addressing the debts that were her responsibility. She paid or settled three debts, two of which were not alleged in the SOR. After the bankruptcy, he accepted a high-paying job in another state. They chose to live apart in order to be in a better position to rectify their financial problems. They both thought that a \$40,497 debt to a military credit union was discharged in his bankruptcy. She mistakenly believed that she was only an "authorized user" on the account, and therefore not liable for the debt. She learned after the hearing that it is a joint account, and that they both signed the application papers for the account. She paid \$10,000 to the credit union and agreed to pay the balance through monthly payments. Both Applicant and her husband were credible and sincere in their testimony that the debt will be paid, and they do not intend for this to happen again. They have a substantial surplus each month, and she is more involved in their finances.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board discussed an applicant's burden of proof under these mitigating factors:

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.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and [has] taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his [or her] 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

I find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay or otherwise resolve the debts that were her responsibility. Her financial problems occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. I further find clear indications that her financial problems are being resolved and are under control. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are applicable.

The debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, and 1.e were solely in Applicant’s husband’s name. They were discharged in his bankruptcy. Applicant has no legal liability for those debts. AG ¶ 20(e) is applicable to those debts.

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 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 and her husband have their finances back on track after his failed real estate ventures. 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.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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge