



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



In the matter of:)	
)	
)	
SSN:)	ISCR Case No. 07-03504
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

March 24, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA), on December February 28, 2006. On July 11, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her notarized answer to the SOR on August 24, 2007. She elected to have her case decided administratively without a hearing. A copy of the government's File of Relevant Material (FORM, the government's evidence in support of the SOR) was sent to Applicant on September 17, 2007. Applicant received the FORM on January 8, 2008. Applicant's response was due by February 8, 2008. No response was received at DOHA. The case was assigned to this administrative judge on March 4,

2008. Based upon a review of the FORM, Applicant's eligibility for access to classified information is denied.

Findings of Fact

There are ten debt allegations under the financial considerations guideline. Applicant admitted all alleged debts,¹ and attributed the delinquent debts to her former husband who reneged on his promise to pay them off. She advised she was now in a position to address the debts, and desired to consolidate them.

Applicant is 30 years old and has been employed by a defense contractor as a stewart assistant since February 2008. She seeks her first security clearance.

The 10 debts (two gas and eight general credit cards) listed in the SOR total \$11,328.00. The debts in SOR 1.a. through 1.f. became delinquent between 2000 and November 2002. The more recent debts fell delinquent between 2003 and 2006. In her security clearance application (SCA, GX 4), she indicated she was delinquent to the SOR 1.c. and the 1.j. creditors, and was making payments. No additional information was provided.

The only source of explanatory information for her financial delinquencies besides the supplemental statement to her answer, is the information Applicant provided May 17, 2007 in her answers to interrogatories. (GX 5) She stated in response to question 3 of GX 5:

Although the debt is in my name, it was accrued during my first marriage and should be equally shared. I've tried unsuccessfully to resolve this matter with my ex[-]husband. During our divorce my husband decided he was not going to help pay our debt any longer. This resulted in late payments and eventually no payments because I did not have the means to handle it alone. I am saving money currently to pay my debt, in hopes the credit card companies might drop the late fees, etc, if I am able to hand them the majority of the cash in one lump sum. Working for [employer] has been the light at the end of the "debtors" tunnel and I hope my employment with them will not be affected by this issue. Thank you.

No additional information was provided about Applicant's negotiations to pay the creditors or consolidate her debt. Furthermore, Applicant has provided no information about her job performance.

¹ Next to each debt in the SOR, Applicant indicated in writing that she admitted owing the debt. She also wrote additional information about the debt. For example, under SOR 1.i., Applicant wrote updated information that the debt had been sold to a collection agency. Whether this information was obtained through her research in an effort to identify and pay the debt, or through the mail in the ordinary course of business events to notify the debtor of the present status of the debt is unknown.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the general policy factors of 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 security clearance decision.

The protection of the national interest is the paramount consideration. AG ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility. The Government places a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include 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.

Financial Considerations (FC)

Inability to pay bills on time places the individual debtor at risk of committing illegal acts to generate funds.

Analysis

The SOR lists 10 past due debts totaling \$11,328.00. Four of the debts have been delinquent since 2000. Though Applicant contends she made payments to at least two of the creditors, it is her responsibility to support her contention, and she failed to do so. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*), and FC DC 19.c. (*a history of not meeting financial obligations*) apply.

The FC guideline contains four mitigating conditions (MC) that may allay the security concerns caused by a person's indebtedness. FC mitigating condition (MC) 20.a. (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that is unlikely to recur and does not cast doubt on the individual's currently reliability, trustworthiness or good judgment*) may overcome dated financial issues that occurred under peculiar circumstances which are unlikely to recur. Though five of the listed debts are more than five years old, the remaining debts are delinquent by five years or less. FC MC 32.a. does not apply.

FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control, and the individual acted responsibly under the circumstances*) has limited application to this case because of Applicant's marital troubles. Her marital discord does not receive greater weight because it lacks detail. Was her husband's agreement (to pay the delinquent debt) an unofficial understanding that the two parties made after they separated, or was this agreement actually a condition in the divorce? Without more information about the surrounding circumstances of his decision to pay the delinquent debts, it is difficult to conclude whether she acted reasonably after he stopped paying the past due debt. She claimed she made payments on the debts, but provided no documents to verify this claim.

FC MC 20.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*) does not apply as there is no evidence of counseling or evidence to demonstrate the financial problems are under control.

FC MC 20.d. (*the individual initiated a good-faith effort to repay creditors or otherwise resolve debts*) does not apply either. Applicant's statements of intention to save money so she could negotiate with her creditors and/or enroll in a debt consolidation plan have little probative weight because she has presented no documented proof of her intentions. Applicant's improved financial position has no probative value unless coupled with corroborated action to pay off her overdue debts.

Whole Person Concept

As explained on page 18 of Enclosure 2 of Directive 5220.6, the decision whether to grant or deny a security clearance depends on a common sense assessment of the FC guideline evaluated in the context of the whole person. I have carefully evaluated the FC guideline in the context of the general factors of the whole

person. Applicant's history of financial problems began in 2000 when she was 22 years old, and her first credit card bill became delinquent. In the next eight years, Applicant accumulated nine additional delinquent accounts. Her claims of continuing to pay several of the creditors after her separation and divorce from her spouse suffer from an absence of proof demonstrating continued payments or any other action to resolve her indebtedness. Without evidence indicating changes made in the way Applicant manages her past due debt and overall financial practices, it is likely Applicant's financial problems are likely to continue. The amount of delinquent debt and the lack of documentation to resolve the debts substantiates a finding against Applicant under SOR 1.a. through 1.j. Accordingly, the FC guideline is resolved against Applicant.

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 (Financial Considerations, 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
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	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.

Paul J. Mason
Administrative Judge