



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



In the matter of:)	
)	
)	ISCR Case No. 10-09946
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

August 16, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On May 13, 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 an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated June 27, 2011.¹ Applicant received the FORM on July 1, 2011, and timely submitted additional information. On August 4, 2011, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case assignment on August 5, 2011. Based on a review of the case file, submissions, and exhibits, I find

¹The Government submitted nine items in support of its case.

Applicant met her burden regarding the security concerns raised. Security clearance is granted.

Findings of Fact

In her answer to the SOR, Applicant denied the factual allegations with explanations (SOR ¶¶ 1.a-1.b under Guideline F (Financial Considerations)).

Applicant is a 39-year-old employee of a defense contractor seeking to obtain a security clearance. She graduated from high school and attended college from 1990 until 1993 and again from 2004 until 2005. She did not obtain a degree. Applicant is unmarried and has one son. Applicant has held a security clearance since 2003. She has worked for her current employer since April 2004. (Item 5)

The SOR lists two delinquent accounts totaling \$38,000. The delinquencies include a charged-off mortgage in the amount of \$31,662, and a collection account in the amount of \$7,198. Applicant denied the debts totaling approximately \$38,000. However, the credit reports confirm them. (Items 7, 8 and 9) She also acknowledged on her August 2010 security clearance application that she had other accounts that were in repayment status. Applicant listed various judgments, garnishments, and delinquent accounts on her security clearance application based on a copy of a recent credit report. (Item 6)

Applicant purchased a home in August 2005 with an adjustable rate mortgage (ARM) consisting of two loans. She wanted to refinance but due to declining real estate prices, she could not. When the ARM expired, her mortgage increased by \$700 a month. She attempted to meet her increased financial obligations by renting a part of the home from 2007 until 2009. (Response to FORM)

During the 2007-2009 time frame, Applicant had unexpected medical expenses. She was in an automobile accident in 2008, and she had extensive dental work in 2007. The dental bill was more than \$10,000. These additional unexpected expenses contributed to her financial difficulties. She has paid several medical accounts. (Item 6)

In 2010, Applicant attempted several loan modifications for her mortgages. She also tried the Home Affordable Modification Program (HAMP). She rejected the initial offer that the mortgagor made to her because the change in the monthly payment was too small. The second offer, that she accepted, resulted in the mortgage payment still being too high. Applicant believed both loans would be "rolled" into one loan modification program. At first, this was not the case. However, when a short sale of Applicant's home occurred on June 24, 2011, the second loan was included in the sale of the property. (Response to FORM) Applicant provided a copy of the settlement statement to support her claim. (Response to FORM)

Applicant provided documentation that the collection account (SOR ¶ b) is paid in full for \$4,000. (Response to FORM and Item 4) This credit card delinquency occurred in part due to Applicant's mortgage problems in 2007. She made minimum

payments from 2007 until August 2010. The account was turned over to a collection agency and Applicant arranged a payment plan because she did not have sufficient funds to pay the entire amount.

Applicant acknowledged that some of her financial difficulties began because she was overextended. She did not produce evidence of financial counseling. She has a personal financial statement that reveals her monthly net income is \$4,747. After expenses, she has a net remainder of \$448. She is current on her daily expenses. She noted that she also receives \$300 a month for child support. She has a checking and savings account as noted on recent pay statements.

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 United States 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 applicant concerned.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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 had delinquent debts amounting to \$38,000. Although she denied the debts in her answer to the SOR, she acknowledged others in her interview and her security clearance application. 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’s debts were recent. The home mortgage was a problem due to the real estate market and her ARM. This could not have been predicted. Consequently,

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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.

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, divorce or separation) and the individual acted responsibly under the circumstances) applies. As noted, Applicant had additional financial difficulties with her ARM and attempts to refinance her home. She tried to reduce her expenses by having a tenant in her home. She also attempted home loan modifications. Her home eventually was sold in a short sale. She also incurred medical expenses which impacted her ability to timely pay her debts. I find that 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 documentation that she has resolved the debts listed in the SOR. She had a payment plan prior to the final resolution of the collection account. She did not present evidence that she received financial counseling which obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem. However, there are clear indications that the problem is being resolved or is under control).

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 has worked for her current employer since April 2004. She has one child. She has completed college classes but has not yet obtained her undergraduate degree. She has held a security clearance since late 2003 without incident.

Applicant purchased a home in 2005 with an ARM. She had difficulty refinancing when the real estate market crashed. She did all she could to keep her home. It eventually sold in a short sale in June 2011. Applicant provided documentation that she resolved her credit card collection account. She has resolved her debts.

Applicant submitted sufficient information or evidence to mitigate the security concerns raised in her case. 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.b: 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