



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



In the matter of:)
)
) ISCR Case No. 10-10332
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

November 28, 2011

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Financial Considerations concern. She established that her financial problems were due to matters outside of her control and she has now put her financial house in order. Clearance is granted.

Procedural History

On April 7, 2011, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.¹ The basis for this decision is set forth in a Statement of Reasons (SOR), which alleges the security concern under Guideline F (Financial Considerations). Applicant submitted a detailed response on July 12, 2011 (Answer). She admitted two of the seven debts alleged in the SOR and requested a hearing.

¹ This action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

On August 25, 2011, Department Counsel filed its ready-to-proceed. After coordinating with the parties, I scheduled the hearing for October 27, 2011 via video teleconference.²

At hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel stipulated that the debt alleged in SOR ¶ 1.b had been satisfied and withdrew the debts alleged in SOR ¶¶ 1.c through 1.g. (Hearing Exhibit II).³ Applicant appeared at the hearing with counsel, called a number of witnesses, and offered Applicant's Exhibits (AE) A through N, which were admitted into evidence without objection.⁴ She also testified on her own behalf.⁵ I kept the record open until November 10, 2011, to provide her the opportunity to submit additional matters for my review. She submitted AE O, which was admitted without objection. The transcript (Tr.) was received on November 4, 2011.

Findings of Fact

Applicant is 39 years old. At age four, doctors discovered that she was deaf. Applicant's disability has not held her back in her professional or personal pursuits. She went to school, worked part-time to pay for college, and graduated from college with a degree in information technology in 1996. She then entered the workforce and had several jobs until landing a position as a software test engineer in 2000. She met her husband, who is also deaf, through a bowling league. Applicant and her husband married in 2005 and their first child was born in September 2006. This joyous occasion was partially marred by Applicant losing her job the month before when her former employer was forced to downsize. Applicant was unemployed until approximately June 2007 when she secured a position with her current employer, a government contractor. The couple's second child was born nine months ago in March 2011.⁶

Applicant's financial problems were due to the 11 month period of time she was unemployed from August 2006 to June 2007. The family was forced to rely on her husband's paycheck. Applicant's husband runs his own landscaping business and the income from this business is irregular. When Applicant lost her job, her husband's business was just getting off the ground and was not generating much income. Applicant's husband supplements his business income through a second job as a counselor for an after-school program. However, his income alone was insufficient to

² The delay in scheduling the hearing was due to scheduling conflicts on the part of Applicant's counsel. As a time management tool, I issued a prehearing order requiring the parties to serve one another and me their anticipated exhibits prior to the hearing. (Hearing Exhibit I).

³ Applicant submitted documentary proof that the debts alleged in SOR ¶¶ 1.c – 1.g were not her debts. As these allegations were withdrawn, they shall not be further discussed herein.

⁴ AE A – M had previously been submitted with the Answer and were reoffered at the hearing.

⁵ Applicant is hearing impaired and DOHA provided interpreters to assist her during the hearing.

⁶ GE 1; AE L and M; Tr. at 48, 52-54, 69-70, 73-75.

cover their expenses, especially with a newborn in the house. Applicant and her husband were forced to rely on credit cards to pay their monthly expenses, and then they fell behind on their payments.⁷

Applicant's financial situation stabilized when she was able to secure her current job, but she was unable to satisfy the debts the family had accumulated while she was unemployed until recently. Applicant has now taken a financial counseling course and established a budget. She slashed her living expenses and, with the increased income from her husband's now thriving business, put her financial house in order. She has been able to sharply reduce her expenses by having her mother-in-law move into the house. The mother-in-law pays \$500 a month in rent and cares for the couple's newborn child, which obviates the need for daycare that was costing them about \$600 a month. Applicant used these savings and a loan from her 401k account to satisfy a number of debts not listed in the SOR and the medical debt alleged in SOR ¶ 1.b.⁸ She contacted the creditor for the debt alleged in SOR ¶ 1.a, agreed to a payment plan to satisfy the debt, and provided proof of payments.⁹

Applicant is a dedicated professional who puts in countless hours at her job. She has a reputation as a hard worker, who is upfront, truthful, and dependable.¹⁰ Outside of work, Applicant volunteers her time at her church, including serving as the director of the deaf choir. Her pastor and friends vouch for her strong family values, honesty, and reliability.¹¹ She has held a security clearance since 2007 and has never compromised or mishandled classified information.¹² As she often works after normal work hours, Applicant is responsible for securing the classified rooms at her work site and never once failed to properly secure such rooms.¹³ One of her co-workers wrote that Applicant "always took great care to ensure all of her work products were marked with appropriate classification markings and all classified data entrusted to her was protected in accordance with all of our local regulations."¹⁴

⁷ GE 2; AE M; Tr. at 58-60, 69-76, 81.

⁸ AE B; AE D; Tr. at 50-51, 56-58, 60-74 (Applicant only took out a \$7,000 loan out of the \$19,000 balance in her 401k account and is paying back the loan). *See also* GE 2.

⁹ AE A; AE N; AE O; Tr. at 48-50, 55-56.

¹⁰ AE K; Tr. at 25-33. *See also* AE F, G, and H.

¹¹ AE E; AE I; AE J; Tr. at 36-47.

¹² AE H; Tr. at 14-15, 29, 34, 52.

¹³ AE F.

¹⁴ AE G.

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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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.

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated at AG ¶ 18, as follows:

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.

One aspect of the concern is that an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information Applicant's past indebtedness raises this concern and establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

However, an applicant's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."¹⁵ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. I have considered all the mitigating conditions, and find that the following were established by the evidence:

- (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's financial problems were due to matters beyond her control. Namely, she lost her job and was out of work for almost a year. She has now put her financial house in order by slashing expenses, satisfying the majority of the debts she accumulated while unemployed, and paying the last of her old debts through an agreement with the creditor.¹⁶ She provided documentary proof of her efforts to satisfy her old debts and the monthly payments she has made to satisfy the last remaining

¹⁵ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

¹⁶ Contrast with ISCR Case No. 10-01978 (App. Bd. Aug. 24, 2011) (After getting into financial trouble, applicant simply walked away from his financial obligations).

debt.¹⁷ She has taken a financial counseling course and put the lessons learned through that course in action by establishing a budget to prevent this type of situation from occurring in the future. AG ¶¶ 20(b), 20(c), and 20(d) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁸ I incorporate my Guideline F analysis herein and highlight some additional whole-person factors. Applicant has overcome numerous obstacles in her life. While in the midst of her recent financial trouble, she went above and beyond the call of duty at work, and never once faltered in her security obligations. She volunteers her time at church to give back to the community. All of these factors speak volumes as to Applicant's character and ability to safeguard classified information no matter the potential distractions. Her supervisors, co-workers, pastor, and friends all vouch for her honesty and reliability. Applicant's past financial trouble no longer casts doubt on her current reliability, trustworthiness, and good judgment.¹⁹ These whole-person factors, in conjunction with the favorable matters noted above, fully mitigate the financial considerations concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraphs 1.c – 1.g:	Withdrawn

¹⁷ *Contrast with* ISCR Case No. 07-13766 (App. Bd. Nov. 24, 2008) (Applicant failed to submit documentary proof that she dealt with her debts in a responsible fashion).

¹⁸ (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.

¹⁹ *Cf.* AG ¶ 20(a). I considered this mitigating condition, but Applicant failed to satisfy the first prong of the mitigating condition as her financial problem was of recent vintage. ISCR Case 09-07792 at 2 (App. Bd. May 10, 2011).

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge