



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-10167
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esquire
For Applicant: *Pro se*

June 24, 2008

Decision

CURRY, Marc E., Administrative Judge:

On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its denial of Applicant's request for a security clearance. Specifically, it alleged facts which raise concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. This 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 on March 3, 2008, and requested a hearing. I was assigned the case on April 29, 2008. On April 30, 2008, the hearing was scheduled for May 20, 2008. At the hearing, I received five government exhibits and Applicant's testimony. Applicant submitted no exhibits. The transcript (Tr.) was received on June 5,

2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to a classified information is denied.

Findings of Fact

Applicant is a 28-year old woman with one child, age three. She has been married twice. Her first marriage ended in divorce in 2003, and the second one ended in divorce in 2007.

Applicant has a high school diploma and a certificate in computer technology from a technical college (Tr. 16). She is working toward an associates degree in computer technology.

Since August 2006, Applicant has worked as a logistics engineer for a defense contractor. Her duties include inventory tracking and data entry (Tr. 16, 32).

Between 1999 and 2008, Applicant accrued approximately \$20,000 of delinquent debt. It consists of credit card accounts (SOR subparagraphs 1.a through 1.h, and 1.q), the deficiency remaining from a voluntary automobile repossession (SOR subparagraph 1.j) and medical bills (SOR subparagraphs 1.i, and 1.k through 1.p).

Applicant blames immaturity and irresponsibility for her financial problems. She was a teenager when she opened most of the accounts. She does not attribute her financial problems to her divorces, stating that "I feel as much responsible . . . [and] I never addressed it [the debt] during the divorce hearings" (Tr. 34).

The debt listed in SOR subparagraph 1.a stemmed from relocation expenses accrued by her first husband, a member of the military, between 1999 and 2001. He was reimbursed for the expenses, but never applied the money to the credit card. She used the other credit cards listed in the SOR to purchase clothing and miscellaneous items.

In 2002, Applicant consolidated her debt, through a credit repair company, and began making \$130 monthly payments (Exhibit 3 at 7). She abandoned the payment plan approximately six months later, because "none of the balances were going down" (Tr. 20). After the consolidation plan failed, she "gave up and accepted that [she] was going to have bad credit for seven years" (Tr. 12).

Applicant purchased the automobile listed in SOR subparagraph 1.j in 2001. She fell behind on payments approximately two years later (Tr. 22). Realizing she was unable to afford further car payments, she returned it to the dealer. She never received any correspondence stating she owed a deficiency balance (*Id.*).

Applicant's medical bills primarily covered her maternity care (Exhibit 3 at 6). Shortly after her daughter was born in 2004, she contested them asserting that they

were her insurer's responsibility (Tr. 13). The insurance company rejected her claim approximately a year later (Tr. 37).

Applicant did not list her repossession on her security clearance application as required. She did not consider it a repossession because she voluntarily returned it to the dealer.

Applicant also did not list her other delinquencies on the security clearance application, as required. She mistakenly thought that charged off debts did not need to be listed.

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 overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a 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. 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 an 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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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 (AG ¶ 18). Applicant’s history of financial problems triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” 19(b), “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt,” 19(c), “a history of not meeting financial obligations,” and 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

I have considered the mitigating conditions and conclude none apply. Her delinquencies remain unsatisfied. Although Applicant was divorced twice, she attributed her financial problems to her immaturity and irresponsibility, rather than to the divorces. She attempted to satisfy the debts through a consolidation plan about five years ago, but abandoned it after six months, and her dispute of the medical bills was rejected by the insurance carrier.

Applicant has no plans for satisfying the delinquencies. Rather, she will wait until they are removed from her credit reports. This approach does not demonstrate the reform and rehabilitation necessary to mitigate the security concerns generated by her history of delinquent debt.

Guideline E, Personal Conduct

Under this guideline, “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.” Applicant’s security clearance application omissions raise the issue of whether AG ¶ 16(a), “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,” applies.

Applicant has been candid about her inability to pay the debts and her intention to wait for them to be removed from her credit reports rather than satisfy them, throughout the investigative process. Also, she did not deflect blame to her ex-husbands, forthrightly blaming the problems on her immaturity and irresponsibility. Under these circumstances, I conclude her responses were based on honest misunderstandings of the questions. I conclude she did not falsify her security clearance application, and that there are no personal conduct security concerns.

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.

Applicant was a teenager when she opened the majority of her credit card accounts, and was ill-prepared to use them responsibly. Nevertheless, approximately six years have passed since she last attempted to satisfy them, and they remain outstanding. Upon considering the applicable disqualifying and mitigating conditions, together with the whole person factors, I conclude Applicant remains a security risk.

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 - 1.q:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.c:	For 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.

MARC E. CURRY
Administrative Judge