



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



In the matter of:)
)
) ISCR Case No. 07-01302
)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esq., Department Counsel
For Applicant: *Pro Se*

March 28, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by her financial history. Eligibility for access to classified information is denied.

On July 11, 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, 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 31, 2007, and again on December 7, 2007, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on January 17, 2008, and reassigned to me on February 4, 2008. DOHA issued a notice of hearing on January 28, 2008. I

convened the hearing as scheduled on February 21, 2008. DOHA received the transcript of the hearing (Tr.) on March 7, 2008.

Procedural and Evidentiary Rulings

The government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on her own behalf but did not submit any documentary evidence. I granted Applicant's request to keep the record open until March 3, 2008, to submit additional matters through Department Counsel. As of March 17, 2008, nothing had been received. I asked Department Counsel to contact Applicant to see if anything was sent. Applicant told him that she thought the record was left open until March 23, 2008, and she mailed material on Saturday, March 15, 2008. I still had not received anything on March 26, 2008. I had a conference call with Applicant and Department Counsel on March 26, 2008. Applicant stated she mailed material on Saturday, March 15, 2008. I told her that we never received the package and I asked her if she could fax us a copy of what she mailed. Applicant stated that she did not keep a copy. She stated that she sent her annual Social Security statement and a letter from her company which contained her security clearance status. I asked Applicant if she wanted me to continue to hold the record open for her to submit any additional material, but she declined the offer.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.f through 1.m, 1.o, 1.p and 1.w through 1.y of the SOR. She denied the remaining allegations.

Applicant is a 56-year-old employee of a defense contractor. She is a high school graduate. She is a widow; her husband passed away in 2001. She has three adult children.¹

When Applicant's husband passed away in 2001, he left her with numerous debts. He had a retirement fund but she is unable to collect on it until she turns 65. His funeral cost \$25,000. She paid for the funeral by withdrawing money from her retirement account, which triggered tax consequences. She incurred numerous medical debts related to her medical conditions. She had cancer and other illnesses. She admits she has many unpaid medical debts. She is not totally ignoring her medical debts. She submitted copies of numerous checks to doctors and hospitals in her response to Interrogatories. She stated she pays her medical bills monthly as best she can. SOR ¶¶ 1.g through 1.k are delinquent medical debts, including a judgment for \$2,003, totaling approximately \$2,856. These debts are listed as delinquent on the credit reports submitted as evidence. There is no evidence that they have been paid. SOR ¶¶ 1.n, 1.w, 1.x, and 1.y are medical debts that are based upon medical bills submitted by Applicant with her response to Interrogatories. These debts are not listed on the credit

¹ Tr. at 70; GE 1.

reports. Applicant does not have a firm grasp on what debts are owed. It is possible that at least part of these debts were paid by Applicant or covered by insurance.²

Applicant admitted to her debts to the Internal Revenue Service (IRS). SOR ¶¶ 1.a, 1.b, and 1.l list debts of \$4,859, \$4,186, and \$2,065 to the IRS for tax years 1996, 1998, and 2004. Applicant stated that she may never pay the IRS back because of a large tax debt incurred in about 1974, when the IRS refused to permit her to claim children that were living with her as dependents. She testified that the IRS states she owes about \$26,000. Both credit reports show a federal lien filed in August 2000 for \$11,406. Applicant testified that she sends the IRS \$100 whenever she can and at the end of the year they keep her tax refund. She submitted IRS documents with her response to Interrogatories. A letter dated October 9, 2006, stated that the IRS applied \$2,249 from her refund from tax year 2005, to her debt for tax year 1996, leaving a balance of \$4,859. A letter dated May 7, 2007, stated that the IRS applied \$1,232 from her refund from tax year 2006 to her debt for tax year 1998, leaving a balance of \$4,186. Another letter dated October 9, 2006, stated the IRS did not accept the figures on her tax year 2004 return, and that she owed \$2,065 for that tax year.³

SOR ¶¶ 1.c, 1.q, and 1.r list debts of \$2,600, \$1,084, and \$4,029 to the same department store. In her response to Interrogatories, Applicant stated these were not her accounts and she stated that her deceased husband had an account with this department store. The debts in SOR ¶¶ 1.q and 1.r are listed on the credit report of August 17, 2006. The debt in SOR ¶ 1.c for \$2,600 is listed on the credit report of August 17, 2006, but it states the debt was transferred to another office and it does not list a balance. The credit report of March 13, 2007 does not list any of the above debts.⁴

Applicant admitted to the debt of \$147 to a collection company on behalf of an energy utility, as alleged in SOR ¶ 1.m. In her response to Interrogatories, Applicant stated she would pay this account because it may have been a bill for the month after she moved. She indicated she would pay the debt on June 1, 2007. No evidence was submitted that the bill was paid.⁵

Applicant admitted she owed \$2,635 to a collection company on behalf of a financial institution, as alleged in SOR ¶ 1.o. She testified that she attempted to make payment arrangements with the company but they wanted the total amount due.⁶

Applicant disputed many of the debts listed on her credit report and on the SOR. The credit report of August 17, 2006 lists Applicant's name, but it also lists another

² Tr. at 25, 30, 42, 47-48, 51-52, 60-62; GE 2-4.

³ Tr. at 37-41; Applicant's Answer to SOR; GE 2-4.

⁴ Tr. at 26-30; GE 2-4.

⁵ Applicant's Answer to SOR; GE 2-4.

⁶ Tr. at 18-19; Applicant's Answer to SOR; GE 1-4.

name that Applicant states she has never used. It lists Applicant's social security number, but it also lists another social security number that is one digit off of Applicant's. It lists Applicant's current address and previous address in another state, but it also lists an address in a state where Applicant has never lived. It lists Applicant's correct date of birth, but it also lists another birth date. It also lists that she was employed for a company where she has never worked, in a state where she has never lived. The credit report of March 13, 2007 does not list the above inaccuracies. It also does not list the debts disputed by Applicant.⁷ After considering all the evidence, I find that the debts in SOR ¶¶ 1.d, 1.e, 1.f, 1.t, 1.u, and 1.v were not incurred by Applicant.

Applicant has never received financial counseling. She wanted to file bankruptcy but she did not have the money to pay the costs of the bankruptcy.⁸

Applicant submitted a Questionnaire for National Security Positions (SF 86), certified as true on August 1, 2006. Applicant answered "Yes" to Question 28a, which asked, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" She also answered "Yes" to Question 28b, which asked, "Are you currently over 90 days delinquent on any debt(s)?" She listed a debt of \$1,851 to a financial institution for an installment loan incurred in about March 1999. This is the debt alleged in SOR ¶ 1.o. She did not list any additional delinquent debts.⁹

Applicant denied the two falsification allegations in the SOR.¹⁰ After considering all the evidence, including her demeanor and her inclusion of at least one delinquent debt, I find Applicant did not intentionally falsify her Questionnaire for National Security Positions.

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, Administrative Judges apply the guidelines 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

⁷ Tr. at 17-21, 25; GE 2-4.

⁸ Tr. at 57.

⁹ GE 1.

¹⁰ Tr. at 65.

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.

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay her obligations for a period of time. The evidence is sufficient to raise the above 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's husband passed away in 2001, leaving her with many debts. She incurred a large number of medical bills related to her cancer and other medical problems. These are conditions that were largely beyond her control. She has not ignored her medical bills; she has been paying them as best she can. As relates to her medical debts, I find she is acting responsibly under the circumstances. AG ¶¶ 20(b) and 20(d) are applicable to her medical debts. She has not submitted enough information for a finding that she acted responsibly under the circumstances as it relates to her other debts. AG ¶ 20(b) is partially applicable to her other debts.

Applicant has not received financial counseling. While Applicant appears to be trying, it is obvious that she does not have a firm grasp on her finances. Her tax issues are many years old and are ongoing. Even her medical payments are haphazard and not part of a well conceived plan. Without some kind of reasonable plan to address her finances, I am unable to find that her problems are being resolved or are under control. Her financial issues are likely to recur and cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) are not applicable.

The debts in SOR ¶¶ 1.d, 1.e, 1.f, 1.t, 1.u, and 1.v were not incurred by Applicant. AG ¶ 20(e) is applicable to those debts. Applicant disputed the debts in SOR ¶¶ 1.c, 1.q, and 1.r. These debts were not listed on the most recent credit report. AG ¶ 20(e) is also applicable to those debts.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying, including 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." Applicant omitted information from her Questionnaire for National Security Positions; however, it was not a deliberate omission. No Personal Conduct disqualifying condition is raised by the evidence.

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 common sense 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 has had financial problems for many years. Her tax problems go back at least to 1996. Her husband passed away in 2001, leaving her with many debts. She paid for his costly funeral by withdrawing money from her retirement account. She has incurred many medical debts from her cancer and other illnesses. While sincere, Applicant never gave me reason to have any confidence that she is in control of her finances. She does not seem to know exactly who she owes. The likelihood of continuation or recurrence of her financial problems remains high.

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
Subparagraphs 1.c-1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p-1.y:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 1.a-1b:	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.

Edward W. Loughran
Administrative Judge