



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-08126
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

May 20, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on March 18, 2006. On December 18, 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 March 11, 2008. DOHA issued a notice of hearing on April 8, 2008, and I convened the hearing as scheduled on May 6, 2008. The government offered Exhibits (GE) 1 through 5 which were received without objection. Applicant testified on her own behalf and submitted Exhibits (AE) A through K. The record was kept open until May 15, 2008. Applicant timely submitted documents that are marked AE L through P.

Department counsel had no objection to the post hearing submissions. The record closed on May 16, 2008. DOHA received the transcript of the hearing (Tr) on May 15, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, dated February 20, 2008 Applicant admitted the factual allegations in ¶¶ 1.a through 1.o of the SOR. Applicant provided additional information to support her request for eligibility for a security clearance.

Applicant is a 37-year-old employee of a defense contractor. Applicant graduated from high school in 1989 and received her undergraduate paralegal degree in 1992 (Tr. 33). Recently, she also earned a U.S. export compliance officer certification.

Applicant is single, and has no children. She was employed as a paralegal and worked for various law firms from 1992 until 2000. She began working for a nonprofit organization in 2001. She had no health insurance and received a low salary (approximately \$13,000 a year) when she was employed with the nonprofit organization. (Tr. 37) She has had many medical problems. As a result, she incurred many medical bills (GE 3).

Applicant did not receive a W-2 form for her wages. She was given a 1099 form (Tr. 37). Applicant did not make estimated tax payments. She accumulated debt to the Internal Revenue Service (IRS) for her unpaid taxes for the tax year 2001 in the amount of \$2,356.46 (interest/penalty). For tax year 2002, Applicant owed approximately \$6,873.95 (interest/penalty) for unpaid taxes. Finally, for tax year 2003, Applicant owed \$6,504.73 (interest/penalty) for unpaid taxes (GE 4).

The IRS notified Applicant in 2003-2004 concerning her unpaid taxes for the years noted above. Applicant was deemed uncollectible at some point due to her low salary (Tr. 45).

Applicant has had health problems for at least fifteen years. Initially, she had a problem with her kidney. When she was finally diagnosed with kidney stones in 2001, she became very ill. She lost 80 pounds. Due to her medical problems, she could not work for a period of time in 2001-2002 (Tr.) 34. She had surgery in 2002 (Tr. 40).

In 2003, Applicant suffered from endometriosis. She had two different surgeries. At one point in time, she was out of work for six weeks. Applicant's consistent health insurance coverage started in September 2004 (Tr. 43). She is now healthy and working full time in a steady position. However, she has approximately \$14,800 in medical bills.

Applicant has been employed in her current position since January 2006. She is well regarded by her colleagues. She is making more money than she ever did before this employment. Her supervisor commends her for her flawless personal integrity,

trustworthiness and hard-working dedication to the company mission. She has maturity, good judgment, diligence in her work and intelligence (AE A-C). Applicant's manager testified at the hearing as to her punctuality, diligence, and thoroughness in her work. Applicant handles the sensitive material for the company with no problems (Tr. 69). She recommends Applicant highly and without reservation for a security clearance.

Applicant is proud and happy to serve in this position. She loves her country and believes she is making a contribution to her country. She loves what she does and understands that her employer has total confidence in her (GE 4).

SOR ¶¶ 1.a and 1.b are for the unpaid federal taxes with interest/penalties. Applicant owed \$2,356.46 for tax year 2001. For tax year 2002, she owed \$6,873.95. The IRS released the liens for the tax years 2001 and 2002 after Applicant paid \$12,600 to the IRS in March 2008 (AE D-E). She did not have to take out a loan to pay the taxes. Thus, she avoided getting into more debt. Instead, her parents gave her the money to pay the taxes and she does not have to pay them back. Applicant requested the IRS to reduce the penalties and interest on her taxes. They explained that would not be possible (AE G-H). Applicant appealed the decision. The IRS granted the request and explained to Applicant that this is a one-time consideration. Applicant is waiting to receive a notice of penalty adjustment. That amount will be applied to the unpaid tax for tax year 2003 (allegation 1.c). Applicant estimates that the remaining amount will be \$2,000 to \$3,000.¹ She will pay that and then receive a certificate of release for tax year 2003 (Tr. 54).

SOR ¶ 1.d is a medical bill for \$125; 1.e is a medical bill for \$295; 1.f is a medical bill for \$125; 1.g is a medical bill for \$314; 1.h is for a hospital bill for \$961; 1.i is a medical bill for \$666; 1.j is a hospital bill for \$9,608. SOR ¶ 1.l is another medical bill for \$2,130; 1.o is a medical bill for \$535. These are not paid. Applicant has received financial counseling and is in the process of contacting the outstanding debtors to obtain a billing statement and begin a repayment plan (AE O).

SOR ¶ 1.k is a phone bill for \$101. Applicant paid this right after the hearing and submitted documentation (AE N). Applicant also paid two more bills after the hearing and submitted documentation for proof of payment for SOR ¶ 1.m (\$50) and SOR ¶ 1.n (\$50).

At the hearing Applicant explained her plan to resolve her medical bills and debt. She will pay the smaller bills first.

Applicant's current monthly net income is approximately \$2,770. After monthly deductions and expenses of \$1,300, she pays on her student loan, and current medical bills. Applicant then has a net remainder of \$235 a month (AE K). She has a budget. She owns her vehicle (Tr. 63).

¹The IRS sent Applicant a letter on May 5, 2008 advising her that they applied an overpayment (\$572.14) from her 2001 tax return to the unpaid balance of the other federal taxes she owed (AE J).

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 debts⁶ is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations⁶ may raise security concerns. Applicant had unpaid taxes for years 2001-2003. She also has delinquent medical debts that total about \$14,800. She has not been able to pay them for a period of time. 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.⁶ Applicant's financial worries partially arose due to her illness, underemployment and lack of health insurance. She is now earning a steady, full time income. The Applicant's problems have been ongoing, but she is now resolving them. Her medical situation has improved. This potentially mitigating condition applies in part.

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.⁶ As noted above, the financial problems arose from her lower earnings, lack of health insurance, ill health and medical bills. She acted responsibly by working and living modestly during her underemployment. However, she did not pay the IRS taxes for three years. I find this potentially mitigating condition applies in part.

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 control⁶ 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.⁶ Applicant has started financial counseling recently. She has

paid her taxes to the IRS for the years 2001-2002. She is awaiting a final amount for the 2003 tax year. She has a plan to pay her debts. I conclude these potentially mitigating conditions apply in part.

AG ¶ 20(e) applies where the evidence shows “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.” In this case, this does not 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. Applicant is a hardworking single person. She had health problems which sometimes impeded her ability to work. Applicant also had a period of underemployment and no health insurance that made it difficult for her to pay all her medical bills. She has finally found a good paying position. She has never made the income that she is making now. Her employer recommends her highly. Her colleagues believe she is a great asset to the company. She has struggled financially for a long period of time. She does not live beyond her means. She takes pride in her job and is described as trustworthy. Of course, the issue is not simply whether all her debts are paid but is whether her financial circumstances raise concerns about her fitness to hold a security clearance. Applicant has a plan to address her delinquent medical debts. She has met her burden of proof in this case to overcome the government’s case.

Overall, the record evidence leaves me without questions and doubts 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 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

Subparagraphs 1.a-1.o: 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