



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



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 11-05721
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

January 13, 2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On August 25, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On August 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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 for SORs after September 1, 2006.

Applicant answered the SOR on September 15, 2011, and DOHA received her answer on September 22, 2011. Department Counsel was prepared to proceed on November 17, 2011. The case was assigned to me on November 29, 2011. DOHA

issued a notice of hearing on December 2, 2011, scheduling the hearing for December 13, 2011. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 5, which were received into evidence without objection. Applicant offered Applicant Exhibits (AE) A through C, which were received into evidence without objection, and she testified on her own behalf.

I held the record open until December 23, 2011, to afford the Applicant the opportunity to submit additional documents on her behalf. Applicant submitted AE D through G, which were received into evidence without objection. DOHA received the hearing transcript (Tr.) on December 21, 2011. The record closed on December 23, 2011.

Findings of Fact

Applicant admitted all of the SOR allegations, with explanations. Her answers are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact. I found Applicant's testimony to be credible.

Background Information

Applicant is a 46-year-old proposal analyst, who has worked for a defense contractor since January 1987. She seeks to retain her secret security clearance, which is a requirement of her continued employment, and which she has successfully held for 25 years. (Tr. 11-15, 17-19, GE 1.)

Applicant was awarded a Bachelor of Arts degree in business administration in June 1988. She has been married two times. Her first marriage was from July 1986 to August 2001, and her second marriage was from August 2004 to August 2011. Both marriages ended by divorce. She has two children, a 19-year-old daughter and a 14-year-old son from her first marriage. Applicant and her former husband share joint custody of their children. Her first husband is a plumbing manager and provides Applicant with child support for their two children. (Tr. 11, 16, 19-21, GE 1.)

Financial Considerations

Applicant's background investigation addressed her financial situation and included the review of her August 2010 e-QIP, her two sets of June 2011 DOHA Interrogatories; as well as her September 2010 and June 2011 credit reports. (GE 1 – 5.) Applicant's SOR alleges seven separate debts with approximately \$6,000 in consumer debt as well as a default on a first and second mortgage. (SOR ¶¶ 1a – 1g.)

Applicant's financial problems stem from her separation and divorce from her second husband. Applicant separated from him in December 2005. At the time they separated, they owned two homes – their primary residence was in Applicant's name

and their second residence was in her husband's name. When Applicant and her husband separated, she moved into their second home, the home in her husband's name. Applicant's estranged husband lost his \$80,000 a year job and was unable to generate income. Applicant and her husband tried to sell their primary residence in an attempt to divide their assets and mitigate their unplanned income shortfall; however, they were unable to sell their primary residence. Unfortunately, they were unable to remain current on the first and second mortgages on their primary residence and the house went into foreclosure in October 2009. (Tr. 20-28, 41.)

The bank subsequently sold the home and recovered the majority of the mortgage owed. Since foreclosure, neither the first or second mortgagees have sought a deficiency judgment from Applicant nor have they issued her a Form 1099 – For Foreclosed Home. Applicant consulted counsel as recently as December 13, 2011, and was advised to await notice from the Clerk of Courts regarding any further foreclosure proceedings. In short, there is nothing further Applicant can do with regard to these mortgage debts. (SOR ¶¶ 1d and 1f.) (Tr. 27-30, 39-42, 45, AE E.)

After their primary residence went into foreclosure, Applicant moved out of their second residence, which was in her estranged husband's name, because she "didn't want to have any partnership in that (house)." Applicant's husband then moved into their second residence and Applicant moved into a rental property where she resides today. (Tr. 23-24.)

All of the remaining consumer debts consisting of four accounts have been settled and paid, paid, or are being paid. (SOR ¶¶ 1a – 1c, 1e, and 1g.) The debts in SOR ¶¶ 1a and 1c are duplicates. (Tr. 30-35, 39, 42-43, AE D – E, AE G.) Apart from seeking counsel regarding her foreclosure debt, Applicant has not sought formal financial counseling. Applicant does not have any credit cards, but does have a debit card. (Tr. 34-36.) Applicant's personal financial statement (PFS) reflects an annual salary of \$81,000. (GE 3 (I-17).)

In conclusion, Applicant has addressed each and every debt alleged. All of her consumer debts have been paid except for one debt. She has a payment plan in place for that one remaining debt and is current on her payments. The proceeds from her home foreclosure sale appear to have satisfied her first and second mortgages. In any event, she is following the advice of counsel and should a deficiency arise, she will address it at that time. Applicant remains current on the rest of her monthly bills. Her budget further demonstrates that she maintains a modest lifestyle and is living within her means. (Tr. 36-37, 43-45, GE 3 (I-17).)

Character Evidence

Applicant submitted two work-related reference letters and one personal reference letter. The first letter is from her manager (M), the second letter is from a long-time co-worker (CW) and individual who knows Applicant in a management capacity, and the third letter is from her church's volunteer director (CVD). The M

confirmed that Applicant has been a valued company employee since January 1987. He stated that Applicant “is a woman of integrity, truthfulness, and loyalty.” He further added “[s]he demonstrates tremendous dedication to her family, friends and work.” (AE A.)

Applicant’s CW confirmed M’s assessment of Applicant that she is a long-term valued company employee. He stated that Applicant is “of good moral character, extremely kind, dependable, and well respected by her peers.” He added that “[s]he worked her way through (her financial problems) and made the necessary adjustments of getting on with her life as a mother and providing a home for her children.” (AE B.) The CVD described Applicant as a “faithful volunteer” and a “blessing to work with” at their church. The CVD further added that Applicant is “a person with strong morals and integrity.” (AE C.) All three individuals recommend that Applicant be granted a security clearance. Lastly, Applicant submitted her work performance evaluations spanning a six-year period. These evaluations reflect sustained above average work performance. It is clear that Applicant has a documented record of service in the defense contractor industry and is a valued employee. (AE F.)

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 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. 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

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by her admissions and the evidence presented. She accumulated approximately \$6,000 in consumer debt and her first and second mortgages underwent foreclosure. These debts have been in various states of delinquency for several years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. Her debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, she receives partial credit under AG ¶ 20(a) because the debt occurred under circumstances that are unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or good judgment.

Applicant merits full credit under AG ¶ 20(b) because her separation and divorce as well as her former husband losing his job were circumstances beyond her control and she acted responsibly under the circumstances. Even though she did not have the funds for full repayment, she remained in contact with his creditors during this timeframe and has taken reasonable steps to resolve her debts.¹

AG ¶ 20(c) is partially applicable even though Applicant did not seek financial counseling. She has, however, produced evidence that reflects she is living within her means and has regained financial responsibility. There are clear indications that her financial problems are being resolved. Furthermore, there is sufficient information to

¹"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

establish partial if not full mitigation under AG ¶ 20(d).² Applicant has paid or is paying all of her consumer debts. Applicant's first and second mortgages appear to be satisfied following the sale of her home. She is following the advice of counsel regarding post-foreclosure issues. In the unlikely event that a deficiency should later arise, she will address it at that time. Given her financial situation, Applicant has done all that can reasonably be expected of her. AG ¶ 20(e) is applicable insofar as Applicant has demonstrated that two of her SOR debts are duplicates.

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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

²The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant's record of 25 years of distinguished service as a defense contract employee and successfully holding a security clearance during that time weighs heavily in her favor. She is a law-abiding citizen and a productive member of society. She is current on her day-to-day expenses, lives within her means, and her SOR debts have been and are being addressed in a meaningful and thoughtful manner. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

With the exception of one debt that Applicant is making payments on, she has settled or paid all of her consumer debt. And, as discussed, there is little more for her to do with regard to her first and second mortgage debts. She is making a significant contribution to the national defense. Her company fully supports her and recommends her for a security clearance. Due to circumstances beyond her control, her debts became delinquent. Despite Applicant's recent financial setback, it is clear from her actions that she is on the road to a full financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's 25 years of distinguished service in the defense industry while holding a security clearance, her years of financial responsibility before falling into debt, her plan for financial recovery and substantial steps she has taken to resolve her financial situation, her potential for future service as a defense contractor, her reference letters, and her testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude she has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated or overcome the government's case. For the reasons stated, I conclude she is eligible for access to classified information.

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 1a to 1g: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

Robert J. Tuidor
Administrative Judge