



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



In the matter of:)
)
) ISCR Case No. 07-04192
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

January 17, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

On July 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 acknowledged receipt of the SOR on August 7, 2007. She answered the SOR in writing on August 23, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on October 12, 2007. The case was assigned to another Administrative Judge on November 7, 2007, and reassigned to me on November 28, 2007. DOHA issued a notice of hearing on November 28, 2007, and I convened the hearing as scheduled on December 17, 2007, at Woodland Hills, California. The government offered Exhibits (GE) 1 through 9, which

were received without objection. Applicant testified on her own behalf and submitted Exhibit (AE) A, without objection. I granted Applicant's request to keep the record open until January 4, 2008, to submit additional matters. On January 4, 2008, she submitted Exhibit B, without objection. Department Counsel's memo is marked Hearing Exhibit (HE) I. The record closed on January 4, 2008. DOHA received the transcript of the hearing (Tr.) on January 4, 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 Answer to the SOR, dated August 23, 2007, Applicant admitted all the factual allegations, but stated she believed the debt alleged in ¶ 1.f was a duplicate of the debt alleged in ¶ 1.d. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is a 53-year-old employee of a defense contractor. She is a technical school graduate. Applicant has held a security clearance for more than 20 years. She is divorced with no children. She lives with her boyfriend, who shares living expenses with her.¹ Applicant has an extensive amount of delinquent debt. The SOR alleges six delinquent debts totaling approximately \$19,691. There is no evidence that any of the listed debts have been paid. Individual debts are discussed below.

SOR ¶ 1.a alleges a judgment entered against Applicant in about July 2000, for \$8,948. In her response to interrogatories requesting information about this debt, Applicant wrote "[t]rying to get itemization/information concerning this." Applicant admitted to this debt, but testified she did not remember what the debt was for. It is listed on the credit bureau report (CBR) of February 3, 2007, but not the CBRs of June 18, 2007, October 12, 2007, or December 17, 2007.²

The debt in SOR ¶ 1.b is for a \$4,035 judgment entered against Applicant in about May 2001. Applicant wrote in her response to interrogatories, "[t]ried to find more information but unable to find account # or address." Applicant admitted to this debt, but again testified she did not remember the debt. This judgment is listed on all the CBRs in evidence.³

Applicant admitted to owing the \$5,981 debt in SOR ¶ 1.c to a company collecting on behalf of a bank which issued Applicant a credit card. Applicant's last activity on this account was in January 2001. The debt is listed on the CBR of February 3, 2007, but not the CBRs of June 18, 2007, October 12, 2007, or December 17, 2007.⁴

¹ Tr. at 34, 36-37; GE 1.

² Tr. at 44-46; Applicant's Answer to SOR; GE 2-5, 9.

³ Tr. at 46-47; Applicant's Answer to SOR; GE 2-5, 9.

⁴ Tr. at 47; Applicant's Answer to SOR; GE 1-5, 9.

SOR ¶¶ 1.d and 1.f allege two medical debts of \$328 each. SOR ¶ 1.e alleges a medical debt of \$71. Applicant initially admitted to owing all the debts, but believed the second \$328 debt was a duplicate. In her post-hearing submission, she stated she discovered that there were two separate debts for two visits to the same hospital. The debts resulted from when she fell and dislocated her elbow on the way to jury duty. She wrote that she provided her insurance card but should have filed for workers' compensation because she "was technically an employee of the court as a juror at the time." She wrote that she tried to pay the bill at the hospital the day of her hearing but the hospital was unable to accept payment.⁵

Applicant worked for a defense contractor, or its predecessor company, from about 1982 until she was laid off in about February 2001. She obtained her technical degree while unemployed. Applicant admitted that she went "a little overboard" in her spending before she was laid off. She was unemployed until she was rehired in about November 2002. She has worked for the same company since her rehire. Applicant withdrew \$30,000 from her 401(k) retirement plan when she was laid off. This initiated serious tax consequences. She stated she asked for the fees, penalties, and taxes to be withheld in advance, and she asked to withdraw a sufficient amount that she would have \$30,000 after the withholding of the fees, penalties, and taxes. It is unclear whether fees or penalties were withheld, but taxes were not withheld. Applicant's state and federal tax responsibilities arising from the withdrawal from the 401(k) were satisfied in about 2005.⁶

Applicant testified that one of the reasons she has not paid the debts was that she was very busy at work and her first priority was her job. She frequently worked overtime and had a long commute. Her mother and her boyfriend have been ill, requiring hospital stays and operations. Additionally a family member was killed in a natural disaster on January 1, 2008. She stated she plans on paying her debts. She had an appointment with a debt consolidation company after the hearing, but was uncomfortable with the person and their fees and did not retain their services. She stated she would continue to seek a company to assist her in her debt resolution.⁷

Applicant has approximately \$5,000 in her savings account and about \$200,000 in her 401(k). Her pay statement from June 2007, revealed \$381 deducted every two weeks for her retirement account.⁸

⁵ Tr. at 21-22; Applicant's Answer to SOR; GE 2-5, 9; AE B.

⁶ Tr. at 22-23, 41-44; Applicant's Answer to SOR.

⁷ Tr. at 20, 25, 30-31; Applicant's Answer to SOR; AE B.

⁸ Tr. at 26, 34-35; GE 2.

Applicant is very involved in helping animals. She assisted a number of sick and injured animals over the years and took in several animals in need of rescue. This resulted in large veterinarian bills.⁹

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(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 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.

⁹ Tr. at 27; Applicant's Answer to SOR.

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 several delinquent debts and was unable or unwilling to pay her obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(a) 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;

(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 currently has significant delinquent debt. She did not show proof that she disputed or paid any of her debts. She was unemployed for a significant period from 2001 to 2002, but she had delinquent debt before she was laid off. Her family members have had medical issues. Her unemployment and the medical issues were conditions that were largely beyond Applicant's control. However, she has been continuously employed for more than five years. She paid her IRS debt but has done virtually nothing to pay the listed debts. During this time period she accrued about \$200,000 in her retirement account, plus about \$5,000 in savings, while ignoring her financial obligations. That is not acting responsibly under the circumstances. She did not make a good faith effort to repay her creditors. She has made promises to begin a payment program, but she has not done so. There are not clear indications the financial problem is being resolved or is under control. Her overall conduct with her creditors casts doubt on her current reliability, trustworthiness, and good judgment. Based on my evaluation of the record evidence as a whole, I conclude no mitigating conditions fully 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 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. Applicant was unemployed for an extended period from 2001 to 2002. She was unable to pay the debts she accrued before and during this period. However, she has been employed continuously since 2002, and except for her debt to the IRS, has done very little to pay her debts. During this period, Applicant's retirement account has grown to about \$200,000. Accumulating a nest egg is a good thing, but not while shirking one's financial obligations. Applicant accumulated personal wealth of approximately ten times the size of the delinquent debt she has ignored. Applicant's displayed extremely poor judgment and her actions were irresponsible.

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 has not mitigated the security concerns arising from her financial issues.

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: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | 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.

EDWARD W. LOUGHRAN
Administrative Judge