



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



In the matter of:)
)
-----) ISCR Case No. 07-08380
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O' Connell, Esquire, Department Counsel
For Applicant: Pro Se

February 12, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on January 16, 2006. On September 26, 2007, the Defense Office of Hearings and Appeals (DOHA) 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 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 October 22, 2007, and elected to have her case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on November 9, 2007. Applicant received a complete file of relevant material (FORM) on November 26, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the

Government's case.¹ Applicant did not submit additional information. The case was assigned to me on January 31, 2008. Based upon a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, dated October 22, 2007, Applicant admitted the factual allegations in ¶¶ 1.a-1.n, of the SOR.²

Applicant is a 37-year-old employee of a defense contractor who attends college classes. She is divorced with one child. She has worked for her current employer since January 2006.³

In October 1991 Applicant failed to pay her last month's rent on a one year lease.⁴ She admits this was "out of stupidity." Her landlord obtained a judgment against Applicant in November 1991.⁵ Applicant made no attempt to pay this amount until 1993 when it became an issue during a security clearance investigation.⁶

In 1997, Applicant fell behind on her payments for her Navy Exchange account. Her wages were garnished for approximately \$1,000 until the debt was satisfied.⁷

Applicant served in the U.S. Navy from 1993 until 2004.⁸ After leaving the military, Applicant could not find employment. Her marriage ended in divorce in 2004. Moreover, she was unemployed from October 2004 until January 2005 and again from August 2005 until September 2005. She collected unemployment for a few unspecified months. She worked in a day care center for a few months but then left the position.⁹

¹The Government submitted twelve items in support of its contentions.

²Item 4 (Applicant's answer to SOR, dated October 22, 2007).

³Item 6 (Security Clearance Questionnaire, dated January 16, 2006).

⁴Item 12 (Applicant's sworn statement, dated October 13, 1993).

⁵Item 11 (Garnishment Summons for Judgment, dated November 1991).

⁶*Id.*

⁷Item 10 (Security Clearance Application, dated February 22, 2000).

⁸*Id.*

⁹Item 5 (Letter from Applicant, dated January 18, 2006).

Applicant filed Chapter 7 bankruptcy in 2005.¹⁰ However, her bankruptcy petition was dismissed in 2006. The record does not provide any pertinent information concerning the bankruptcy. As a result of Hurricane Katrina, Applicant lost her job and was forced to relocate.

The SOR alleges 12 delinquent debts. The total amount of debt is approximately \$22,132.¹¹ Applicant acknowledges all the delinquent debts. She submitted paperwork showing that she has recently enrolled in a Debt Resolution Plan. The required monthly payments are \$357.90 beginning on November 15, 2007.¹² Applicant did not provide any evidence of payments on the debts under the debt resolution plan.

Applicant's monthly net income is \$3,193.67. Her total monthly expenses are \$2,796. Her net remainder is \$397.67.¹³

Applicant indicated in a letter in 2006 that she would contact a financial counselor but there is no evidence in the record to support this contention.¹⁴

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, 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

¹⁰*Id.*

¹¹Item 7 (Credit Bureau Report).

¹²Item 4 at 5-7.

¹³Item 4 (Personal Financial Statement, dated October 10, 2007).

¹⁴Item 5 (Letter from Applicant, dated January 2006).

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 delinquent debt and was unable to pay some obligations for a period of time. Her credit reports confirm that she has not paid the charged off collection accounts. She filed bankruptcy in 2005 but the petition was

dismissed in 2006. Currently, she has approximately \$22,130 in delinquent debt. 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 major financial worries arose in 2004. She accumulated some delinquent debt due to her unemployment and a divorce. While the unemployment may have precipitated the debt, the inquiry does not end at that point. The Applicant’s problems have been ongoing and she has not resolved the debts. Her inaction after being employed raise concerns about her current reliability, trustworthiness, or good judgment. This potentially mitigating condition does not apply.

Under AG ¶ 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.” As noted above, some of the financial problems arose from her divorce, unemployment and lower income. However, she did not act responsibly in identifying and resolving her delinquent debts. I find this potentially mitigating condition does not fully 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 AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not received counseling and has only recently (November 2007) entered into a debt resolution plan to resolve the delinquent debts, either by payment or settlement. She is now financially sound and has a steady income. I conclude these potentially mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows “the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” In this case, Applicant acknowledged the delinquent debts were hers. I conclude this potentially mitigating condition does not apply.

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 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 served in the U.S. Navy for a number of years. When she left the military, she had difficulty finding employment and her marriage dissolved in 2004. She had a son to provide for. Her unemployment and relocation due to Hurricane Katrina contributed to her financial problems. These circumstances beyond her control exacerbated her difficulties but this is not an isolated incident. She had a judgment against her in 1991 which she did not address until 1993 when her security clearance was on the line. And in 1997, her wages were garnished for debt owed to her Navy exchange account. She did file for bankruptcy in 2005. This is a legal way to resolve debt but the petition was dismissed in 2006. She did not enroll in a debt resolution plan until November 2007. Applicant did not provide any evidence to show that she acted responsibly in this situation because once she had stable employment she did not start paying her delinquent debt. This raises concerns about her good judgment. Of course, the issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. Applicant has not shown sufficient effort to resolve her delinquent debts. She has not met her burden of proof in this case to overcome the government's case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from 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-n:	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.

NOREEN A. LYNCH
Administrative Judge