



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-08392
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

August 11, 2008

Decision

CURRY, Marc E., Administrative Judge:

On September 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J, criminal conduct; F, financial considerations; and E, personal conduct. 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 on October 25, 2007, and requested an administrative determination. On March 12, 2008, the government prepared a File of Relevant Materials (FORM). It was sent to Applicant on March 17, 2008, and received May 9, 2009. Applicant was instructed to file any objections or supply any additional information within 30 days of her receipt of the FORM. She elected not to do so, and

the case was assigned to me on July 7, 2008. Based upon a review of the FORM, access to classified information is denied.

Evidentiary and Procedural Rulings

1. The government moved to amend the SOR by adding allegations under Guideline E that Applicant falsified a 2004 security clearance application by failing to list a number of charges and a subsequent conviction related to a fraudulent check cashing scheme and a conviction for driving with a revoked license. The motion was filed five months after the SOR's issuance and four months after Applicant's Answer. Unlike the Federal Rules of Civil Procedure,¹ DoDD 5220.6 does not mandate time limits for amending SORs because the preservation of national security transcends technical court procedure. However, the government still needs to establish good cause for amending the SOR (Additional Procedural Guidance Enclosure 3.1.17). Here, the government has already included the criminal involvement, which Applicant allegedly omitted from her security clearance application, under Guideline J, criminal conduct. Because the nature of the alleged criminal conduct is essentially credibility-related, I can consider any additional credibility evidence regardless of whether it is alleged in the SOR. (ISCR Case No. 98-0582 at 9 (App. Bd. Nov. 12, 1999)). I conclude the government does not have good cause to amend the SOR. The motion is denied.

2. SOR subparagraphs 2.a through 2.f allege delinquent financial debts owed to unidentified creditors. Applicant denied them. SOR subparagraph 3.a alleges, among other things, that Applicant failed to include these unidentified delinquent debts on her security clearance application. Although SOR drafting is not held to the strict standards of criminal indictments, they must, at a minimum, be drafted with enough specificity to enable applicants to prepare responses. These subparagraphs fail to meet this minimum threshold, therefore, I resolve them in Applicant's favor, and will not address them further.

Findings of Fact

Applicant is a 30-year-old single woman with three pre-teen children. She served in the U.S. Army from 1997 through her honorable discharge in 1999.² For the past three years, she has been working for a contractor, assisting families of deceased service members (Answer).

In 1997, Applicant opened a federal credit union account. In 2000, she presented three paychecks for the credit union to cash, collectively totaling \$3,328, that were

¹See F.R.C.P. Rule 16(a)(3)(A).

²She was discharged after becoming pregnant with her oldest child.

payable to her and endorsed by her (Item 8 at 4-5). The maker of the checks was a company where Applicant purportedly worked.³

The credit union cashed the checks and posted the money to Applicant's account. Over the next three days, Applicant had money wired to her from her credit union account three times to locations in three different states (Item 7 at pages 4-6). When the credit union presented the checks to the bank of Applicant's alleged employer (the drawee bank)⁴ for reimbursement, it was informed that the account had been closed.

The drawee bank then contacted its corporate security office, who then located the company where Applicant allegedly worked, and began interviewing members of the company (Item 7 at 5). The investigation revealed that the company was a small, non-profit volunteer organization that employed no paid employees (Item 8 at 6). It maintained a checking account for operating expenses, which it had closed shortly after the checks were stolen from the treasurer's car during a break-in. As part of the investigation, the authorities showed the treasurer Applicant's signature on the back of the checks. The treasurer then identified Applicant as a past tenant of an apartment located in a complex that the treasurer managed, and stated that Applicant vacated the apartment without paying a \$2,000 rent debt (*Id.*).

While the investigation was pending, Applicant attempted to cash three more checks, totaling \$6,000, through her credit union (Item 8 at 5). By then, the credit union was aware of Applicant's fraudulent scheme, and contacted the Federal Bureau of Investigation (FBI).

In February 2004, Applicant was indicted for bank fraud, a felony. She pleaded guilty to the lesser offenses of larceny within a special maritime jurisdiction, and receiving stolen property within a special maritime jurisdiction (Item 7 at 2). The court, on November 10, 2004, sentenced her to two years probation, and ordered her to pay restitution (Item 8 at 3). By November 16, 2006, Applicant had paid the restitution (*Id.*).

Applicant owes 19 creditors approximately \$35,000 in delinquent debt. The debts include utilities (SOR subparagraphs 2.h, 2.i, 2.l through 2.o, and 2.r), credit accounts owed to banks and department stores (SOR subparagraphs 2.g, 2.j, 2.t.), medical bills (SOR subparagraphs 2.g and 2.j), two automobile delinquencies (SOR subparagraphs 2.u, and 2.w), an account owed to an apartment complex (SOR subparagraph 2.x)⁵, and

³The maker is the person or entity who signs or is identified in the check as the person undertaking to pay it (U.C.C. § 3-103(a)(7)).

⁴The drawee bank is the bank from which the check is drawn (U.C.C. §3-103(a)(4)).

⁵This is the same apartment complex where the treasurer of the non-profit organization, whose checkbook was stolen and used by Applicant to forge checks, worked as a property manager.

several miscellaneous delinquencies (2.g, 2.k, 2.v, 2.y, 2.aa, and 2.bb). Two of the debts listed in the SOR, subparagraphs 2.s and 2.z, are duplicates of other SOR debts.⁶

Applicant admitted SOR subparagraphs 2.h through 2.j, 2.r, and 2.t, and denied the remainder. She asserts that she has either been satisfying them through payment plans, or is currently negotiating payment plans. She provided no documentary evidence supporting these assertions.

As for the denials, Applicant wrote the creditors listed in SOR subparagraphs 2.k through 2.m, and 2.o, either officially disputing them, or requesting further information. She provided no evidence of any efforts to contact the creditors of the other denials. None of the disputed delinquencies were substantiated with documentation.

Applicant answered “No” to Section 38 of a Questionnaire for National Security Positions (QNSP), executed on April 4, 2004, which required her to disclose whether she had been more than 180 days delinquent on any debt within seven years of the QNSP’s completion. SOR subparagraphs 2(l), 2(x), and 2(aa), either were not 180 days delinquent or had not been reported as delinquent when Applicant completed the QNSP (See Item 15 at 6-7). The remainder were more than 180 days delinquent when she completed the QNSP. Applicant asserts that the omissions were unintentional. She also did not disclose her 2004 bank fraud indictment and subsequent conviction for embezzlement theft on the QNSP.

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. According to AG ¶ 2(c), the entire process is a 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.

⁶SOR subparagraph 2.s is a duplicate of subparagraph 2.g, and SOR subparagraph 2.z is a duplicate of 2.v.

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.

Analysis

Guideline J, Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness” (AG ¶ 30). Also, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations” (*Id.*). Here, Applicant organized a fraudulent scheme that enabled her to swindle more than \$3,000 from a federal credit union by presenting invalid checks to be cashed. She did not stop this activity until the credit union detected the fraud, and refused to cash more invalid checks. AG ¶31(a), “a single serious crime . . . ,” applies.

I have considered the mitigating conditions and conclude none apply. Applicant committed a crime of deception, that on its face, is indicative of a lack of honesty. It was compounded by her failure to disclose it on her security clearance application. She was convicted less than five years ago. In her Answer, she alluded to pressures in her life that led her to commit the crime, but did not elaborate. Although she paid restitution, it has less probative value because it was court-ordered. Her employment at the same job for three years demonstrates stability, but absent any evidence of her job performance, has limited probative value. Applicant has not mitigated the criminal conduct security concern.

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*). Here, Applicant’s extensive financial problems trigger the application of AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

I have considered the mitigating conditions and conclude none apply. Her contention that the acknowledged delinquencies were being satisfied through current or imminent payment plans was not supported by documentary evidence. Similarly, she provided no documentary evidence to establish a reasonable basis for the delinquencies she denied. She has not mitigated the financial considerations security concern.

Guideline E, Personal Conduct

Under this guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information” (AG ¶ 15). Here, Applicant’s omission of financial delinquencies from her security clearance application raises the issue of whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies. In light of the significant pattern of deception Applicant demonstrated by executing the fraudulent check cashing scheme, I conclude her omission from her security clearance application was intentional. AG ¶ 16(a) applies without mitigation. Applicant has not mitigated the personal conduct security concern.

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) the 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.

Applicant engaged in illegal acts to generate funds. As the record indicates, she was financially overextended at the time. Because she is still financially overextended, the possibility that she may engage in similar future conduct remains unacceptably high. Evaluating this case using the whole person factors, I conclude that it is not clearly consistent with the national interest to grant Applicant access to classified information. Clearance is denied.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a - 2f:	For Applicant
Subparagraphs 2.g-2.r:	Against Applicant
Subparagraph 2.s:	For Applicant
Subparagraphs 2.t-2.y:	Against Applicant
Subparagraph 2.z:	For Applicant
Subparagraphs 2.aa-2.bb:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	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.

MARC E. CURRY
Administrative Judge