



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-02233
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro Se*

April 17, 2008

Decision

HOWE, Philip S., Administrative Judge:

On May 16, 2006, Applicant submitted her Security Clearance Application (SF 86). On April 4, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), detailing the security concerns under Guideline F to 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 answered the SOR in writing on April 26, 2007, but it did not comply with instructions on the form of an Answer. She filed another Answer on June 18, 2007. She requested her case be decided on the written record in lieu of a hearing.

On December 6, 2007, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the

Applicant. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on December 13, 2007. Applicant did not file a response to the FORM within the 30 day time allowed that would have expired on January 12, 2008. I received the case assignment on March 27, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answers to the SOR, dated April 26, 2007, and June 18, 2007, Applicant admitted the factual allegations in ¶¶ 1.b, through 1.e, and 1.g to 1.i of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.a and 1.f of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 45 years old, divorced, and has five children and six grandchildren. She works as a security guard for a defense contractor. Applicant has nine delinquent debts totaling \$27,163 as listed in the SOR. These delinquent debts are for telephone service, medical bills, student loans, an auto loan for a repossessed car, credit card debt, and utility bills. Applicant denies knowing the origin of a telephone bill for \$331 (Subparagraph 1.a), and a debt owed to a collector for \$252 (Subparagraph 1.f) (Items 3, 5)

Applicant admits she is not able to repay her debts in a timely and reasonable manner. She continues to pay some of them, and works hard for her income. She takes care of her family as a single parent, and does not drink or use illegal drugs. (Item 5)

The credit reports, dated May 31, 2006, and February 16, 2007, pertaining to Applicant show that the delinquent debts listed in the SOR are due and owing by her. Applicant's Answer does not present a repayment plan for any of these debts. She does not explain how she incurred these debts, nor how or when she intends to repay them. Applicant does not present any evidence of her financial circumstances in her Answer. Her SF-86 admits she was over 90 days delinquent on some debts (Question 28b), and she listed her student loan for \$9,468 as delinquent. The SOR alleges her student loan debt is \$15,394 which Applicant admitted is a correct amount. That creditor is deducting payments from her paycheck, and took her income tax refund. She asserted she began making payments in January 15, 2007, but did not provide documentary evidence to support her assertion. The delinquent debts listed in the SOR are unpaid and owing by Applicant. (Items 7, 8)

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, the administrative judge applies the guidelines 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(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 "[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 to obtain 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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated a significant amount of delinquent debt that she was unwilling or unable to pay her financial obligations. 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." Applicant did not provide any evidence that would support the application of this mitigating condition.

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." Applicant did not provide any evidence to support this mitigating condition being applied to her case.

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" 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." AG ¶ 20(e) applies where an Applicant has a reasonable basis to dispute the legitimacy of a debt. Applicant supplied no evidence that would support the application of any of these mitigating conditions.

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 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 the facts and circumstances surrounding this case. When these problems began, Applicant was a mature adult. (See AG ¶ 2(a)(4).) She accumulated debt, but does not explain how or why she did. (See AG ¶ 2(a)(2).) There is no evidence of rehabilitation or a change in her behavior regarding debt accumulation. (See AG ¶ 2(a)(6).) Applicant has no arrangements to repay or resolve these delinquent debts, and they could be a source of improper pressure or duress. (See AG ¶ 2(a)(8).) 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 these debts remain unpaid or unresolved, they are sufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from her financial considerations. I conclude that security concern against Applicant. I conclude the “whole person concept” against Applicant also.

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:	AGAINST APPLICANT
Subparagraph 1.a to 1.i:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge