



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



In the matter of:)	
)	
)	ISCR Case No. 11-05250
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

03/09/2012

Decision

LYNCH, Noreen A., Administrative Judge:

On October 19, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on January 12, 2012. A notice of hearing was issued on January 24, 2012, and the case was heard on February 13, 2012. Department Counsel offered five exhibits (GE) 1-5, which were admitted without objection. Applicant testified, and submitted 18 exhibits (AE) A-R at the hearing, which were admitted without objection. I held the record open until March 8, 2012, and Applicant submitted additional documentation, which was marked as (AE) S, and accepted into the record. DOHA received the hearing transcript on March 2, 2012. Based on a review of the pleadings,

submissions, and exhibits, I find Applicant has met her burden of proof of mitigation regarding the security concerns raised. Security clearance is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted the delinquent debts in the SOR with explanations. Applicant is 33 years old. She is single and has no children. Applicant graduated from high school in 1997. (Tr. 88) She obtained her associate degree in December 2003. Applicant is sponsored for her security clearance by a federal contractor. (Tr.13)

Applicant has worked since the age of 16. She held many positions, maintained her bills, and paid for several automobiles with her good credit. Her credit was excellent and she was never late with payments. (Tr. 18)

Applicant began a long-term relationship in 2003, which ended in approximately 2008. During that time, she incurred many expenses for housing, furniture, and utilities that she believed her boyfriend would help pay. He left the area and did not pay his share of the bills. (Tr. 18) She accepted the responsibility for the bills, but she could not afford to make timely payments on the accounts. (Tr.18)

Applicant's professional career has been in the banking industry. After her relationship ended, she decided to relocate to another area for better job opportunities to make more money to pay the delinquent debts. Initially upon relocating, she worked for an insurance company for three months. At the same time, in 2008, there was a natural disaster where her mother lived. She asked for a leave of absence to help her mother, which was initially approved. In 2008, she returned home to help her mother. Later, her employer decided to rescind the approval. She could not find comparable employment. She held many positions, including part-time jobs, but was underemployed or unemployed from July 2008 until January 2010. She used her credit cards to pay for her living expenses. Since January 2011, she has been gainfully employed. (Tr. 94)

The SOR lists delinquent accounts totaling approximately \$41,970. The credit reports in the record confirm the debts. (GE 3, 4, 5) Applicant produced documentation that she paid or settled the following accounts: SOR ¶¶ 1.a, b, c, d, e, g, h, k, l, m, o, p, t, u, and v. The Government conceded that Applicant mitigated the above allegations. (AE A-R) The majority of the debts were paid in full before the issuance of the SOR. Applicant submitted documentation after the hearing to confirm that she has completed the payment plans for the debts alleged in SOR ¶¶ 1.f, i, n, and q. (AE S)

When Applicant researched her delinquent debts, she could not locate the current collection agency for the debt alleged in SOR 1.j. (Tr. 60) This debt for \$750 is not listed on the most recent credit report. (Tr. 61) SOR ¶ 1.r is a duplicate account for 1.j. (Tr. 81) The alleged debt in SOR 1.s is a dental bill for \$9,549. Applicant explained that she contacted the original account holder and they do not have a record of the bill. She contacted the creditor listed in 1.s and they do not have the account. (Tr.82)

Applicant' currently earns \$40,000 annually. She is living with a family from her church so that she may save money to help pay her debts. She has no new delinquent debt. She received financial counseling from her church. Applicant has no credit cards. (Tr. 102) Applicant's income will increase if she is accepted for a position with the defense contractor who is sponsoring her. (Tr. 108)

Applicant is active in her church. She developed a financial program for young people in her church. She speaks in the community about managing debt. (Tr. 112) She noted that she is repaying her mother who has helped her repay some of her debt. She has the intention to pay the dental bill when she can locate the account holder.

Applicant explained that she regrets her poor judgment with respect to the relationship and trusting her ex-boyfriend to help pay with bills. She emphasized that the high credit card amounts reflected in the SOR are due to interest and penalties. She did not live extravagantly. She has learned a lesson and states this has been a humbling experience.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven

by Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Applicant admitted the delinquent debts that are approximately \$41,970. Her credit report confirms the delinquent debts. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant has resolved the debts that she incurred. She has no new delinquent debt. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (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) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) is potentially applicable. As noted, Applicant was unemployed and underemployed in 2008 and 2009. She also incurred delinquent debt for purchases that she and her ex-boyfriend made jointly. When he abdicated on his responsibility to pay his share, Applicant assumed responsibility. She held many positions so that she could pay her living expenses. She contacted her creditors and made payment arrangements when she could. She acted reasonably under the circumstances. This mitigating condition applies.

FC MC AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. As noted above, Applicant either paid or settled most of her debts. She has received financial counseling. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 33 years old. She obtained her associate degree. She worked since the age of 16. She held positions in the banking industry. She moved to a location that she believed would provide better employment opportunities after her relationship ended in 2008. She helped her mother when a natural disaster occurred in her mother's home state. She lost employment and suffered underemployment.

Applicant's financial difficulties were beyond her control. She has acted responsibly. She has resolved her delinquent debts. She is willing to pay the dental bill but has not found the account holder. She has had financial counseling. She has no new debt. She has learned from her mistakes. She has submitted information to mitigate the security concerns raised in this case. Clearance is granted.

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.a-1.v:	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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge