



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



In the matter of:)
)
-----) ISCR Case No. 07-04383
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: James E. Watson, Personal Representative

January 28, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on April 6, 2006. On July 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 acknowledged receipt of the SOR on December 20, 2007. She answered the SOR in writing through counsel on September 12, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on September 13, 2007. Department Counsel was prepared to proceed on September 21, 2007, and I received the case assignment on October 17, 2007, after another judge had been assigned the case on September 24, 2007. DOHA issued a notice of hearing on November 7, 2007, and I convened the hearing as scheduled on November 28, 2007.

The government offered Exhibits (Exh.) 1 through 3, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through C without objection. DOHA received the transcript of the hearing (Tr.) on December 6, 2007. I granted Applicant's request to keep the record open until January 2, 2008, to submit additional matters. No additional material was filed and Applicant failed to return calls from Department Counsel who called to inquire if anything was to be sent. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations in of the SOR, with explanations.

Applicant is 48 years old and has been an employee of a defense contractor since 1994. She has held a security clearance since 2006. She incurred debts to eight creditors that became delinquent for a total amount of over \$17,000. These are alleged in the SOR and she confirmed them in her interrogatory (Exh. 3) and her answer to the SOR.

The circumstances that led to her financial problems began with her divorce in 2002, and was compounded by a labor dispute in 2006 which resulted in no employment for seven months. She has considered using a credit counselor but has not done so (Tr. 43).

Applicant's delinquent debts are for a variety of credit cards two of which are to department stores. One for over \$8,000 has been the subject of a garnishment on her salary since 2007. It is the only debt that is being paid. She did not report the delinquent debts at Question 28 on her SF 86 because she wanted to resolve the debts through re-financing her home to avoid reporting them to the government (Answer and Tr. 32).

Applicant was unable to obtain refinancing at the time of the hearing although she provided documents showing that she was attempting to do so. Her home has a value of \$140,000 and the remaining balance on the mortgage is \$6,000. She was working through a bank and mortgage consultant (Exh. A) to obtain \$75,000 through the re-financing. Several of the creditors had agreed to settle for less than the debt if payment was made by November 30, 2007 (Exhs. A and B).

Applicant did not supply any additional information about the refinancing during the period of time the record was left open for her to do so. She did not return telephone calls from the Department Counsel for two weeks thereafter in an effort to ascertain if any action had been taken. Thus, there is no evidence that the refinancing occurred or that any debts have been paid.

Applicant has a 15-year-old son for whom she is saving for his college education. She receives \$233 per month in child support. She earns over \$2,000 per month with

overtime working at an hourly rate of \$20. Her mortgage payments are over \$500 per month but if she re-finances they will rise to over \$600. After deductions and mortgage payments, she has approximately \$600 left at the end of the month (Tr. 35-38). She has contributed to a 401k account through her employer and has approximately \$14,000 in the account.

Applicant has a good reputation with her employer and has received several awards for her work. Her supervisor speaks highly of her work ethic and abilities. She is active in her church and her priest speaks highly of her (Exh. C 1-6).

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 ¶ 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 ¶ 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(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. Applicant accumulated some delinquent debt and was unable to pay some obligations for a period of time. 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. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant's financial difficulties have been extant for over five years and she acknowledges that little if anything has been done to resolve them (Tr. 50).

Under AG ¶ 20(b), the concerns may be mitigated where “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.” As noted above, some of the financial problems arose from divorce and a period of unemployment, but I cannot conclude that the concerns are mitigated. The lack of effective action by Applicant in the sequence of events since the debts were incurred,

became delinquent, the SF 86 was filed, and the hearing occurred are strong indicators of lack of appropriate action to resolve the security concerns.

Guideline E Personal Conduct

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

Such conduct might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations can raise questions about and an individual's reliability, trustworthiness and ability to protect classified information (AG ¶ 15).

Conditions that could raise a security concern and be disqualifying include the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire (AG ¶ 16 a). Applicant's failure to report delinquent debts at Question 28 of her SF 86, prompted security concerns under Guideline E (Personal Conduct). There are mitigating conditions (MC) for this security concern, but none of them are relevant to the facts of the case.

Applicant acknowledged at several stages of this matter that she knew of the delinquent debts and deliberately failed to report them on her SF 86 in the hope that she could resolve the issues before the government discovered them. While she may have had the intent to do so, she has never taken any action but preliminary steps to resolve the financial problems even though she apparently had the financial means to make some substantial progress to resolve them.

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, 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 commonsense 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. While Applicant has a solid record over 12 years of employment with her company, and is a worthwhile member of her community, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. While the debts may have, at least in some measure, been caused by events outside her control, her lack of substantial action to resolve the problems over several years does not indicate responsible conduct. The issue is further aggravated by her failure to report the delinquent debts on her SF 86 for no other reason that she wanted to get the debts resolved before the government learned of them. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial considerations and personal conduct security concerns.

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
Subparagraph 1.f.: Against Applicant
Subparagraph 1.g.: Against Applicant
Subparagraph 1.h.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: 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.

CHARLES D. ABLARD
Administrative Judge