



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



In the matter of:)
)
) ISCR Case No. 11-05945
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

09/07/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on October 29, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on April 25, 2012, 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on May 8, 2012. She submitted a notarized, written response to the SOR allegations dated May 25, 2012. She did not request a hearing and a decision on the written record will be made.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on July 23, 2012. Applicant received the FORM on July 27, 2012. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response with attachments dated August 13, 2012. DOHA assigned this case to me on August 24, 2012. The Government submitted 12 exhibits, which have been marked as Items 1-12 and admitted into the record. The SOR, including Applicant's response, has been marked and admitted as Item 1. Her written response to the FORM is admitted into the record as Applicant exhibit (AE) A.

Findings of Fact

In her Answer, Applicant admitted the factual allegations in ¶¶ 1.a - 1.g, 1.i, and 1.l of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.h, 1.j and 1.k of the SOR.¹ After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 51 years old, works as a technical writer for a Department of Defense contractor. She began her current employment in September 2010.²

Applicant married her first husband in 1985, and they divorced in 1998. She has two sons from this marriage, who are 25 and 23 years old. She married her second husband in 2000, and they divorced in 2003. Applicant described her second marriage as physically and emotionally abusive, which led to her decision to leave the marriage. After she left this marriage, Applicant experienced problems with misuse of alcohol, which she has resolved and it is not alleged as an issue in the SOR. Her divorce and misuse of alcohol impacted her finances.³

Applicant graduated from college in 1992 with a Bachelor of Science degree in business administration. From July 1997 until June 2002, Applicant worked for a major

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 3.

³Item 3; Item 5; Item 9.

corporation, at which time the company ceased to operate. She was unemployed for about six weeks from June 2002 until August 2002. She worked continuously from August 2002 through March 2006. She was unemployed from March 2006 until July 2006, when she accepted employment as a technical writer for a toy and hobby company. She left this job in October 2006 because of the volatile work environment. She remained unemployed about one month. She worked for two employers from November 2006 to August 2008. Her second employer informed her that she would be laid-off and gave her one month to find another position while in its employment. She committed to a teaching position overseas beginning in September 2008. Her employer then rescinded its notice of lay-off. Because of her teaching commitment, she resigned this position and moved overseas. Her overseas position ended in June 2009. She returned to the United States and remained unemployed until October 2009, when she accepted an analyst position which she left in September 2010 for her current position.⁴

Applicant completed a security application in September 2003. She met with an investigator in August 2004, who discussed numerous unpaid debts with her. The investigator identified four medical bills, four credit card debts, a mortgage account, and school loan debts. Applicant had paid two medical bills and the two other medical bills were unknown to her and could not be located. Applicant had three credit card debts in payment plans and one credit card was current. Her school loan had been deferred, and she was in negotiations on a payment plan. The mortgage account was unknown to her. She verified her payments on several of these accounts. Applicant explained that after she lost her job in June 2002, she encountered problems paying her debts as her next job paid significantly less, leaving her with insufficient monthly income to pay her debts.⁵

In 2004, Applicant's younger son moved to his father's home, and the court ordered Applicant to pay her former husband \$600 a month in child support. She fell behind in her payments and owed \$8,000 to her former husband. She paid this debt in full by 2009. She also incurred financial expenses directly related to her alcohol misuse.⁶

Based on her personal financial statement, Applicant currently earns \$4,616 a month in gross income and \$3,212 in net monthly income. Her monthly expenses for food, clothing, utilities, car, medical, and other miscellaneous expenses total \$1,800. She also pays \$226 a month on her school loan debt and \$300 to a technical school (she did not explain the reason for this payment). She also lists a \$300 a month payment on her car. In her response to the FORM, she indicated that she had paid cash for her new twelve-year-old car, which depleted her savings account and ability to repay her debt. Her monthly expenses total approximately \$2,326. Her leave and earnings statement reflects monthly deposits of \$2,212 to one bank account and \$1,000 to

⁴Item 3; Item 4.

⁵Items 6-8; Item 10.

⁶Item 5.

another account at the same bank. Applicant advised that she is saving money to pay her debts, but she has not clearly explained the amount she is saving each month. Based on her total monthly net income and her monthly expenses, she has approximately \$900 a month in residual income, including any savings.⁷

The SOR lists 12 debts, including four judgments, an education loan, five medical debts, and two other debts, totaling \$40,698. The largest debt is her \$26,851 school loan. Applicant began paying \$226 a month on this debt in 2011. The February 2012 and the March 2012 credit reports indicate that the payments on this account are current. Applicant verified her monthly payments on this debt from April 2012 through July 2012. She also verified that she pays \$300 a month to the technical school. Two of the judgments relate to debts incurred in 2002 and in repayment plans in the past. She has not made an effort to pay the judgments.⁸

The November 2010, the February 2012, and the March 2012 credit reports list some of the SOR debts. These reports also reflect that Applicant paid past-due accounts and that she paid other accounts as required. DOHA mailed interrogatories to Applicant before it issued the SOR in April 2012. The interrogatories requested Applicant to verify the status of a number of debts. She indicated that she had paid nine debts, that she disputed the debt in SOR ¶ 1.k on several occasions because she never received the product ordered. This debt appeared only on the November 2010 credit report. She denied owing the two smallest SOR debts (1.h for \$123 and 1.j for \$35), indicating she had paid these debts. SOR debts 1.a through 1.g and 1.i remain unpaid and are not in a payment plan.⁹

Applicant has not provided information showing that she has received financial counseling. Her credit reports show that she pays her current bills in a timely manner and that she is not incurring new debt. She lives with her parents to help them and to reduce her monthly living expenses. She contributes to the household living expenses.¹⁰

Policies

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 used in evaluating an applicant's eligibility for access to classified information.

⁷Item 5.

⁸Item 1; Item 5; Item 12; AE A.

⁹Item 1; Item 5; Item 11; Item 12.

¹⁰Item 5; Item 11; Item 12; AE A.

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 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, 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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems in 2002 when she lost her job and then worked for a lower wage. She attempted to resolve these debts, but again fell behind in her payments. Most of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following are potentially applicable:

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

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). 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." See, e.g.,

ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

Applicant's financial problems arose from complex issues. Between 2002 and 2009, she was unemployed four different times with her unemployment lasting between one and four months. When she returned to work in 2002, she earned less than at her previous corporate job, making it difficult for her to pay her bills. By 2004, she had paid several small bills and developed payment plans for her larger bills, including her school loans. Her subsequent job losses and her debts from her 2003 divorce caused her to again fall behind on her debt payments. Between 2003 and 2012, she paid more than \$12,000 towards her debts. She paid her child support arrearage, many small medical bills, and several other bills. She complies with her school loan payment plan and has done so for over a year. She recently purchased a twelve-year-old car as transportation for work with her debt-payment savings. Applicant pays her current expenses and is not incurring additional unpaid debt. She developed a payment plan for her school debt and is now current on this loan. She paid several small SOR debts and a number of other small debts identified in the interrogatories, but not listed in the SOR. For the last nine years, she has worked to resolve her past debts. She has not fully resolved all her debts, but she has shown a track record to pay debts. She has sufficient income each month to save money to pay her remaining debts as she has done in the past and can do in the near future. She has mitigated the security concerns raised. AG ¶¶ 20(b) and 20(c) apply. AG ¶ 20(d) applies to SOR ¶ 1.1

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 relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant developed financial problems when the corporation where she worked closed. Her next job paid her a lower income, making it difficult for her to pay her living expenses and her debts. She left an abusive marriage, which left her with more debts. When her 16-year-old son moved to his father's house, she had to pay child support, which decreased her household income. She fell behind in these payments because of her income. While she had negotiated payments for several of her major credit card debts, she did not complete the payment plan. The creditors obtained judgments against her. She has yet to resolve these debts from her 2002 unemployment and subsequent lost income.

Applicant has not paid all her debts. She lives modestly and pays her current living expenses as she has a steady income. She has taken control of her school debt. She has paid many small medical debts, her child support arrearage, and several other debts. She has resolved or is resolving four of the 12 SOR debts, which comprise approximately 66% of the SOR debts. Although her school debt will not be paid for many years, she is paying it as she agreed. She made changes in her life style, which enables her to save money to resolve her debts and to live within her current income. She has not yet resolved all her debts, but she is not required to pay all her debts to hold a security clearance. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. While some debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances under Guideline F.

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.l: 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.

MARY E. HENRY
Administrative Judge