



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



In the matter of:)	
)	
)	ISCR Case No. 11-03668
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Monica L. Montgomery, Esquire

February 6, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on September 9, 2010. On July 11, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for the Applicant. 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.

The Applicant acknowledged receipt of the SOR on July 15, 2011. She answered the SOR in writing on July 27, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on September 8, 2011, and it was assigned to another Judge. The case was reassigned to the undersigned on September 26, 2011. DOHA had already issued a notice of hearing on September 21, 2011, and I convened the hearing as scheduled on October 27, 2011. The Government

offered Exhibits (GXs) 1 through 7, which were received without objection. The Applicant testified on her own behalf and submitted Exhibits (AppXs) A through F, which were received without objection. DOHA received the transcript of the hearing (TR) on November 2, 2011. I granted the Applicant's request to keep the record open until January 3, 2012, to submit additional matters. On, January 3, 2012, she submitted AppXs G through L, which were received without objection. The record closed on January 3, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Motion to Amend SOR

At the hearing, Department Counsel moved to amend the SOR by adding Subparagraphs 1.e. through 1.l., and by deleting Subparagraphs 1.a. through 1.d. (TR at page 8 line 1 to page 10 line 4.) There being no objection by the Applicant's Counsel, the motion was granted. (*Id.*) The particulars of the new allegations will be discussed under my Findings of Fact, below.

Findings of Fact

At the hearing, the Applicant admitted the factual allegations in all the Subparagraphs, except for Subparagraph 1.i., which she denied.

Guideline F - Financial Considerations

The Applicant's alleged past due indebtedness occurred as the direct result of the collapse of the real estate market in 2008, and by her daughter's illness. (TR at page 24 line 21 to page 25 line 14, at page 26 line 14 to page 29 line 4, and at page 29 line 22 to page 30 line 12.) She was a real estate agent, and her husband is in the construction business. As a result of the downturn in the real estate market, their family income was drastically reduced. (TR at page 24 line 21 to page 25 line 14, at page 26 line 14 to page 29 line 4.) Furthermore, her daughter was ill; and as a result, she had to be supported financially by her parents. (TR at page 29 line 22 to page 30 line 12.)

1.e. It is alleged that the Applicant is "indebted to a creditor identified as medical account . . . on . . . [her] credit report dated June 24, 2011, for an account that has been placed for collection in the approximate amount of \$56.00." The Applicant has paid this debt, as evidenced by a receipt and by a letter from the creditor. (TR at page 30 line 20 to page 31 line 2, at page 36 line 20 to page 37 line 8, and AppX L.)

1.f. It is alleged that the Applicant is "indebted to . . . [Creditor F] for an account that has been placed in collection in the approximate amount of \$13,514.00." The Applicant is making monthly payments of \$200 towards this debt, as evidenced by a letter from the successor creditor of the debt. (TR at page 31 lines 8-17, at page 38 line 7 to page 39 line 1, and AppX J.)

1.g. It is alleged that the Applicant is “indebted to . . . [Creditor G] for an account that is at least 90 days past due in the approximate amount of \$80.00, and has a balance of \$460.” The Applicant is making monthly payments of \$30 towards this debt, as evidenced by a letter from the successor creditor of the debt. (TR at page 31 lines 18~25, at page 39 line 3 to page 40 line 3, and AppX H.)

1.h. It is alleged that the Applicant is “indebted to . . . [Creditor H] for an account that has been placed for collection in the approximate amount of \$447.00.” The Applicant is making monthly payments of \$10 towards this debt, as evidenced by her banking log. (TR at page 32 lines 2~6, at page 40 line 4 to page 41 line 3, and AppX G.)

1.i. It is alleged that the Applicant is “indebted to . . . [Creditor I] for an account that has been placed for collection in the approximate amount of \$2,487.00.” The Applicant disputes this debt as not being owed, as evidenced by formal letters to three credit reporting services. (TR at page 37 lines 7~18, at page 41 line 10 to page 42 line 5, and AppXs A, B and C.) I find that the Applicant does not owe this debt.

1.j. It is alleged that the Applicant is “indebted to . . . [Creditor J] for an account that has been placed for collection in the approximate amount of \$1,732.00.” The Applicant is making monthly payments of \$80.84 towards this debt, as evidenced by a letter from the creditor. (TR at page 32 line 19 to page 33 line 2, at page 42 line 8 to page 43 line 20, and AppX I.)

1.k. and 1.l. It is alleged that the Applicant is “indebted to . . . [Creditor K] for an account that has been placed for collection in the approximate amount of \$481.00,” and “for an account that has been placed in collection in the approximate amount of \$2,149.00.” The Applicant has “PAID” these two medical debts, as evidenced by documentation from the creditor. (TR at page 33 line 5 to page 34 line 11, at page 43 line 22 to page 44 line 25, and AppX K.)

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 are useful 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 over-arching 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. 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 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 Paragraph 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 Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns.

However, the countervailing second and fourth Mitigation Conditions are clearly applicable here. The Mitigating Condition found in Subparagraph 20(b) is applicable where, *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., . . . a business downturn, unexpected medical emergency . . .), and the individual acted responsibly under the circumstances.”* Here, the Applicant’s debts are related to the crash in the housing market, which caused a significant reduction of family income, and to her daughter’s illness. She has now addressed all of the alleged past due debts. Subparagraph 20(d) is applicable where, *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* The Applicant has paid, or is paying all of her admitted past due 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. Under Paragraph 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 also consider the nine adjudicative process factors listed at AG Paragraph 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 all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. 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 Considerations.

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.e.~1.i. 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.

Richard A. Cefola
Administrative Judge