



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-05632
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

January 31, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on January 18, 2005. On July 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant.¹ 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 October 15, 2007. Although not explicitly stated in the response, the assigned Personnel Security Specialist and Department Counsel reported that she requested that her case be decided by an

¹Item 1.

Administrative Judge on the written record without a hearing.² Department Counsel submitted the Government's written case on October 25, 2007. A complete copy of the file of relevant material (FORM)³ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of her copy of the FORM on November 5, 2007, and returned it to DOHA. She provided no further response to the FORM within the 30-day period she was given to do so, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on January 15, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor with no prior military service. She was divorced in October 2002. In the General Remarks section (question 43) of her SF 86, she stated that she is a single parent of one or more children. However, no children were listed in response to question 9 on her SF 86, so further detail is unavailable. She has been continuously employed since 1997, except for one month of unemployment in February 2003.⁴ Her personal financial statement, dated June 4, 2007, reflects about \$630 in monthly surplus of family income over expenses.⁵

In her answer to the SOR, dated October 15, 2007, and her sworn answers to financial interrogatories, dated June 4, 2007, Applicant admitted the truth of all factual allegations in ¶¶ 1.a, through 1.af of the SOR, with explanations. Her admissions are, with the exceptions noted below, corroborated by the credit bureau reports (CBR) in Items 5, 6, 7, and 8 of the FORM, and are incorporated herein as findings of fact. For ease of comprehension, the 32 delinquent debts alleged in the SOR will be broken into three groups involving judgment, medical, and consumer debt allegations.

SOR ¶¶ 1.a through 1.d, 1.ae and 1 af allege six judgment debts totaling \$4,701. Applicant correctly noted, in her response to the SOR, that the debts alleged in ¶¶ 1.a and 1.ae are the same judgment debt, originally in the alleged amount of \$225. She submitted proof of one \$20 payment to the collection agency to whom the debt was assigned.⁶ This receipt also shows the collection agency now claims an outstanding balance of \$575.05 on this debt, after the \$20 payment. Applicant also correctly responded that the \$371 judgment debts alleged in ¶¶ 1.c and 1.af are the same, but

²See AJ Exhibit I (documents pertaining to Applicant's election of administrative determination).

³The government submitted eight items in support of the allegations.

⁴Item 4.

⁵Item 5 at 4.

⁶Item 3, Encl. 1.

claimed that she could not contact the creditor. In fact, the CBR she submitted with her response to financial interrogatories shows that this judgment debt was paid on December 1, 2005.⁷ Accordingly, Applicant owes three judgment debts, as alleged in ¶¶ 1.a, 1.b, and 1.d, in the total amount of \$3,701.⁸

SOR ¶¶ 1.e through 1.y allege 21 medical bills in collections, totaling \$4,131. Applicant admitted to all of them, claiming they were consolidated in a repayment program and some had been paid. She submitted an account statement and several “paid-in-full” receipts for medical bills paid under this program.⁹ The first receipt corresponds to the \$50 debt alleged in SOR ¶ 1.l, but none of the other receipts correspond to debts alleged in the SOR. Contrary to the SOR allegations in ¶¶ 1.r and 1.s, and Applicant’s admissions thereto, those debts are for telephone bills to two different companies as opposed to medical accounts.¹⁰ Accordingly, their total of \$314 will be subtracted from the medical group and added to the consumer debt category below. Applicant owes 18 delinquent medical debts, as alleged in SOR ¶¶ 1.e through 1.k, 1.m through 1.q, and 1.t through 1.y, in the total amount of \$3,767.

SOR ¶¶ 1.z through 1.ad allege five credit card and consumer-credit debts that are charged off or in collections, totaling \$5,577. Applicant admitted owing them. She submitted a collection agency’s offer, dated September 5, 2007, to settle the ¶ 1.z debt for a lesser amount. She provided no proof of any payment toward this offer, the payment coupon that was to accompany payment remained attached to the copy of the offer letter, and the debt remained unpaid on her October 25, 2007 CBR.¹¹ Appellant claimed to have negotiated a reduced settlement for the \$920 debt alleged in ¶ 1.aa, and submitted a collection agency’s settlement offer letter.¹² This offer actually involved a different and more recent delinquent credit card debt to a different bank that was not included in the SOR.¹³ There is no evidence of resolution of the alleged debt. In response to the SOR, Applicant claimed (without documentation) to have made arrangements to start repaying the debts alleged in ¶¶ 1.ab, and 1.ac, at \$10 per month

⁷Item 5, Equidata CBR, dated May 18, 2007, at page 10 of 16.

⁸This figure values the ¶ 1.a debt at the SOR-alleged \$225, rather than the \$575 now claimed by the collection agency.

⁹Item 3, Encl. 2.

¹⁰See Item 7 at 1; Item 8 at 2. The amounts alleged, \$235 and \$79, respectively, are correct, and their mis-designation as medical accounts in the SOR is not considered a fatal variance.

¹¹Item 3, Encl. 3; Item 8 at 2. Applicant provided no proof of her claim that she had made arrangements to pay \$10 per month toward this debt beginning in November 2007.

¹²Item 3 at 1, Encl. 4.

¹³Compare Item 3, Encl. 4, with Item 8 at 3 (debt reported delinquent as of June 2006).

each starting in November and December 2007.¹⁴ In her June 4, 2007, response to interrogatories, she said she had arranged to start payments on these two debts at the end of that month.¹⁵ She provided no proof of any payment toward either debt. Finally, Applicant claimed that the \$1,468 debt alleged in ¶ ad was the same as the debt alleged in ¶ 1.z. This is incorrect, since the latter debt is for a bank-issued credit card and the former is owed to a collection agency for a fitness center.¹⁶ Applicant owes these five credit card and consumer-credit debts in the total amount of \$5,577 as alleged. Including the \$314 in telephone account debts, improperly alleged as medical debts above, the total of her seven non-judgment and non-medical debts is \$5,891.

Combining these three groups produces a total of 28 delinquent debts still outstanding, in the amount of \$13,359, toward which Applicant provided no evidence of payment or other resolution. The record CBRs reflect that some of these debts first became delinquent in every year since 1999, with no evidence of any single precipitating event. Applicant provided no other evidence of good character, trustworthiness or judgment in mitigation.

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.

¹⁴Item 3 at 1.

¹⁵Item 5 at 7.

¹⁶Item 5, Equidata CBR, dated May 18, 2007, at pages 3 of 16, and 5 of 16.

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. Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person who applies for access to classified information seeks to enter 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.

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 a significant number and amount of delinquent debts over the past eight years. She was either unable or unwilling to repay these debts, despite submitting a personal financial statement reflecting an apparent ability to do so. Excluding the debts alleged in SOR ¶¶ 1.c, and 1.I, which were paid, Applicant demonstrated no effort to resolve any of the remaining \$13,359 of proven delinquent debt. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination and balancing of resulting security concerns with any potentially mitigating matters.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions 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's financial issues have been a continuing problem since at least 1999. Her disregard of these financial obligations is ongoing, and continues to raise concerns about her current reliability, trustworthiness, or good judgment. The evidence does not support this potentially 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's delinquencies arose on a regular basis, with new delinquent debt reported in every year since 1999. These delinquencies preceded and followed her 2002 divorce, with no evidence of recent responsible action to address them. Although 18 of the 28 debts involved medical bills, these only involved 28% (\$3,767 out of \$13,359) of the amount past due. This potentially mitigating condition is not supported as a factor for significant consideration in this 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. Applicant neither asserted nor provided evidence of either of these conditions, except with respect to the \$371 debt alleged in SOR ¶ 1.c (which she did not even realize was reported as being paid), and the \$50 debt alleged in ¶ 1.l, which she paid. I conclude these potentially mitigating conditions do not apply.

Applicant reported surplus monthly income, yet regularly incurs delinquent debt. She has made minimal effort to address or resolve the delinquent debts established by the Government, even after receiving notice of the security concerns raised by these issues. This supports the inference that she remains financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. It further indicates a lack of judgment and unwillingness to abide by rules and regulations, thereby raising substantial questions about her reliability, trustworthiness, and ability to safeguard classified information.

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 is a mature individual who is responsible for her choices and conduct. She provided no information to show that any of these debts arose due to circumstances largely beyond her control. Applicant has been employed almost continuously throughout the period that these debts became delinquent, and reports having the means to begin resolving these delinquent debts should she choose to do so. She has chosen not to resolve them without valid justification. There is no evidence of rehabilitation or permanent behavioral change. She submitted no evidence demonstrating that risk of coercion or duress is not significant. Her ongoing disregard of lawful obligations, especially after receiving notice of the security concerns raised thereby, creates continuing doubt about her trustworthiness and reliability. She offered no other evidence to mitigate these concerns.

Overall, the record evidence creates substantial doubt 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 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant

Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.ab:	Against Applicant
Subparagraph 1.ac:	Against Applicant
Subparagraph 1.ad:	Against Applicant
Subparagraph 1.ae:	For Applicant
Subparagraph 1.af:	For 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.

DAVID M. WHITE
Administrative Judge