



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 10-09066 |
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| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

July 13, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On February 18, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on April 29, 2011. A notice of hearing was issued on May 12, 2011, and the case was heard on June 21, 2011. Department Counsel offered two exhibits (GE) 1-2, which were admitted without objection. Applicant testified and submitted nine exhibits (AE) A-I at the hearing, which were admitted without objection. I kept the record open until July 7, 2011, and Applicant timely submitted three exhibits which were marked and accepted into the record as AE J-L. DOHA received the hearing transcript on June 29, 2011. Based on a review of the pleadings, submissions, and exhibits, I find

Applicant met her burden of proof on mitigation regarding the security concerns raised. Security clearance is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted two debts and denied the remaining debts with explanation.

Applicant is 39 years old. She is divorced and has no children. She obtained her undergraduate degree in 2000 and received her graduate degree in 2005. Applicant served in the military from 1993 until 1996. She has held a security clearance since 1994. (GE 1) Applicant has been employed with her current employer since December 2009.

Applicant acknowledged that when she was in college, she received credit cards and did not manage her accounts wisely. When she started employment with the Government, she moved at least six times to accept better paying positions. However, the Government did not always pay for the move to another location. Applicant incurred additional debts because she used her credit cards to pay for all the moving expenses. (Tr. 66)

Applicant was unemployed from October 2007 until April 2008 and from June 2007 to July 2007. Many of her earlier positions were underemployment. She also interned while she worked to gain possible part-time employment opportunities. Applicant taught courses at a community college part-time to supplement her income so that she could pay some of her bills. She was always motivated to pay her bills.

The SOR lists eight delinquent accounts totaling approximately \$28,000. The credit reports in the record confirm the debts. (GE 2) Applicant disputes two debts as duplicates. She admits two debts, but denies the others because they have been paid or are settled.

Applicant has a payment arrangement for the debt in SOR ¶ 1a. (\$5,701). She provided cancelled checks that confirm payments of \$120 monthly on the debt. (AE L) She also believes that they may accept a settlement after she makes more payments. The debt originated with a car loan. The car was repossessed in 2006, and it was sold for \$6,000. Applicant did not believe that she owed anything. (Tr. 25) She learned recently that the car had been sold for approximately \$1,000, and she was responsible for the remainder. (AE A and J) Applicant explained that she had disputed this account earlier because, after the sale of the auto, she was told there was no balance. She was not ignoring the account.

Applicant provided proof that in June 2002 she paid the debt alleged in SOR ¶ 1.b. (\$665). Prior to the hearing, she submitted the receipt with her response to interrogatories. (GE 2)

Applicant has a settlement arrangement for the debt of \$9,470 in SOR ¶ 1.c, which is a duplicate of the account alleged in SOR 1.e. Applicant was advised by her financial counselor in 2010 to pay this bill in a lump sum, and to pay this bill after all her other accounts were settled or resolved. The original amount was \$4,300 for the purchase of furniture. She had difficulty tracking the collection agency as the original account was sold. (AE C) Under her agreement, a monthly payment amount of \$500 will be made beginning in September 2011. Applicant expects to apply additional monthly amounts to the \$500 when her car is paid in December 2011. (Tr. 62)

The debt of \$307 alleged in SOR ¶ 1.d is paid. Applicant submitted documentation to show the payments were made in 2010. (AE B)

The debt of \$2,510 listed in SOR ¶ 1.f is in repayment status. (Tr. 48) Applicant sends \$500 monthly. (AE D) This account will be paid in full by September 2011.

The debt of \$1,406 alleged in SOR 1.g is paid. (AE E) Applicant settled the debts listed in SOR 1.g and 1.h to the same creditor. She submitted proof in her post-hearing submission. (AE L) At first, Applicant disputed both these debts. She did not have an account with this group. However, she decided to settle the accounts on the advice of her financial counselor.

Applicant obtained financial counseling on two separate occasions. In September 2008, she was advised to pay the smaller debts first. (AE H) She has a detailed budget. Her monthly net income is \$4,590. Applicant has a net monthly remainder of \$1,278. She is current on all her expenses. Her car loan will be paid in full by December 2011. This will allow her to apply \$362 more a month toward the last of her debts. Her credit report confirms accounts that she owns that are paid as agreed. Applicant has a savings account that she can use for emergency items. (AE F)

At the hearing, Applicant noted that in 2010, she again met with a financial counselor to develop more specific goals to reduce and consolidate her debts. She followed their advice.

Applicant submitted several letters of recommendation. Her former military supervisor described Applicant as a trusted agent of the United States. She worked as an intelligence specialist and never had an incident while holding her security clearance. (AE G) In addition, he noted that Applicant exhibited the highest character and was a tremendous asset to the organization. He has known Applicant since 2002.

Applicant has received awards and recognition for professional work and for her volunteer work. (AE I) She was the civilian volunteer of the quarter in 2005. She is licensed in the gospel ministry. She has devoted time and efforts to her community church.

Applicant competed and won a scholarship to study abroad in 1997. She was noted as a national security education scholar. She studied Arabic in Egypt. Applicant's talents as a linguist are highly valued. (AE G)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The U. S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has acknowledged delinquent debts. Her credit report confirms them. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant had financial difficulties in the past due to credit card debt. She acknowledges her debts. She was unemployed or underemployed for periods of time. She now has employment that is secure and affords her the ability to pay all her bills. She has paid a substantial amount on her accounts. The remaining unpaid accounts are in repayment status. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) applies in part.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death,

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

divorce or separation) and the individual acted responsibly under the circumstances) applies. As noted, Applicant was unemployed on several occasions. She also admitted that she incurred credit card debts when moving for jobs. She acted responsibly by paying the debts that she could and by obtaining financial counseling. Thus, she acted reasonably under the circumstances. This mitigating condition applies.

FC MC AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant provided evidence of her good-faith efforts to repay her debts with payment receipts, and payment arrangement documents. She has consistently addressed her accounts. She sought financial counseling and her finances are under control. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 39 years old. She served in the military for three years. She has held a security clearance since 1994 without incident. Applicant applied herself and worked hard to obtain a graduate degree. She has taken many temporary positions that did not pay as well so that she could maintain her accounts. She accepts responsibility for her past errors with credit cards.

Although she had financial difficulties in the past and had substantial debt, she now has secure employment that provides her the means to save money, pay her debts, and maintain her daily expenses. She accepted the financial advise that she

received and addressed her delinquent debts. She never shirked her responsibility. She also volunteered and accepted internships to improve her job opportunities.

Applicant has excellent references. She was awarded a national scholarship and studied abroad. She is a national security education scholar. She is cognizant of the importance of a security clearance. She has been recommended by her former military supervisor to retain a clearance.

Applicant submitted information to mitigate the security concerns raised in her case. She offered evidence of financial counseling and provided documentation regarding a consistent payment plan for all her debts. Applicant has mitigated the security concerns under the financial considerations guideline. Clearance is granted.

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.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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge