



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-11316
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

May 29, 2008

Decision

CURRY, Marc E., Administrative Judge:

On October 22, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its denial of Applicant's security clearance. Specifically, it alleged facts which raise concerns under Guideline 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 on November 28, 2007, and requested an administrative determination. On March 19, 2008, the government prepared a File of Relevant Materials (FORM). Applicant replied on April 22, 2008, and the case was assigned to me on May 2, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer, Applicant admitted all of the SOR allegations except subparagraphs 1.a, 1.b, 1.j, 1.n, and 1.p through 1.q. I make the following additional findings of fact.

Applicant is a 34-year-old woman with five children. She is estranged from her husband, who is currently incarcerated. They are seeking a divorce. She has custody of three of her children. It is unclear from the record who has custody of the other children. She works as a receptionist for a defense contractor. The record contains no evidence of her highest level of education.

Applicant has approximately \$15,000 of delinquent debt. She owes approximately \$10,000 of this delinquency to an automobile creditor (SOR subparagraph 1.r), and approximately \$1,000 consists of several medical accounts (SOR subparagraphs 1.f through 1.l). All of these debts were accumulated while Applicant was living with her husband. He is not assisting with debt repayment (Reply).

The SOR alleges approximately \$7,000 of delinquent child support payments (SOR subparagraphs 1.a and 1.n). Applicant denied these debts and provided evidence that they were current. She provided no evidence supporting her contention that the other contested delinquencies, as noted above, were either satisfied, in the process of being satisfied, or were not her responsibility.

Applicant contends that she is in the process of satisfying the admitted SOR delinquencies. She provided no supporting documentation. Also, she presented no documentation of any financial counseling or other efforts to repair her finances.

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.

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

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). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*).

Applicant successfully contested SOR subparagraphs 1.a and 1.n. I resolve these in her favor.

The remaining debts listed in the SOR continue to be delinquent. AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 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,” apply.

Applicant’s delinquencies were accrued during her marriage, and her estranged husband, currently incarcerated, has not assisted her in satisfying them. She has not, however, provided any evidence that she has taken any steps to either resolve the delinquencies or seek professional counseling. Consequently, although her financial troubles were caused by circumstances beyond her control, she has not established that she has acted responsibly under the circumstances. AG ¶ 20(a), “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,” does not apply.

Applicant’s failure to demonstrate efforts at rehabilitation also renders the remaining mitigating conditions inapplicable. She has not mitigated the financial considerations security concern.

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.

With five children to support, and an estranged, incarcerated husband who provides no help, Applicant is facing an extraordinarily difficult situation. She has not, however, demonstrated any evidence of efforts to improve her situation. Although her contention that she cannot currently afford to make progress on her debts is understandable, she failed to demonstrate efforts at exploring alternative avenues of mitigation including financial counseling, and assistance with budgeting. Absent evidence of payment or efforts at organizing her finances, I cannot conclude that the financial considerations security concern has been mitigated.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once and a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended, but should she be afforded an opportunity to reapply in the future, having developed a payment plan, sought counseling, and begun paying delinquent obligations, she may well demonstrate persuasive evidence of her security clearance worthiness. However, a clearance at this time is not warranted. Having evaluated the whole person factors in the analysis set forth in the Financial Considerations section above, I conclude that it is not clearly consistent with the national interest to grant Applicant access to classified information. Clearance is denied.

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:	For Applicant
Subparagraphs 1.b - 1.m:	Against Applicant
Subparagraphs 1.n:	For Applicant
Subparagraphs 1.o - 1.r:	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.

MARC E. CURRY
Administrative Judge