



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



In the matter of:)
)
) ISCR Case No. 07-11103
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro Se*

August 20, 2008

Decision

DAM, Shari, Administrative Judge:

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

On August 31, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct). 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.

On March 4, 2008, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On April 29, 2008, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items, and mailed Applicant a complete copy on May 7, 2008. Applicant received the FORM on May 16, 2008, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information. On July 22, 2008, DOHA assigned the case to me.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations under Guideline F, Guideline E, and Guideline J.

Applicant is 40 years old and separated from her husband. She has a 20-year old daughter. Since March 2005, she has worked as a Mess Attendant for a federal contractor. She worked as a cashier at a retail store from October until March 2005, and was unemployed from October 2001 to October 2004. Prior to being unemployed, she was a Runner for a private company for almost two years. From January 1997 to February 2000, she was unemployed. (Item 3).

In August 2006, Applicant filed an e-QIP. In response to Sections 27d., 28a., and 28b., concerning unpaid judgments, delinquent debts over 180 days in the last 7 years, and debts over 90 days delinquent, she responded "No," and failed to disclose a judgment and numerous delinquent debts. (Item 3).

During an interview in March 2007, in which she reviewed a credit bureau report, Applicant stated that some of the debts arose because her husband was incarcerated twice over a couple years for alcohol related crimes and was unemployed. She did not recognize some of the debts and ignored others because she does not have the money to pay them. Since her husband moved out of their home, his income is no longer available to pay bills. Her net monthly income is \$1,700 and her expenses total that and possibly more. (Item 9).

Applicant admitted that she deliberately supplied incorrect information on the e-QIP regarding her finances, because she wanted to obtain a security clearance so she could maintain her position. (Item 9).

Based on credit bureau reports (CBR) dated September 29, 2006, October 3, 2007, and January 11, 2008, Paragraph 1 of the SOR alleges 18 delinquent debts, including one judgment, totaling \$17,481, which began accruing in 2001. All of the debts remain unpaid or unresolved, except SOR ¶ 1.q for \$161.

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 commonsense 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. According to 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 and has the ultimate burden of persuasion to obtain 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 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.

Section 7 of Executive Order 10865 provides that decisions adverse to an applicant 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* Executive Order 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. Based on three CBRs and her statements, Applicant has been unable or unwilling to satisfy debts that began accruing in 2001. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. The guideline 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 delinquencies are numerous and have been ongoing since 2001. Hence, this 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." Applicant stated that her husband was incarcerated for periods of time, which reduced the family's income. She was also unemployed for long stretches of time. Both circumstances were beyond her control. However, there is no evidence in the record indicating that she responsibly managed her finances during those difficult periods, which is necessary for full application of this mitigating condition. Thus, AG ¶ 20(b) has limited application.

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). Applicant did not present any evidence that

she received credit counseling and/or that her financial problems are under control, as required under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” According to the record, only one small debt is paid, and all other debts remain unpaid or unresolved; hence, AG ¶ 20(d) does not apply. There is no evidence indicating that she disputed any of the debts, which is necessary to trigger the application of AG ¶ 20(e) that applies when “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.” The record does not support the application of AG ¶ 20(f) “the affluence resulted from a legal source of income.”

Guideline E, Personal Conduct

The security concern pertaining to the guideline for personal conduct is set out in AG ¶ 15:

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.

The Government alleged in ¶ 2.a of the SOR that Applicant falsified her answers to three questions on the e-QIP, because she failed to disclose specific delinquent debts and a judgment. The Government contended that those omissions may raise a security concern and be disqualifying under 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.

Applicant admitted the allegation and explained that she falsified her application because she wanted to obtain a security clearance in order to maintain her job. Based on the evidence, the Government established said disqualification. Applicant did not provide any evidence that would trigger the application of any mitigating conditions listed under AG ¶ 17.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the Government’s security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Department Counsel argues that Applicant's intentional falsification of her e-QIP constitutes a violation of federal law, specifically, Title 18, United States Code, Section 1001, and raises a disqualification under AG ¶ 31. Based on the finding under Guideline E that Applicant intentionally falsified the e-QIP, the Government established the disqualifying condition set forth in AG ¶ 31(c) "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted." None of the criminal conduct mitigating conditions listed under AG ¶ 31 is applicable because Applicant failed to sufficiently address or provide mitigating evidence that would warrant the application of any of the five conditions.

"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). They include the following:

- (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) the 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.

According to 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. Applicant is 40 years old. She has a history of being unable to meet her bills. Her husband's legal and alcohol issues apparently have contributed to those problems. At this time, she did not produce any evidence that she has attempted to manage her finances. Without proof that she has established a plan to resolve her outstanding delinquent debts and a budget to manage her finances, similar problems are likely to occur in the future. Although she forthrightly admitted that she did not disclose her financial delinquencies to the Government because she feared she would lose her employment, there is insufficient information in the record to mitigate the personal conduct concern at this time.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial issues, personal conduct, and criminal conduct.

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.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r and 1.s:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge