



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



In the matter of:)
)
) ISCR Case No. 11-01884
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

December 6, 2011

Decision

HOGAN, Erin C., Administrative Judge:

On August 4, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 after September 1, 2006.

On September 7, 2011, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 6, 2011. The case was assigned to me on October 25, 2011. That same date, a Notice of Hearing was issued, scheduling the hearing for November 16, 2011. The hearing was held as scheduled. During the hearing, the Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 7. Applicant testified and offered two exhibits which were admitted as Applicant Exhibits (AE) A and B. The transcript (Tr.) was received on November 27, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her response to the SOR, Applicant admits all the SOR allegations.

Applicant is a 50-year-old program management analyst employed by a Department of Defense contractor seeking to maintain her security clearance. She has worked for her current employer since December 27, 1988. She has held a security clearance for over 22 years with no security violations. She is engaged. She has two adult daughters. (Tr. 26-27; Gov 1)

Applicant's security clearance background investigation revealed that she had several delinquent debts. The SOR alleged two delinquent accounts consisting of an \$11,000 collection account owed for a timeshare (SOR ¶ 1.a) and a \$278 cell phone account placed for collection. (SOR ¶ 1.b)

On August 25, 2011, Applicant settled the debt alleged in SOR ¶ 1.a for \$3,245. This debt was for a timeshare that she and her fiancé purchased in 2006. They stopped making payments towards the timeshare and negotiated a pay-off settlement. The timeshare was located out of the United States in an area where there has been significant drug-related violence. (Tr. 30, 33-37; Response to SOR; AE A at 1-5)

The debt alleged in SOR ¶ 1.b was a cell phone account that Applicant opened for her daughter's use. Her daughter transferred cell phone accounts without telling her and did not pay off the account. Applicant learned of the debt when she attempted to get a new phone. She immediately paid the debt when she became aware of it. This account was paid before the SOR was issued. (Tr. 28-30; Response to SOR; AE A at 6-8)

Although not alleged in the SOR, during the hearing, Applicant indicated that she and her fiancé purchased a second home in 2006 for \$650,000. Their mortgage was an adjustable rate mortgage. They initially were able to afford the payments. In 2008, Applicant and her fiancé ended their relationship and he moved out of the house. (They subsequently reconciled.) She was unable to afford the house payments on her own. She put the house up for sale in April 2008. She was unable to sell or rent the house. She moved out of the house in May 2009 and moved back into her first home. The value of the second house had decreased to \$350,000 because of the decline in the housing market. Applicant approached the mortgage lender to inquire about short selling the property. She was current on the mortgage payments at that time. She was advised that she needed to be delinquent on her mortgage payments in order to qualify for a short sale. She followed this advice and her second home was sold at a short sale in June 2010. Applicant reported the pending short sale to her security officer on March 25, 2010. The lender cancelled the remainder of the debt after the short sale. (Tr. 39-46; Gov 2; Gov 3)

In response to interrogatories, dated May 9, 2011, Applicant completed a personal financial statement. Her net monthly income was \$5,478. Her total monthly

debt was \$5,175.93. During the hearing, Applicant testified that the personal financial statement was mostly accurate. She indicated she took out a 401(k) loan and paid down the \$17,105 balance on a credit card to \$6,000 because of high interest rates. All of her accounts are current. She has approximately \$400 left over each month after expenses. (Tr. 50-52; AE 2 at 10-11)

Applicant provided numerous awards and certificates of appreciation that she earned during her career. She also actively volunteers in her community. (AE B)

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which must be considered when determining 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.

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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security 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. Decisions include, by necessity, consideration of the possible risk 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.

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.” 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 relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant encountered difficulties meeting her financial obligations beginning in 2006. The SOR alleged two debts totaling \$11,278.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

AG ¶ 20(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) applies with respect to circumstances (downturn in the real estate market) that resulted in the short sale of Applicant's second home. Although this debt was not alleged in the SOR, more than likely because Applicant resolved the debt before the SOR was issued, it was likely a contributing factor towards her other financial difficulties. However, this mitigating condition is given less weight because Applicant's decision to purchase a second home and a timeshare in 2006 was within her control.

AG ¶ 20(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) applies because Applicant resolved her delinquent accounts and her financial problems appear to be under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant encountered financial problems, but resolved all delinquent accounts. She demonstrated a good-faith effort to resolve her debts.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's 23-year employment history with a defense contractor. She possessed a security clearance for the duration her employment without any security violations. Applicant encountered financial problems when she and her fiancé over-extended themselves in 2006 when they purchased a second home and a timeshare. A temporary break up and a downturn in the real estate market aggravated Applicant's financial situation. After making efforts to sell or rent the second home, she was ultimately able to sell the home in a short sale. Applicant resolved all delinquent accounts in the SOR. Her financial situation is now stable. All her accounts are current. She demonstrated a good-faith effort to resolve her delinquent accounts. Security concerns are mitigated.

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
Subparagraph 1.a:	For Applicant
Subparagraph 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge