



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-02279
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

December 4, 2014

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on March 22, 2013. On July 11, 2014, the Department of Defense (DOD) 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 adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on July 21, 2014. She answered the SOR in writing (Answer) soon thereafter, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on September 15, 2014. Applicant did not respond to the FORM. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in Paragraphs 1.a., 1.b., 1.c. and 1.e. of the SOR, with explanations. She denied the factual allegations in Paragraph 1.d. of the SOR.

Guideline F - Financial Considerations

Applicant is a 44 year old divorcee, who, in her Answer, attributes her current financial difficulties to a September 2009 divorce and to a May 2012 “accident.” (Item 3, and Item 4 at pages 5 and 19.)

1.e. In January of 2011, Applicant filed for the protection of a Chapter 7 bankruptcy. (Item 7.) As a result of this filing, in May of 2011, more than \$168,000 in liabilities were discharged. (*Id.*)

1.a. Applicant admits that she is indebted to Creditor A, on two medical accounts, in an amount totaling about \$18,050. In her Answer, Applicant attributes these past-due debts to her 2012 accident, and avers she is “making payments.” However, as Applicant has submitted nothing in support of her averments, I find that these debts are still past due.

1.b. Applicant admits that she is indebted to Creditor B, on four accounts, in an amount totaling about \$2,833. In her Answer, Applicant again attributes these past-due debts to her 2012 accident, and avers she is “making payments.” However, as Applicant has submitted nothing in support of her averments, I find that these debts are still past due.

1.c. Applicant admits that she is indebted to Creditor C, on five medical accounts, in an amount totaling about \$2,115. In her Answer, Applicant attributes these past-due debts to her 2012 accident, and avers she is “making payments.” However, as Applicant has submitted nothing in support of her averments, I find that these debts are still past due.

1.d. Applicant denies that she is indebted to Creditor D in an amount of about \$204. In her Answer, Applicant avers she is “current” with this creditor. As this debt does not appear on the Government’s most recent June 2014 credit report, I find that this debt is not past due. (See Item 5.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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. (AG Paragraph 2.) The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense 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 the 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 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 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 Subparagraph 19(a), an *"inability or unwillingness to satisfy debts"* is potentially disqualifying. Similarly under Subparagraph 19(c), *"a history of not meeting financial obligations"* may raise security concerns. Applicant has significant past-due debts, which she has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant may attribute her past-due debts to her 2009 divorce and to her 2012 accident, she has failed to provide anything showing she has acted *"responsibly under the circumstances,"* as required by Subparagraph 20(b). Furthermore, Subparagraph 20(d) requires that *"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."* Applicant availed herself of the protection of a bankruptcy in 2011, but has now failed to address debts totaling about \$23,000. Accordingly, Applicant has not met her burden of persuasion. Once she does address these debts, she may again apply for a security clearance.

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. Under AG Paragraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Applicant has submitted nothing since her simple Answer, and the record evidence leaves me with questions and doubts as to her eligibility and suitability for a security clearance. Applicant has about \$23,000 in past-due indebtedness that she has yet to address. For these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept 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.	For 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge