



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



In the matter of:)
)
) ISCR Case: 11-08158
)
)
Applicant for Security Clearance)

Appearances

Department Counsel: Braden M. Murphy, Esq.
For Applicant: *Pro se*

12/19/2012

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the Government's security concerns raised under Guideline F, Financial Considerations and Guideline E, Personal Conduct. Her eligibility for a security clearance is granted.

On October 5, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 7, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guidelines for Financial Considerations and Personal Conduct. 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 effective within the Department of Defense on September 1, 2006.

On October 2, 2012, Applicant answered the SOR in writing (AR) and elected to have a hearing. On October 25, 2012, DOHA assigned the case to me. On November 6, 2012, DOHA issued a Notice of Hearing, setting the case for November 20, 2012. The case proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence without objection. Applicant testified and offered Exhibits (AE) 1 through 3 and A through D into evidence without objection. DOHA received the hearing transcript on November 29, 2012.

Findings of Fact

Applicant admitted the factual allegation contained in paragraph 1.d, and denied those contained in paragraphs 1.a, 1.b, 1.c, 1.e, and 1.f of the SOR on the basis that she paid or disputed the debts. She denied the allegation contained in paragraph 2.a. (AR.) Her admissions are incorporated into the findings of fact herein.

Applicant is 29 years old and unmarried. She has 5-year-old twins for whom she is the sole supporting parent. She graduated from high school in 2001. She attended college through 2006, when she left having finished most of her coursework. She completed her bachelor's degree in science and management in 2010. She is enrolled in a master's program in engineering management.

While attending college in the summer of 2006, Applicant worked for her current employer through an internship program. In January 2007 she obtained a full time position with that company. She is a quality program engineer. Her employer is aware of her security clearance issues. She stated that she receives good performance reviews and has received raises every year based on them. (Tr. 23.)

Applicant attributed her delinquent debts to being "young and irresponsible." (Tr. 28-29.) She was in college when several debts became delinquent and did not appreciate the consequences of mismanaging them or her finances. (Tr. 29.)

Applicant has not participated in a formal credit or financial counseling course, but has taken accounting and finance-related classes as part of her college management degree. (Tr. 24.) She also is in the process of purchasing a home and has been working with a loan manager to clear up any credit problems. (Tr. 24.)

Applicant submitted her budget. Her annual salary is between \$57,000 and \$58,000, which does not include money earned for overtime. (Tr. 26.) Her net monthly income is \$3,075 and expenses are \$1,685, leaving \$1,390 remaining at the end of the month. (AE 2.) Since June 2011 she has lived with her mother and shared expenses. (Tr. 27-28.)

The SOR alleged six delinquent debts that totaled \$19,664, of which \$18,531 related to an automobile repossession. The debts became delinquent between 2004 and 2011. The status of each debt is listed on AE1, and is as follows:

1.a. The Torres/ComEd debt for \$130 was paid in July 2012. (AE C.)

1.b. The Midland/T-Mobile debt for \$545 was paid in August 2012. (AE B.)

1.c. The \$200 debt owed to a village for a traffic ticket was paid in October 2012. (AE A.)

1.d. Applicant said she paid the \$186 debt owed to LVNVFUNDG for an alarm system that was on her mother's old home. She cannot find her canceled check. (Tr. 32.)

1.e. Applicant said she paid \$72 debt owed to Hollywood Video. She cannot verify the payment because the store closed and there is no company to contact. (Tr. 34.)

1.f. Applicant is disputing the Citi/Financial Auto loan for \$18,531. This debt arose while she was in college and after her mother stopped paying the monthly bill when her mother started going through a divorce. When Applicant discovered the problem, she did not have the funds to pay it and she voluntarily returned the automobile. Later she learned that the automobile was sold. Prior to March 2012, she made a \$50 payment on the account one month and then sent another \$50 payment, which the company returned to her. She has been trying to negotiate a settlement of the account since March 2012. She objects to the amount of the debt. She received three settlement offers from the creditor: \$12,727, \$4,818 and \$2,545. She has money in a savings account to pay the debt, but wants documentation to verify the account and amount owed. (Tr. 38-44; AE D.)

In October 2009, Applicant completed an e-QIP. She was asked, "*Section 26: Financial Record: b. Have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed?; f. Have you defaulted on any type of loan?; g. Have you had bills or debts turned over to a collection agency?; h. Have you had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed?; m. Have you been over 180 days delinquent on any debt(s)?; and n. Are you currently over 90 days delinquent on any debt(s)?*" She answered "No" to those questions and failed to list the automobile repossession and her other delinquent debts.

Applicant acknowledged that she did not include the information, but denied that she intentionally falsified the e-QIP. At the time, she was financially immature. She had not paid attention to credit issues and was unaware of any delinquent debts. This was the first e-QIP she submitted, and she did not appreciate the importance of checking her credit history in order to accurately fill out the form. She had never reviewed a credit report until she met with an investigator shortly after filing the e-QIP. She did not understand that voluntarily returning the automobile was considered a voluntary repossession, and was required to be disclosed. She did not receive any guidance from her employer in regard to completing the form. (Tr. 30, 52-59; AR.)

Applicant submitted a letter of recommendation from her manager, who has known her for seven years. She has observed Applicant grow in maturity and character. She considered her to be “a most valued member” of the team. (AE 3 at 2.) Applicant’s friend and co-worker also provided a letter of recommendation. She, too, has known Applicant for seven years and has found her to demonstrate leadership abilities and a commitment to her position. (AE 3 at 1.)

Applicant testified candidly and credibly. She displayed a thorough understanding of her financial status and obligations. She acknowledged that she has student loans for her undergraduate degree that are deferred while she completes a master’s degree. Her employer is paying for that degree. Her credit status has improved. (Tr. 63-64.)

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 (AG) 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 AG ¶ 2(a), describing 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 “any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides that adverse 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.”

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.

Analysis

Guideline F, Financial Considerations

The security concerns pertaining to Financial Considerations are 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 conditions that could raise security concerns and may be disqualifying, two of which are raised by the evidence in this case:

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

Applicant began accumulating delinquent debts while she was in college, which she did not begin to resolve until 2012. From 2004 through 2011 she was unable or unwilling to repay the debts alleged in the SOR, creating a history of moderate financial irresponsibility.

After the Government raised these potential disqualifying conditions, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns under this guideline. AG ¶ 20 includes four conditions that could mitigate the security concerns arising under this guideline:

- (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 admitted that her financial problems resulted from financial immaturity and a failure to manage her debts and money. AG ¶ 20 (b) does not apply. Although she has not participated in formal credit counseling, she has taken accounting and finance-related college courses. She is also working on her credit status with a mortgage lender in order to obtain a loan and purchase a home. Based on her good faith payment of five small debts, attempts to resolve the largest delinquent debt, and her budget, there are clear indications that her finances are under control, warranting the application of AG ¶ 20(c) and AG ¶ 20(d). She provided proof that she has a reasonable basis to dispute the largest SOR-listed debt, while attempting to resolve it. AG ¶ 20(e) has application.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to Personal Conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The SOR alleged in ¶ 2.a that Applicant falsified her answers to questions listed in Section 26 on her October 2009 e-QIP because she failed to disclose information regarding an automobile repossession and delinquent debts. The Government contended that her omissions may raise security concerns and be disqualifying under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that she intentionally omitted information about her financial situation. When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge

must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant testified that she did not complete the e-QIP accurately due to her financial immaturity and lack of experience with filling out the form. She did not receive any direction from her employer prior to submitting it and had never reviewed her credit report before being shown one by the investigator. After listening to her testimony and observing her demeanor, I find that her explanation for the omission of information is credible and that she did not intentionally falsify the e-QIP, but instead made a negligent mistake. Hence, the evidence does not establish deliberate falsification and this Guideline is found in her favor.

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 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.

According to 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 facts and circumstances surrounding this case. Applicant is a candid, intelligent and responsible 29-year-old woman. She sufficiently impressed her employer, while still in college, that the company offered her a position in 2007 where she continues working today. She acknowledged that five years ago she had little appreciation for the importance of financial management, but has sufficiently matured in that aspect as a result of this proceeding and having young children. Her budget will easily accommodate the outstanding delinquent debt that she is in the process of negotiating. There is no other derogatory information in the file. The likelihood of a recurrence is minimal, given her financial acumen and recognition that similar problems could affect her employment opportunities. She has removed any potential for pressure, coercion,

exploitation, or duress, and is no longer at any risk for having to engage in illegal acts to generate funds.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant mitigated the security concerns arising from financial considerations and personal conduct.

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 through 1.f: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

In light of all circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge