



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 06-26618
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

September 25, 2008

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on December 15, 2005 (Government Exhibit 1). On January 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for 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 filed an Answer to the SOR on January 31, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on March 20, 2008. I received the case assignment on March 25, 2008. DOHA issued a notice of hearing on May 16, 2008, and I convened the hearing as scheduled on May 20, 2008. The government offered Government Exhibits 1 through 6, which were

received without objection. Applicant testified on her own behalf and submitted Applicant's Exhibits A through H, without objection. Pursuant to her request, the record was left open for the Applicant to submit additional documentation. On June 4, 2008, the Applicant submitted Applicant's Exhibit I, which was received without objection. DOHA received the transcript of the hearing on June 3, 2008. The record closed on June 4, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 49 and single. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

Guideline F, Financial Considerations

Subparagraph 1.a. The Applicant denied this allegation because the allegation mistakenly said that a vehicle was repossessed. This alleged past due debt for \$4,370.00 actually concerns a timeshare that the Applicant purchased with her then partner. The partner refused to pay her part of the timeshare costs, and the timeshare was repossessed. The Applicant's testimony was very vague as to whether she currently owed any money on this debt or not. (Transcript at 23-32.)

The credit report dated December 30, 2005 is the only one of four credit reports that refers to this debt. It says, "Merchandise was taken back - *may* be a balance due." (Government Exhibit 3.) (Emphasis supplied.) In addition, this entry shows no past due amount.

Subparagraph 1.b. The Applicant denied this allegation concerning a \$40.00 medical debt. The Applicant testified that she had asked her father to pay this debt for her in about 2006 and believes that he had paid the debt. (Transcript at 31-32.) For reasons set forth under "Analysis," below, I find this testimonial evidence to be truthful and worthy of belief.

Subparagraph 1.c. The Applicant originally denied owing this debt for \$10,972.00. She subsequently was able to determine that it was her debt. The Applicant made arrangements to pay this debt in two installments and did so. The creditor indicates that this debt has been "settled in full." (Transcript at 32-36; Applicant's Exhibits E and I.)

Subparagraph 1.d. The Applicant has consistently denied owing this \$1,175.00 debt to a bank. She believes it to be the result of identity theft committed by her former partner. (Transcript at 37-38; Government Exhibit 2 at 3.)

Subparagraph 1.e. The Applicant denied owing this \$137.00 medical debt in her Answer. She testified, "I think I made the payment on that, but I can't find the

paperwork.” (Transcript at 38.) Government Exhibits 5 and 6, credit reports dated March 19 and May 16, 2008, respectively, state that this debt is “Paid Collection.”

Subparagraph 1.f. The Applicant admits owing this debt in the amount of \$10,361.00. She testified that only recently had she been able to find the collection attorney handling this account. The Applicant’s partner is willing to pay this debt. (Transcript at 34-36; Applicant’s Exhibit D.)

Applicant’s Exhibit I at page 5 shows that she has been in touch with this creditor since the hearing. The exhibit shows that the Applicant has made arrangements to settle this account for \$5,698.38, no later than June 16, 2008. For reasons stated under “Analysis,” below, I find this statement to be truthful and worthy of belief.

Mitigation

Applicant’s Exhibit A consists of four letters. Two are from her Field Service Manager and Company Vice President. (Applicant’s Exhibit A at 1-2.) Her manager states, “She is a hard working and very punctual employee who has earned the trust of every supervisor she has worked for while performing [her job].” (Applicant’s Exhibit A at 1.)

Two friends describe the Applicant as “honest,” “dependable” and “hard working.” (Applicant’s Exhibit A at 3-4.)

The Applicant’s most recent credit report and budget (Government Exhibit 6; Applicant’s Exhibit C) shows that she is taking control of her financial situation. She testified that she has no outstanding bills and is able to live within her means. (Transcript at 39.)

Policies

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own

common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . 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.” 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 Applicant testified at great length about her financial situation, and submitted written evidence following the hearing. For the following reasons I find her testimonial evidence, as well as her documentary evidence, to be credible and worthy of belief. First, the Applicant freely admitted the debts that she does owe. Second, the Applicant admitted at the hearing that two debts, which she thought were the same, had turned out to be different. Third, the Applicant fulfilled promises made at the hearing to make a payment on one debt and contact the creditor in another debt.

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. The evidence shows, and the Applicant admits, that she had some problems paying her bills in the past. 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. Evidence that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” is mitigating under ¶ 20(d). The Applicant successfully showed that she has paid the debts in allegations 1.c. and 1.e. In addition, she credibly testified that she had asked her father to pay the \$40.00 medical debt and believed that he had paid it (1.b.), and that she had made a payment arrangement regarding the only open debt (1.f.). I conclude this potentially mitigating condition applies.

Finally, ¶ 20(e) states that it may be mitigating where “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.” The Government has not met its burden to show that the Applicant owes any money with regards to subparagraph 1.a., since the only credit report concerning that debt says that there “*may* be a balance due.”

In addition, as set forth at length above, with regards to a bank and its collection agencies, she has consistently denied owing them money due to her former partner stealing her identity (1.d.). For the reasons stated above, I find this denial to be credible and worthy of belief. This mitigating condition clearly applies to the facts of this case.

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,

