



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



In the matter of:)
)
) ISCR Case No. 10-04483
)
Applicant for Security Clearance)

Appearances

For Government: William T. O'Neil, Esquire, Department Counsel
For Applicant: *Pro se*

August 4, 2011

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On January 28, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued an interrogatory to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated October 18, 2010, to Applicant detailing security concerns for financial considerations under Guideline F. These actions were 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 acknowledged receipt of the SOR on October 23, 2010.

Applicant answered the SOR on October 23, 2010. She admitted the five allegations under Guideline F. Department Counsel was prepared to proceed on February 7, 2011, and the case was assigned to me on February 22, 2011. DOHA issued a Notice of Hearing on April 18, 2011, scheduling a hearing for May 2, 2011. I convened the hearing as scheduled. The Government offered seven exhibits that I marked and admitted to the record without objection as Government Exhibits (Gov. Ex.) 1 through 7. Applicant testified on her behalf and offered seven exhibits that I marked and admitted to the record without objection as Applicant Exhibit (App. Ex.) A through G. I left the record open for Applicant to submit additional documents. Applicant timely submitted two documents which I marked and admitted to the record as App. Ex. H and I. Department Counsel had no objection to the admission of the two documents. (Gov. Ex. 8, Memorandum, dated May 16, 2011) DOHA received the transcript of the hearing (Tr.) on May 10, 2011.

Procedural Issues

Applicant received the Notice of Hearing on April 25, 2011. She discussed the hearing date with Department Counsel prior to the mailing of the Notice of Hearing on April 18, 2011. Applicant is entitled to 15 days advance notice of a hearing. (Directive E3.1.8.). Applicant was ready to proceed at the hearing on May 2, 2011, and she had sufficient time to prepare. She waived the 15-day notice requirement. (Tr. 5-7)

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 38 years old and is required to be eligible for access to classified information for a position as a human resource specialist with a defense contractor. She is a college graduate with a degree in health care administration. She married in 2000, divorced in 2005, and has a teenage college son who lives with her. (Tr. 38-42)

Applicant's previous employer relocated her from one city to another In July 2006. She owned a home in her original location, which she was able to sell when she moved. Her company helped her with some, but not all, of her moving expenses. When her employer restructured the company, transferring functions to a main headquarters eliminating regional positions, Applicant was terminated with other employees on December 31, 2008. She received a severance payment. She was unemployed from January 1, 2009, until July 28, 2009. During this time, she worked part time on an as needed basis. She found full time employment as an administrative assistant supervisor for another company making \$19-per-hour in July 2009. In September 2010, that company eliminated all supervisory positions, and Applicant's job was downgraded and

her salary lowered to \$16 per hour. At present, she is still employed with this company at the \$16-per-hour salary. She also has a part-time position as a medical assistant instructor which she took on November 15, 2010. Applicant experienced delinquent debts from her unemployment, the expenses from her move, and her lower salary. Applicant admits she used credit cards during her unemployment to meet her bills. After becoming unemployed, Applicant contacted her creditors to inform them of her financial situation and to establish payment plans. (Tr. 22-28)

Credit reports (Gov. Ex. 4, dated February 13, 2010; Gov. Ex. 5, dated May 13, 2010; Gov. Ex. 6, dated September 15, 2010; and Gov. Ex. 7, dated February 3, 2010) show the following delinquent debts for Applicant: \$6,293 on a bank credit card for a retail store (SOR 1.a); \$773 past due on another bank credit card (SOR 1.b); a credit union credit card charged off for approximately \$8,637 (SOR 1.c); another bank credit card past due for approximately \$350 (SOR 1.d); and \$24,899 in mortgage payments past due on a \$161,000 mortgage (SOR 1.e). Her delinquent debts amount to \$15,000 of unsecured debts, and \$24,000 in mortgage arrears.

The credit card debt at SOR 1.a is for a card Applicant used for living expenses when she was unemployed. Applicant settled the debt for four payments of \$550.57. (App. Ex. A, Letter, dated February 3, 2011) Applicant paid the debt in full by making early and extra payments. (Tr. 14-16, 28-29; App. Ex. B, Letter dated March 29, 2011)

The actual amount of the debt for the credit card account at SOR 1.b was approximately \$2,500. The SOR is for the past due amount of \$773. Applicant agreed to pay \$75 monthly to pay the entire debt at SOR 1.b. She has consistently made her monthly payments and the debt is now approximately \$1,200. (Tr. 16-17, 29-30; App. Ex. C, Letter, dated July 19, 2010; App. Ex. H, Payments, various dates)

Applicant attempted to negotiate a settlement plan with the creditor for the debt at SOR 1.c. However, the creditor is seeking two large payments of over \$2,000 each that Applicant can not afford. She is still negotiating with the creditor to arrive at an acceptable payment plan. (Tr. 17-18, 30-31)

Applicant agreed to make \$75 monthly payments on the overdue debt at SOR 1.d. Applicant established an automatic deduction from her checking account for the monthly payments. She has consistently made the agreed payments and her debt is now in the status of being paid as agreed. She continues to make the required monthly payments to keep the account as pays as agreed and the balance is approximately \$2,313.24. (Tr. 18-20, 31-32; App. Ex. D, Letter to establish automatic deduction, dated July 28, 2010; App. Ex. E, Letter of agreed payments, dated August 3, 2010; App. Ex. F, Cancelled checks, various dates; App. Ex. I, Electronic payments, various dates)

The debt at SOR 1.e pertains to Applicant's mortgage for the house she purchased when she was transferred by her previous employer. She met the mortgage payments of \$1,243 when she first moved but was unable to continue making timely mortgage payments after her company laid her off. Applicant still lives in the house. The

allegation at SOR 1.e is for past due mortgage payments of \$24,899 with a total balance of \$161,000. Applicant tried to modify the mortgage for a lower monthly payment but the mortgage holder would not agree. She sought help from Government mortgage agencies to help with modifying her mortgage. Applicant's mortgage holder did agree to a short sale of the house to satisfy the mortgage. The appraised value is approximately \$148,000. Her mortgage holder will not accept any mortgage payments pending the short sale. Applicant listed the house for sale but it has not yet sold. Applicant is unsure if she will still owe a debt on the remaining mortgage debt if the house is sold at a short sale. (Tr. 20-22, 32-36, 37-38; App. Ex. G, Sale documents and short sale agreement, dated September 1, 2010)

Applicant has paid other outstanding debts. She paid her student loans, another bank account, and some back state taxes. Applicant understands the debts are her problem even though they were incurred during difficult economic time. She hopes to work for a defense contractor overseas in a war zone, anticipating the additional pay will help her with her past due debts. (Tr. 36-37, 43-47)

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 must be considered 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to 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.

Analysis

Financial Considerations:

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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts established by credit reports and Applicant's admissions raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts); and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant's testimony concerning her finances was candid and forthright. She provided financial information concerning her attempts to resolve her financial obligations.

I considered Financial Considerations Mitigating Condition (FC MC) 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) and FC MC AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions apply. Applicant was transferred

by her company and purchased a house at her new location. About two years later, her company restructured and Applicant's job was eliminated. Up until this time, she was current with payment on her debts. She was unemployed for approximately eight months, fell behind on some debt payments, and used credit cards to pay debts and living expenses. About a year after finding new employment her new company restructured, her position was downgraded, and she lost hourly pay. Applicant found a part-time position to help with her finances. Her delinquent debts happened under unlikely circumstances of losing a job and having another job downgraded in pay. These circumstances were beyond her control. Applicant acted responsibly under the circumstances by notifying her creditors of the issues and reaching settlement agreements with some of the creditors. She paid one of the SOR debts in full and is current with agreed payments on two other debts. She also paid other debts not listed on the SOR. Her mortgage holder agreed to a short sale and the house has been placed on the market. Only one creditor refused to negotiate a reasonable payment plan.

I considered FC MC ¶ 20(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). Applicant noted that she sought help from some Government agencies to understand and modify her mortgage. While these companies undoubtedly provided her some credit counseling, she did not present evidence of financial counseling to meet the requirements of this mitigating condition.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish that she paid each and every debt listed. All that is required is that Applicant demonstrates an established plan to resolve her financial problems and show she has taken significant actions to implement that plan.

Applicant took a part-time job, in addition to her regular full-time position, to gain additional income. She paid one SOR debt in full. She paid other debts not listed in the SOR in full. She has payment plans on two SOR debts and the debts are now current and being paid as agreed. She and her mortgage holder have agreed to permit a short sale of her house. It is unclear if she will still owe a mortgage debt after a short sale. Only one creditor would not negotiate a reasonable settlement plan. If granted eligibility for access to classified information, Applicant hopes to work overseas earning more money to pay her debts. Applicant's actions in paying and resolving her delinquent debts provide significant and credible information to establish a meaningful track record of debt payment. These actions are reasonable and prudent under Applicant's financial

circumstances and show honesty and an adherence to her financial duties and obligations. She established her good-faith efforts to repay her creditors and resolve debt. Her actions show she is acting reasonably and responsibly to resolve her financial problems, so her past delinquent debts do not now reflect adversely on her trustworthiness, honesty, and good judgment. She has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered that Applicant's financial problems arose from conditions beyond her control. She was laid off from a job that paid well and was unemployed for over eight months. Her position was downgraded and she lost some hourly salary a year after finding employment. She took a second job to earn more funds to pay her debts. She established a "meaningful track record" of payment of her delinquent debts. She paid one SOR debt and other non-SOR debts in full. She is paying two other SOR debts by payment plan. She and her mortgage holder agreed to permit her house to be sold at a short sale and the house is on the market. Only one debt remains because the creditor is demanding large payments Applicant cannot reasonably afford. Applicant's actions to pay her past financial obligations and resolve her debts indicate she will be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations, and she should be granted access to classified information.

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.e: 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.

THOMAS M. CREAN
Administrative Judge