



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-08068
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

July 8, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on February 22, 2006. On November 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant requested a hearing before an Administrative Judge. I received the case assignment on May 20, 2008. DOHA issued a notice of hearing on May 30, 2008, and I convened the hearing as scheduled on June 19, 2008. The Government offered Exhibits (GE 1-9), which were received without objection. Applicant testified in her own behalf, presented the testimony of one witness, and submitted Exhibit (AE A), without

objection. DOHA received the transcript on June 27, 2008. Based upon a review of the record, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, dated March 22, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, of the SOR. She provided additional information to support her request for eligibility for a security clearance.

Applicant is a 26-year-old employee of a defense contractor. After graduating from high school in 1999, she attended college for a brief period. In December 2000, Applicant enlisted in the U.S. Air Force where she remained on active duty until June 2004. She has worked for her current employer since late 2006 (Tr. 17).

Applicant married her husband in 2003 while both were in the military. Their first child was born in March 2003. Applicant and her husband left the Air Force in 2004. At that time Applicant was six months pregnant with their second child. They resided with Applicant's parents until they could find employment. Applicant could not find a job initially because she was six months pregnant (Tr. 8). She remained unemployed until 2006. Initially, her husband worked sporadically at odd jobs. However, approximately three weeks after they returned home, Applicant's husband left her.

Applicant did not hear from her husband and had no idea where he was living. Her second child was born January 3, 2005. Applicant did not have any employment and was forced to go on welfare. She cared for herself and her two children with some help from her family. At that time she began to fall behind in her payment of bills.

Applicant and her husband had purchased a vehicle for the family use during the marriage. Applicant co-signed the automobile loan. When her husband left, he took the automobile with him (Tr. 15). Applicant bought furniture for the children and had various medical and daily expenses. Her husband did not send any money to support them.

Applicant's husband returned at some point and they attempted to reconcile the marriage for the good of the children. Applicant again became pregnant. Her husband left the home again. Applicant learned that he was unfaithful to her. She decided to divorce him. While they were separated, their third child was born in March 2008. Applicant's divorce will occur next month (Tr. 18).

Applicant was paying on the car payment until she could no longer afford the payments. Her husband still had possession of the car. Applicant moved to a small apartment and left her parents when her husband returned. However, she could not afford the rent when he left again. Applicant and her children moved back to her parents' home.

Applicant's third child was born with complications. She could not return to work immediately and fell behind in payments. She also incurred medical and hospital expenses.

She returned to work in late 2006. She paid several bills. Her husband did not help with the bills. She has not heard from him since January 2008. Applicant is concerned about her credit and financial status. She wants to go back to school to improve her job opportunities.

Her father testified at the hearing that Applicant has been working at her current job and has not received any support from her soon-to-be-exhusband. He and his wife are helping Applicant with expenses and child care so that Applicant can work (Tr. 26). Applicant's father confirmed that Applicant's husband disappeared. He also confirmed that Applicant left her parents' home to rent an apartment when her husband returned the first time. She had to move back with her parents when the lease was up so that she could stay employed and care for her children (Tr. 27).

The SOR alleges three delinquent debts, including an involuntary repossession of a vehicle. The total amount of debt that Applicant owes is approximately \$11, 242 (GE 2). SOR debt ¶ 1.a is in the amount of \$63 for a medical account in collection. SOR debt ¶ 1.b is in the amount of \$909 for a charged off credit account; and SOR debt ¶ 1.c is in the amount of \$10,270 for an involuntary repossession of an automobile.

The current status of Applicant's delinquent debts is as follows: two debts are paid (SOR ¶¶ 1a. and 1.b) (attachments to answer in file). When Applicant first learned about the car repossession, she called the creditor and agreed to settle the account for \$2,984.67 (Tr. 21) She arranged three payments of \$994.89. The final payment is due August 31, 2008.

Applicant's current monthly net income is \$2,800. After monthly expenses and current debt payments, she has a net remainder of \$800 (Tr. 25). She does not use credit cards.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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 common sense decision. According to AG ¶ 2, 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 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.

The guideline notes several conditions that could raise security concerns. Under AG & 19(a), an inability or unwillingness to satisfy debts^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debt in 2004 and could not meet her financial obligations. The family car was repossessed after her husband took the automobile. The credit reports confirm the debts. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where 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.^o Applicant's financial worries arose in 2004 when she and her husband left the military. Her husband left her when she was pregnant and unemployed with one child. Applicant paid her daily expenses but could not manage all the bills. While those circumstances may have precipitated the debt, the inquiry does not end at that point. She acted responsibly. Her conduct over the last six months with her creditors removes security concerns and doubts about her current reliability, trustworthiness, and good judgment. She has one outstanding delinquent debt which is in repayment status. This potentially mitigating condition applies.

Under AG & 20(b), it may be mitigating where 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.^o As noted above, her financial problems arose when her husband disappeared and took the car. He left her and their child. Applicant was unemployed as she had just left the military and was pregnant. After she became re-employed, she acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition applies.

Evidence that 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^o is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.^o Applicant paid two debts and has a plan for the repossession. I conclude these potentially mitigating conditions partially apply.

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) 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 common sense 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 the facts and circumstances surrounding this case and conclude they are sufficient to overcome the government's case. Applicant is a young woman. She served in the military for a number of years. She graduated from high school and attended college for a brief period. She had no financial difficulties until her marriage.

Applicant married while in the military. Applicant was pregnant with her second child when she left the military in 2004. She could not immediately gain employment due to her condition.

Applicant's husband left her and the children several times. He did not work at steady employment and did not support the family. Applicant had to live with her parents so that she could maintain herself and her children. Applicant's husband took the family car and left Applicant to make the payments.

Applicant has been gainfully employed for the past year and a half. She is currently living with her parents. They are helping her to care for her children. She will soon be divorced. She has acted responsibly in her situation. She paid two debts that were alleged in the SOR. She is currently paying on the last debt. She is living a frugal life. She is not living beyond her means. She hopes to continue her education to better her future job opportunities. She met her burden of proof with respect to security concerns under the financial guideline.

Overall, the record evidence leaves me without question or doubt 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

Subparagraph 1.a: For Applicant

Subparagraph 1.b:
Subparagraph 1.c:

For Applicant
For Applicant

Conclusion

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

NOREEN A. LYNCH
Administrative Judge