



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-06852
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Department Counsel
For Applicant: *Pro Se*

June 11, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines E and F. 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 November 29, 2007, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on January 8, 2008. Applicant did not file a response to the FORM. The case was assigned to me on May 2, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 42 year old employee of a defense contractor.

Applicant is indebted in the approximate amount of \$4,740.00 to an individual as a result of a judgement entered against her in 2003.

Applicant is indebted to Capitol One Bank in the approximate amount of \$925.00 as a result of a judgment entered against her in 2001.

Applicant is indebted to Pallino in the approximate amount of \$862.00. This debt was placed for collection with RPM in 2007.

Applicant is indebted to Dominion Virginia Power in the approximate amount of \$1,038.00. This debt has been assigned to NCO-MARLIN for collection.

Applicant is indebted to Sprint in the approximate amount of \$391.00. This debt was referred to AFNI-BLOOM for collection in or before 2004.

Applicant has a history of bad debts and judgments against her going back to the early 1990s when she and her husband divorced. She has struggled since then while raising her two children without child support from the husband. Her financial difficulties were compounded by several periods of unemployment.

Applicant completed an electronic questionnaire for national security positions (EQNSP) in July 2006. In response to three questions on the EQNSP, applicant intentionally provided false, material information. Specifically, in response to Question 28A, she denied that in the prior seven years she had been over 180 days delinquent on any debt; in response to Question 28B, she denied she was then over 90 days delinquent on any debts; and in response to Question 29, she denied that in the prior seven years she had any judgments against her that had not been paid. As documented above, applicant was well over 180 days delinquent on numerous debts, including two judgment debts from 2001 and 2003, when she completed the EQNSP. During a December 2006 interview with an OPM investigator, applicant stated she didn't list her debts on the EQNSP because she feared "repercussions from her job supervisor and/or security officer." In her response to the SOR, she stated she didn't list the debts or judgments because (1) she was rushing to complete the EQNSP and was concentrating on her job history, (2) because of her 2001 interview with an investigator, she knew the Government was aware of her debts, and (3) she thought she had put down on the EQNSP that she "would discuss [her debts] with interviewer."¹ This was not the first time applicant falsified material facts on a DoD security questionnaire. On an April 1999 security clearance application (SCA), she denied having any financial problems when, in fact, she had numerous delinquent debts, including judgment debts, outstanding.

¹No such statement was on the EQNSP.

Policies

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph 19.c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant has a long history of an inability or unwillingness to pay her debts. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply 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 failure to honor her financial obligations is both recent and frequent. This fact, and the fact the evidence does not support a finding that her financial difficulties are likely to be resolved anytime soon, precludes application of this mitigation condition.

Under Paragraph 20.b., it may be mitigating 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.” Applicant’s financial difficulties were arguably largely the result of factors beyond her control; namely, her divorce and numerous periods of unemployment. However, it is impossible to conclude she acted responsibly under the circumstances for at least two reasons. First, she has made no payments on any of her long-standing past-due debts even though she has been gainfully employed since 2003. Second, in 2006 she either purchased a new home or refinanced her then current home by taking out two new mortgages. These two mortgages total approximately \$350,000.00, and require applicant to make monthly payments totaling approximately \$2,500.00. According to a July 2007 financial statement completed by applicant, when these mortgage payments are factored in, she has a net monthly cash flow of less than \$60.00, and this \$60.00 figure assumes a monthly \$200.00 to \$400.00 contribution from her mother and no payments to her delinquent creditors. Under the circumstances, obtaining these two mortgages does not evince responsibility. This mitigating condition does not apply.

Evidence that “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” is potentially mitigating under Paragraph 20.c. This mitigation condition does not apply.

Paragraph 20.d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has made statements that she will begin making payments on her delinquent debts but has not provided any proof that she has actually done so. This mitigating condition does not apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is as follows:

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.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 16.a., the "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," may be disqualifying. This disqualifying condition is applicable because applicant intentionally provided false, material information on an EQNSP.

Paragraph 17 sets forth conditions that could mitigate security concerns. I considered each of them and conclude none apply.

"Whole Person" Analysis

Under the whole person concept, the AJ must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An AJ should 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) 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 Paragraph 2(c), the ultimate determination of whether to grant 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 is a mature woman who has a history of not meeting her financial obligations. In addition, she lied to the Government in July 2006 when she denied any delinquent debt. Applicant's inability or unwillingness to honor her financial obligations and to be truthful about them is serious

and recent. Her failure to offer credible evidence that her financial difficulties are unlikely to continue, and her incredible denial of an intent to deceive the Government about her financial condition when completing the EQNSP, preclude findings that her financial difficulties will not recur and she is unlikely to provide false information to the Government in the future. Based on the foregoing, I conclude applicant failed to mitigate the security concerns arising from Guidelines E and F.

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

Paragraph 2, Guideline 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.

JOSEPH TESTAN
Administrative Judge