



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-00651
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro se*

January 29, 2008

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on January 3, 2006. On August 16, 2007, 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.

She answered the SOR in writing on October 8, 2007, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on November 5, 2007. The Applicant responded to the FORM (Response) on December 11, 2007. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, dated October 8, 2007, Applicant admitted the factual allegations in Paragraphs 1.a.~1.d of the SOR, with explanations. She denied the factual allegations in Paragraph 1.e of the SOR.

Guideline F - Financial Considerations

In January of 1999, the Applicant divorced her former spouse, and "became a single mother . . . working as a Sales Secretary making \$12 an hour" (Item 3 at page 1). This was the genesis of the Applicant's financial difficulties. She is now remarried, and has submitted a plan of action vis-a-vis her admitted past due debts (Response).

1.a. Is a debt to creditor #1 in the amount of about \$7,349 (Item 7 at page 1). The Applicant acknowledges the past due balance, and avers the following: "Half to be paid on 24 April - balance to be paid July 2008" (Response at page 2). She offers no evidence that creditor #1 has agreed to this payment methodology.

1.b. Is a debt to creditor #2 in the amount of about \$517 (Item 7 at page 2). The Applicant acknowledges the alleged past due balance of \$417, which is different from the amount supported by the evidence, and avers the following: "Will be paid in full February 2, 2008" (Response at page 2). She offers no other evidence.

1.c. Is a debt to creditor #3 in the amount of about \$2,260 (Item 7 at page 2). The Applicant acknowledges the alleged past due balance of \$2,402, which is also different from the amount supported by the evidence, and avers the following: "½ to be paid February 2 and balance to be paid April 24, 2008" (Response at page 2). She offers no evidence that creditor #3 has agreed to this payment methodology.

1.d. Is a debt to creditor #4 in the amount of about \$8,188 (Item 7 at page 3). The Applicant acknowledges the alleged past due balance of \$8,272, which is different from the amount supported by the evidence, and avers the following: "We have agreed to \$50/month payment via . . . [successor creditor]. We are in the process of offering a settlement, which would be paid in full April 24, 2008" (Response at page 2). She again offers no evidence that creditor #4 has agreed to this payment methodology.

1.e. Is a debt to creditor #5 in the amount of about \$222 (Item 7 at page 1). The Applicant acknowledges the past due balance, and avers the following: "will be paid in full February 2, 2008" (Response at page 2). She offers no other evidence.

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 Paragraph 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 Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the Applicant is responsible "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.

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 Paragraph 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 Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under AG Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns. Under Subparagraph 20(b), it may be mitigating, in part, where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. . . . divorce or separation), and the individual acted responsibly under the circumstances.”* However, as noted above, although the Applicant has a plan of action to address her past due debts; it is only a plan, without more I can find no *“good-faith effort to repay overdue creditors or otherwise resolve debts”* as required by AG Subparagraph 20(d).

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 Subparagraph 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 Subparagraph 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.

Here, the Applicant was placed in a bad financial situation because of her divorce; but she only has a plan of action, with no evidence of any payments or acceptance of any payment plans by her creditors. For this reason, 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:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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.

RICHARD A. CEFOLA
Administrative Judge