



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-10410
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Melvin A. Howry, Esq., Department Counsel

For Applicant:
Pro se

March 8, 2012

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on April 17, 2009. (Government Exhibit 2.) On April 29, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns 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 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 24, 2011, and requested a hearing before an administrative judge (Answer). Department Counsel was prepared to proceed on June 29, 2011. This case was assigned to me on July 5, 2011. DOHA issued a notice of hearing on July 26, 2011. I convened the hearing as scheduled on

August 30, 2011. The Government offered Government Exhibits 1 through 9, which were received without objection. Applicant testified on her own behalf, called one additional witness, and submitted Applicant Exhibits A through X, which were also received without objection. Applicant asked that the record remain open until September 16, 2011, for the receipt of additional documents. Applicant submitted Applicant Exhibits Y through EE on September 7, 2011, which were admitted without objection. DOHA received the transcript (Tr) of the hearing on September 8, 2011. The record closed on September 16, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 60 and married. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because she is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admitted the factual allegations in the SOR. Those admissions are findings of fact. She also submitted additional information to support her request for a security clearance.

The SOR contains three debts. Paragraphs 1.a and 1.c are the first and second mortgages, respectively, of a house in State B. Both mortgages are held by the same company, and were obtained at the same time. Paragraph 1.b. is a purchase money note secured by a motor home owned by Applicant. The SOR alleges total delinquencies of approximately \$46,000, which is supported by credit reports of August 17, 2010; April 11, 2011; and August 24, 2011. (Government Exhibits 3, 7 and 9.) A credit report supplied by Applicant dated January 11, 2011, also supports the existence of the debts. (Government Exhibit 6 at Attachment 1.)

Applicant has worked in the defense industry for over 30 years. In 2000 she was laid off from her job with Company One, in State A. She took a job in State B with Company Two, at half her former salary. At approximately the same time, her husband was injured and placed on permanent disability. Because of his injury, their income dropped and her reduced salary could not support them. They began using credit cards to pay bills. In 2002 she took a job with Company Three, which returned her to State A. After commuting on weekends to State B, four hours each way, for several years, she and her husband decided to sell the house in State B and return to State A. (Answer; Government Exhibit 2 at Section 13A; Applicant Exhibit C; Tr at 74-75, 85-90.)

As a result of continuing financial pressures, in 2008 Applicant began trying to sell her house in State B. Unfortunately, the house was located in a very depressed area, which was hard hit during the financial crisis, and she was unable to sell the house for two years. Three attempts to complete a short sale of the property failed.

Eventually, the mortgage holder, who held both the first and second mortgage, foreclosed on the property and sold it at a trustee sale on January 18, 2011. (Tr at 75-77, 103.)

Applicant and her husband have attempted to obtain information concerning the trustee sale, as well as the current status of the first and second mortgages, without success. In July 2011 they were advised that the first mortgage account had not yet been updated with the results of the foreclosure sale. (Applicant Exhibit R.) In August 2011 Applicant's husband sent an email to the mortgage company enquiring about settling the second mortgage account. The reply email says only, "our [mortgage company] records indicate this account has been charged off." (Applicant Exhibit EE.) He also testified that several phone calls were made to attempt to resolve this debt, to no avail. At one point he was told by a mortgage company representative that they would probably liquidate the second mortgage. (Applicant Exhibits AA and BB; Tr at 103-107.) A statement from the mortgage company dated August 27, 2011, is confusing. It states that the first mortgage is, "Closed," with no further details. It also shows the second mortgage (also described as a home equity line of credit) without a past due amount and still being active, even though the underlying property has been sold. (Applicant Exhibit U.)

Applicant also owned a motor home at one time. She lived there during the week while working in State A. When their financial situation began to deteriorate, Applicant and her husband voluntarily returned the motor home to the lienholder. It was sold in April 2010, which resulted in a total deficiency of approximately \$13,000. (Applicant Exhibit DD.) Applicant's husband, who handles the family finances, has made several phone calls to attempt to resolve this debt, to no avail. In fact, the last person he spoke to from the original note holder, "said he had no record of the account at all." (Applicant Exhibit CC; Tr at 107-110.) The most recent credit report available, from August 24, 2011, shows that the debt has been transferred to a new collection agent. (Government Exhibit 9.) Applicant's husband has written this new agent in an attempt to resolve this debt. (Applicant Exhibit CC.)

Applicant states that before 2009 she had excellent credit. Credit reports provided by the Government dated May 19, 2004; and April 25, 2009, confirm that fact. Prior to the SOR being issued, Applicant took two withdrawals from her pension plan. She used this money to resolve several other delinquent debts, which are not alleged in the SOR. (Government Exhibit 6 at Attachments 3, 4 and 7; Tr at 91-93.) Applicant submitted an updated Personal Financial Statement at the hearing, which shows that she is able to maintain her current debts without difficulty. (Applicant Exhibit S.) In addition, she and her husband are financially stable, with substantial savings. (Tr at 78-79.) They are ready and willing to resolve these remaining debts, as soon as someone will talk to them. (Government Exhibit 6 at Attachment 5; Tr at 111-113.)

Mitigation

Applicant is a well respected person and employee. She submitted letters of recommendation from co-workers, including supervisors, security managers, and

corporate counsel. The security managers state that Applicant was very pro-active in informing her employers of the financial situation as it developed and that, “[Applicant] has always displayed a great degree of honesty, integrity, responsibility, and trustworthiness.” (Applicant Exhibits E and F.) A corporate vice president, who has worked with Applicant for over 20 years, states that she “has always held herself to the highest ethical standards of personal and business conduct.” (Applicant Exhibit G.)

An organizational psychologist who has worked with Applicant on a daily basis for a year and half states, “I can say with confidence that she has been and continues to be a role model for those around her to inspire personal and professional accountability and ethical behavior.” (Applicant Exhibit H.) An attorney, who has worked in the defense industry with Applicant for over ten years, states, “I found her [Applicant], among other characteristics, to be highly ethical, extremely intelligent, and above all honest to a fault.” (Applicant Exhibit I.)

A human resources professional for Applicant’s employer provided Applicant Exhibit J. She has known for Applicant for seven years and states, “I have always known her [Applicant] to be hardworking, ethical and committed to her family and her work.” Finally, Applicant’s current supervisor, who has known her for over ten years and supervised her for two, commented on Applicant’s reputation for having a “very high standard of ethics.” She also states, “Based on my experience, [Applicant] is one of the most trustworthy people I know.” (Applicant Exhibit K.)

Applicant provided her performance reviews for every year from 2004 through 2010, except for 2007. All of these reports describe Applicant as someone who “consistently exceeds her established goals.” (Applicant Exhibits L through Q; Tr at 70.)

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by her own admission, and supported by the documentary

evidence, had two mortgages and a motor home debt that she could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. Her financial situation was caused by a drop in her income, due to a job lay-off and her husband’s debilitating injury. There is no evidence of poor judgment on her part. Her home was foreclosed on by the bank after a two year effort to arrange a short sale. The location of her foreclosed house is in a state which was extremely hard hit by the housing crisis. She and her husband have repeatedly attempted to resolve the second mortgage, and the motor home debt. Based on the particular facts of this case, I find that she has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received financial counseling. However, as found above, her current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). In addition, Applicant and her husband have been proactive in contacting her remaining creditors, and attempting to resolve the debts. Their actions bring them under the orbit of AG ¶ 20(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.”

The Applicant has acted in a way that shows good judgment, making the best she could out of a difficult situation. All of these mitigating conditions apply to the facts of this case.

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 the relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant's financial difficulties were not a result of poor judgment on her part. Rather, they were brought about by the turmoil in the real estate market in 2008 and 2009, and the unexpected loss of income by Applicant and her husband. Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. As stated above, this situation concerning the foreclosed house and returned motor home are aberrations, and not indicative of her usual conduct. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial situation. Accordingly, the evidence supports granting her request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge