



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-00059
)
)
Applicant for Security Clearance)

Appearances

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

For Applicant:
Pro se

March 27, 2012

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on May 17, 2010. (Government Exhibit 1.) On June 1, 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 June 20, 2011, and requested a hearing before an administrative judge (Answer). Department Counsel was prepared to proceed on July 22, 2011. This case was assigned to me on August 2, 2011. DOHA issued a notice of hearing on August 22, 2011. I convened the hearing as scheduled on

September 7, 2011. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on her own behalf, and submitted Applicant Exhibits A through K, which were also received without objection. Applicant asked that the record remain open until September 30, 2011, for the receipt of additional documents. Applicant submitted Applicant Exhibit L on September 26, 2011, which was admitted without objection. DOHA received the transcript (Tr) of the hearing on September 21, 2011. The record closed on September 30, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 49 and divorced. 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 denied the factual allegations in the SOR. She also submitted additional information to support her request for a security clearance.

Applicant's financial difficulties began in January 2006, when she was laid off from her employer of eight years. Her income dropped from approximately \$75,000 per year in 2005 to \$19,000 in 2006. (Tr at 75.) From then until mid-2008 Applicant was able to maintain most of her bills by working two jobs and taking money from her 401(k). By 2008 her financial situation had not improved, and she was unable to maintain payments on her debts. She began working with her current employer in May 2010. Once she had full-time employment, in addition to her other jobs, she began working at restoring her credit. (Tr at 33-35.)

The SOR sets out nine delinquent consumer debts, which total \$55,286. (SOR 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.i, 1.j, and 1.k.) The SOR also alleges two delinquent real estate mortgages. (SOR 1.g, and 1.h.) The existence and status of these debts is supported by credit reports concerning Applicant dated May 25, 2010; January 7, 2011; and September 1, 2011. (Government Exhibits 2, 3, and 6.) The current status of these debts is as follows:

1.a. Applicant denied that she owed \$11,275 for a delinquent credit card account (#42463151). She submitted documentation, which Applicant believed showed that there was a payment agreement on this account. (Applicant Exhibit C.) These documents actually seem to apply to another delinquent debt with this creditor (#43885760), which is not alleged in the SOR. Applicant testified that she believed she had made payment arrangements with this creditor concerning all of her accounts. (Tr at 35-42.) The most recent credit report in the record appears to indicate that this particular debt has been transferred to a new collection agent, which was unknown to

Applicant. She stated that she will contact this new agent to arrive at an acceptable payment arrangement. (Tr at 41-42; Government Exhibit 6.) Applicant submitted a dispute concerning this account to the credit bureau on July 16, 2011. (Applicant Exhibit L at 10.) This debt is not resolved, but is being disputed.

1.b. Applicant denied that she owed \$686 for a delinquent credit card account. She provided cancelled checks showing that she had paid the collection agent the entire amount due. (Tr at 42-48; Applicant Exhibit D.) This debt is resolved.

1.c. Applicant denied that she owed \$10,559 for a delinquent credit card account. She submitted documentation showing that she had arrived at a payment arrangement with a collection agent and was paying them by automatic withdrawal from her bank. (Tr at 48-52; Government Exhibit 4 at 35-37; Applicant Exhibits E, and L at 13-14.) Subsequent to the hearing, Applicant submitted documentation showing that the account may actually have been transferred to a third collection agent. (Applicant Exhibit L at 12.) Believing this to be fraud, Applicant has filed a police report concerning the payments made to the first collection agent. (Applicant Exhibit L at 15-18.) Applicant has also submitted a dispute concerning this account to the credit bureau on June 16, 2011. (Government Exhibit 6 at 3; Applicant Exhibit L at 10.) This debt is not resolved, but is being disputed.

1.d. Applicant denied that she owed \$17,843 for a delinquent credit card account. She submitted evidence that this debt had been successfully paid off for a lesser amount. (Tr at 52; Government Exhibit 4 at 31, 33-34; Applicant Exhibit F.) This debt is resolved.

1.e. Applicant denied that she owed \$9,198 for a delinquent credit card account. She submitted evidence that this debt had been successfully paid off for a lesser amount. (Tr at 52-53; Applicant Exhibit G.) This debt is resolved.

1.f. Applicant denied that she owed \$4,625 for the delinquency on an automobile loan. She testified that the car was repossessed and sold in May 2009 for an amount above what she still owed on the car. However, she was subsequently informed that there was a delinquency still owing. She has disputed this debt with the credit bureau and with the original collection agent, since she does not believe there is a legitimate amount owing. (Tr at 53-59; Applicant Exhibit L at 10.) After the hearing, Applicant was informed in writing that the account had been transferred to a second collection agent. (Applicant Exhibit L at 6.) This debt is unresolved, but is being disputed.

1.g. Applicant denied that she was delinquent on her home mortgage in the amount of \$104,000. She submitted documentation showing that she had successfully modified this mortgage, reducing the monthly payments and adding her delinquency to the principal balance. (Tr at 59-61; Government Exhibit 4 at 13-14, 23-25; Applicant Exhibit H.) This debt is resolved.

1.h. Applicant denied that she owed \$3,295 for a second mortgage on a second house in another city. This house was foreclosed on by the first mortgagee and sold in

November 2009. Pursuant to Department Counsel's representation, the time has passed for the second mortgage holder to file an action regarding any deficiency. (Tr at 61-66; Applicant Exhibit L at 9.) The most recent credit report in the record states, "Account paid for less than full balance. Charged off account." (Government Exhibit 6 at 3-4.) Applicant has written this mortgage company several times to determine what the status is of this mortgage. (Applicant Exhibit I.) She has not received a response. Applicant has also submitted a dispute concerning this account to the credit bureau on August 16, 2011. (Applicant Exhibit L at 10.) There is also evidence that Applicant was a claimant in litigation concerning this mortgage servicing company. (Government Exhibit 4 at 30.) Based on all of the available evidence, I find that this debt is resolved.

1.i. Applicant denied that she owed \$131 for a delinquent energy bill. She submitted evidence that this debt had been successfully paid off. (Tr at 66; Applicant Exhibit J.) This debt is resolved.

1.j. Applicant denied that she owed \$384 for a delinquent home alarm account. Applicant was unclear about the status of this debt. In her Answer at page 2, she states, "Per my conversations with [home alarm company], . . . there is no record of me ever having an account with that company. This debt is currently being investigated by the credit bureau." (See Tr at 97.) She further testified that the debt was disputed, but that it also had been paid. (Tr at 67-68.) This debt is unresolved.

1.k. Applicant denied that she owed \$585 for a delinquent credit card account. She submitted evidence that this debt had been successfully paid off for a lesser amount. (Tr at 68-70; Government Exhibit 6 at 4; Applicant Exhibit F.) This debt is resolved.

Applicant owed \$55,286 in delinquent debt: \$28,443 of that debt has been paid or resolved; and \$26,843 remains unresolved. Of that amount, only one debt for \$384 is not currently in dispute. Applicant is able to maintain her current debts and, as shown, successfully resolve whatever indebtedness she continues to have.

Mitigation

Applicant provided her performance reviews for the time since she started work in 2010. She "Meets Requirements." (Applicant Exhibits A and B.)

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 considerable delinquent debts and two mortgages 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 the four year span before she could acquire full-time employment. There is no evidence of poor judgment on her part. Her second home was foreclosed on by the bank after she used available funds to keep it up for two years. The location of her foreclosed house is in a state which was extremely hard hit by the housing crisis. Once gainfully employed, with a steady income, Applicant paid off many of her past due debts and modified the mortgage on her primary residence. She successfully paid off half of her delinquent debts before the hearing. 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 has been proactive in contacting her creditors, and attempting to resolve the debts.

Applicant filed disputes about several of the debts, where it appears that there are new collection agents, in an effort to get a better handle on her debts. These actions bring her 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. The DOHA Appeal Board has noted, “An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken significant actions to implement that plan.”¹ Applicant has done so. She has mitigated the security significance of her financial situation. Paragraph 1 is found for Applicant.

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 unexpected loss of income by Applicant, the result of which lasted for four years. Under AG ¶ 2(a)(2), I have considered the facts of Applicant’s debt history. As stated above, she has resolved approximately half of the past due indebtedness, and evinces a credible intent to resolve the rest as quickly as possible. In addition, she successfully modified the mortgage on her residence, resolving that particular debt. 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,

¹ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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.k:	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