



ISCR Case No. 07-07585

Appearances

January 18, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant has failed to rebut or mitigate the government's security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Applicant submitted her Security Clearance Application (SF 86), on April 18, 2006. On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. DOHA's action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 November 5, 2007. She answered the SOR in writing on November 9, 2007, and requested that her case be

determined on the record in lieu of a hearing. The government compiled its File of Relevant Material (FORM) on November 20, 2007. The FORM contained documents identified as Items 1 through 8. By letter dated November 27, 2007, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. On December 19, 2007, Applicant timely filed a response and one exhibit which I have identified as Applicant's Exhibit (Ex.) A. Department Counsel did not object to Applicant's Ex. A or her response to the FORM. On January 3, 2008, the case was assigned to me for a decision.

Findings of Fact

The SOR contains 23 allegations of disqualifying conduct under AG F, Financial Considerations. (SOR ¶¶ 1.a. through 1.w.) (Item 1.) In her Answer to the SOR, dated November 6, 2007, Applicant admitted the factual allegations in ¶¶ 1.a through 1.p, and 1.r through 1.w. of the SOR, explaining that she "plan[ned] to make the necessary payment arrangements to satisfy [each] debt." In her Answer, Applicant did not address ¶ 1.q., which alleged a \$565 debt to one of her creditors. Her failure to address allegation 1.q. in her answer to the SOR may have been inadvertent. The debt alleged at ¶ 1.q. is listed as unpaid on Applicant's credit report dated August 15, 2006. (Item 5.) Applicant submitted no credible evidence to establish that the debt had been paid or settled.

Appellant is 25 years old and a high school graduate. She is the mother of a seven-year-old child. (Item 4.) She was granted a security clearance in March 2003. In August 2003, she was fired from her job because of repeated tardiness. (Item 4.)

Applicant admits responsibility for eight debts in collection status which were unpaid as of August 22, 2007. These debts totaled approximately \$7,722. (SOR ¶¶ 1.a through 1.e; SOR ¶¶ 1.i., 1.j., and 1.k.) She also admitted responsibility for five charged-off debts totaling approximately \$12,021, which were also unpaid as of August 22, 2007. (SOR ¶¶ 1.f., 1.g., 1.h., 1.m., and 1.n.)

Applicant admitted seven debts totaling approximately \$1,780, which were unpaid as of August 15, 2006. (SOR ¶¶ 1.o., 1.p. 1.r., 1.s., 1.t., 1.u., and 1.v.) She also admitted a debt of \$806, which was 60 days past due and not paid as of August 22, 2007. (SOR ¶ 1.i.) Additionally, she admitted she was responsible for a judgment for \$838, which was not satisfied as of October 15, 2007. (SOR ¶ 1.w.) Many of Applicant's debts were incurred between 2004 and 2006. (Item 5.)

In her response to the FORM, Applicant stated she was working with a debt consolidation and counseling firm "to repair a few items on my credit report that would be cause for concern." Applicant's Ex. A listed four debts on a form provided by a debt consolidation and counseling firm, identified on the SOR at ¶¶ 1.a., 1.j., 1.k., and 1.m. and totaling \$13,012. Instructions on the form requested that Applicant provide missing account numbers for the creditors so that the firm could contact them. The form was

undated. (Ex. A.) She failed to provide evidence she has executed a consolidation plan or made payments to any of the four creditors she listed on the form.

Applicant also stated in her response to the FORM that she planned, at some unspecified future date, to set up payment plans with the remaining creditors. She stated that her debts came about “at a time of personal transition with single parenthood, childcare and child support concerns,” events that caused her to make unfortunate financial decisions. She did not specify how her parental and childcare responsibilities led to her financial delinquencies. (Applicant’s response to FORM at 1.) Applicant provided no evidence that she had received financial counseling.

Policies

When evaluating an Applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. 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, the guidelines take cognizance of the complexities of human behavior and are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s adjudicative goal is a fair, impartial and common sense decision. The adjudicative 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. See A G ¶ 2.(c).

The protection of the national security is the paramount consideration. A G ¶ 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 in 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 that 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 Adjudicative Guideline F, ¶ 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 ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated multiple debts and was unable to pay her financial 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. Several conditions could mitigate the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be resolved if it 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. (Guideline F, ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (Guideline F, ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence 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 (Guideline F, ¶ 20(c)) or the individual has initiated a good-faith effort to repay overdue creditors or

otherwise resolve debts. (Guideline F, ¶ 20(d).) Applicant provided a document to show she was consolidating her debts. However, she provided no evidence that the document had been received by the debt consolidation company or that she had made any payments to the four creditors listed on the document.

Applicant's acknowledged financial delinquencies are numerous, long-standing, and continue to the present day. All of her financial delinquencies remain unresolved, suggesting that the circumstances that caused these delinquencies are likely to continue in the future, thereby casting doubt on Applicant's current reliability, trustworthiness, and good judgment. Accordingly, ¶ 20(a) does not apply as a mitigating condition. Applicant attributes her financial delinquencies to assuming the responsibilities of single parenthood and child care. These facts do not of themselves establish that Applicant's unresolved financial delinquencies were largely beyond her control or that she acted reasonably under the circumstances. Nothing in the record suggests that, before she received the SOR, Applicant contacted her creditors to negotiate payment or settlement plans. Accordingly, I conclude ¶ 20(b) does not apply to the facts of Applicant's case.

Nothing in the record suggests Applicant has sought or participated in financial counseling and the evidence strongly shows her underlying financial problems are neither resolved nor under control. Accordingly, I conclude that ¶ 20(c) is inapplicable.

Applicant asserted she would pay most of her creditors at some unspecified date in the future. These assertions were not persuasive. Promises to take actions in the future are not a substitute for a documented track record of remedial actions. ISCR Case No. 98-0188 at 3 (App. Bd. April 29, 1999.) In determining an individual's security worthiness, the government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. BD. July 12, 1999). Accordingly, I find ¶ 20(d) does not apply in mitigation to this case.

Whole Person Concept

The revised adjudicative guidelines and the Directive require that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant is a mature adult who has a history of financial over-extension. Her history of not meeting her financial obligations and her inability to pay her debts over a

period of several years raises a security concern because it suggests a lack of good faith. She has promised to pay her delinquent debts in the future, but she has not specified when that will be. Since she has not made any payments on her debts and has not sought consumer credit counseling or assistance in learning how to manage her finances, Applicant has failed to demonstrate that her delinquencies will not continue to be security concerns in the future.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended. I conclude that Applicant failed to mitigate security concerns under Guideline F (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
Subparagraphs 1.a through 1.w:	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.

JOAN CATON ANTHONY
Administrative Judge