



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



In the matter of:)
)
-----) ISCR Case No. 07-02879
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: Shawn Kapala, Personal Representative

January 18, 2008

Decision

WESLEY, Roger C., Administrative Judge

Statement of Case

On July 20, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 14, 2007, and requested a hearing. The case was assigned to me on October 25, 2007, and was scheduled for hearing on November 28, 2007. A hearing was held on November 28, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's

case consisted of five exhibits; Applicant relied on one witness (herself) and 14 exhibits. The transcript (R.T.) was received on December 7, 2007.

Procedural and Evidentiary Rulings

Prior to the close of the hearing, Applicant requested leave to supplement the record with documentation of her stipulated final judgment of marriage dissolution. There being no objection from the Government, and good cause being demonstrated, Applicant was granted seven days to supplement the record. Within the time permitted, Applicant furnished (1) a copy of her stipulated final judgment of dissolution of marriage and (2) a letter regarding her unsuccessful efforts to obtain a dated copy of the bankruptcy court's lifting of its stay of her divorce proceedings. There being no objection from the Government, and good cause being demonstrated, Applicant's post-hearing submissions were admitted as Applicant's exhibits O and P.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: He is alleged to have incurred 12 delinquent medical debts exceeding \$12,000.00. For her response to the SOR, Applicant denied all of the listed debts. She explained that each of the listed debts were discharged in her completed Chapter 7 bankruptcy. She provided explanations regarding her child support withholding order, her income/expense chart, and character references.

Findings of Fact

Applicant is a 32-year-old electronics technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant married in 1990 and had two children from this marriage. No longer able to live with her spouse following several incidents of domestic violence attributable to him, Applicant petitioned for divorce in December 2003 (R.T., at 44). Her attorney at the time advised her to cease paying her bills pending finalization of the divorce decree, because she (according to the attorney) would be paying his bills as well (R.T., at 44-46).

Applicant followed her attorney's advice and ceased paying her bills. With the aid of a stay lift from the bankruptcy court (see ex. J), she was able to complete and finalize her divorce in July 2007 (see ex. O). Under the decree's terms, Applicant and her husband split responsibility for their listed debts. Each spouse, too, was awarded individual custody of one each of their two children and assigned corresponding child support for the child living with the other parent. Once their respective child support obligations were netted out, Applicant became responsible for paying net child support to her ex-husband in the amount of \$163.00 a month (R.T., at 70-71).

Following her divorce, Applicant returned to school and obtained the AA degree in 2004. She was hired as an intern in January 2005 by her current defense employer, and has been a full time employee with the company since June 2005. She received a recent promotion and a pay increase to \$19.97 an hour (R.T., at 49). Current with her debts, she is pursuing a B.S. degree in engineering at the state university in her community (R.T., at 51). She considers herself a full time student and takes 13 credits a semester while working full time with her defense employer (R.T., at 51-52).

Because her divorce was progressing so slowly in 2004, Applicant's lawyer suggested to her that she seek Chapter 7 bankruptcy relief and coordinate her divorce efforts with her bankruptcy lawyer (R.T., at 53). Each of her listed debts in the SOR is covered by her bankruptcy petition (schedule F) and was discharged in bankruptcy (see ex. I; R.T., at 61-65). Albeit, there were several debts listed in the SOR that represented duplicate accounts (i.e., creditors 1.d and 1.e). Applicant completed her required bankruptcy counseling and received her bankruptcy discharge in July 2007 (ex. I).

Applicant continues to receive child support from her ex-husband, and still pays net child support to her ex-husband (\$163.00 a month net) due to the disparities in their respective incomes (i.e., she makes more than he does). She has paid her divorce lawyer \$1,500.00 so far and still owes him \$1,700.00 (R.T., at 71). She paid her bankruptcy attorney one lump sum payment of \$1,500.00 in full discharge of her fee obligations for her bankruptcy (R.T., at 71).

Applicant is highly regarded by supervisors and coworkers familiar with her work. She is described by her shift supervisor as a professional caring coworker who has gained the respect and confidence of all of those who come in contact with her (see ex. G). Her coworkers characterize her as a hardworking, dedicated technician who is an asset to her customers and her team (ex. G).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

"The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts").

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is an electronics technician provider for a defense contractor who accumulated a number of delinquent debts during her marriage that ended in divorce in July 2007. These delinquent debts (12 in all that exceeded \$12,000.00) were eventually apportioned between Applicant and her ex-husband in their divorce decree and were subsequently discharged in Applicant's bankruptcy. Because Applicant's

liability remained joint and several for these debts (notwithstanding apportionment of the debts in the divorce decree), she could effectively discharge her legal responsibility for the debts only by paying them herself (in the event her ex-spouse did not), or seek protection through a discharge in bankruptcy (as she did). Because of their recency, however, Applicant's debts raise initial security concerns.

Security concerns are raised under the financial considerations guideline of the Adjudicative Guidelines where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts, which heretofore she has not been in a position to address, warrant the application of two of the disqualifying conditions (DC) of the Adjudicative Guidelines for financial considerations: and DC 19(a) ("inability or unwillingness to satisfy debts") and DC 19(c) ("a history of not meeting financial obligations").

Extenuating circumstances are associated with the advice she received from her attorney about stopping payment of her debts while awaiting the outcome of her bankruptcy. Extenuating, too, are Applicant's limited income from her entry position and the extra burdens imposed on her as a single parent and student. Her income and expense records reveal that she is meeting her current expenses and debts with her current income sources following her bankruptcy discharge, and no longer has any significant debts. MC 20(b) of the financial considerations guideline ("the conditions that resulted in the behavior 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)") has some applicability to Applicant's situation. For the most part, her financial history reflects a young single parent struggling to better herself with enhanced educational skills.

With her limited income and relatively high expenses as a single parent, following her initiation of divorce proceedings in 2003, Applicant has not been in a position to make either individual or collective progress (such as use of debt consolidation) on her listed debts. Faced with no viable alternatives, she petitioned for Chapter 7 bankruptcy relief in 2004 and received her discharge in July 2007. Considering the extenuating circumstances of Applicant's accumulated debts, the trust she inspires in her work, and her now completed efforts to discharge her debts through Congressionally approved bankruptcy procedures, Applicant essentially eliminates risks of having to generate funds by both legal and illegal means to pay her debts.

Applicant's documented Chapter 7 discharge is enough to justify application of two of the mitigating conditions to her financial situation. MC 20(d) of the guidelines for financial considerations ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") and MC 20(e) ("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") have some beneficial application to Applicant's situation in this case.

Holding a favorable security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access information covered by clearance eligibility requirements is required precisely to inspire trust and confidence in the holder of the clearance.

Based on her documented divorce decree and Chapter 7 bankruptcy discharge of her old debts and the whole person level of trust she has demonstrated in fulfilling her responsibilities at work, gaining college credits, and caring for her family as a single parent, Applicant is able to convincingly demonstrate the level of overall personal accountability and responsibility necessary to mitigate the Government's security concerns.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the positive judgment and trustworthiness impressions she has made on her friends and colleagues, and her current bankruptcy discharge of her listed debts, she mitigates security risk concerns related to her debts. Favorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions and guidelines listed above, this Administrative Judge makes the following formal findings:

FINANCIAL CONSIDERATIONS: FOR APPLICANT

Sub-paras . 1.a through 1.n: 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. Clearance is granted.

Roger C. Wesley
Administrative Judge