



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-12655
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

May 21, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on September 27, 2006. On February 15, 2008, 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 requested a hearing before an Administrative Judge. I received the case assignment on April 8, 2008. DOHA issued a notice of hearing on April 16, 2008, and I convened the hearing as scheduled on May 6, 2008. The government offered Exhibits (GE) 1 through 6 which were received without objection. Applicant testified on her own behalf and presented the testimony of one witness. She also submitted Exhibits (AE) A through G. Department Counsel had no objection to the exhibits. DOHA received

the transcript of the hearing (Tr) on May 15, 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 to the SOR, dated March 25, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, and 1.d of the SOR. She denied 1.e-1.g. Applicant provided additional information to support her request for eligibility for a security clearance.

Applicant is a 30-year-old employee of a defense contractor. Applicant graduated from high school in 1996. She attended classes and received multiple training certificates beginning in 1997 (AE B). She completed a number of courses in human resource management and supervision in 2007 and 2008. Applicant has been employed in her current position since May 25, 2005. She is in a leadership program. She has taken many courses and attained certification in various areas to improve her opportunities at work. She received promotions (Tr. 62).

Applicant is single and has no children. (GE 1). She served in the U.S. Army from 1996 until 2000. She received an honorable discharge (GE 2). She held a security clearance while in the military (AE C) and in her position in 2002 (AE A).

After Applicant left the military she worked for a communications company. She was laid off in October 2001 (Tr. 49). She remained unemployed until 2002 (Tr. 49). Applicant also served four years on inactive reserves and was honorably discharged in 2004 (Tr. 50).

Applicant completed truck driver training in 2002. At the hearing, she explained that she paid on the training loan until 2003. She claimed that she stopped paying because she received a phone call from an anonymous source who told her that the company had fraudulent practices (Tr. 55). Applicant later admitted that she was making a good salary after the truck driver training. She further explained that she was young and not responsible. When she was on the road she chose to ignore the bills and did not pay. It was not because she did not have the money or that she was told not to pay it (Tr. 67). She now believes that she cannot afford to pay it and refuses to pay it now because the account is closed (Tr. 67).

SOR ¶ 1.a is a collection debt for \$10,034. This is the amount that she owed to the truck driving school for training and room and board. As stated above, Applicant has no intention of paying this debt (Tr. 67).

SOR ¶ 1.b is a collection account for \$1,078. This debt originated with a cell phone plan. When Applicant received the bill she told them that she would not pay it because it was not the plan that she requested (Tr. 55). She explained that this debt was from the time period that she was in the Army (1999-2000).

SOR ¶ 1.c is a credit card debt that is charged off in the amount of \$4,105. Applicant used the credit card to pay for her daily personal and business expenses when she was employed with a communications company in 2002. She admitted owing the money but when she learned that the account was in collection status she decided not to pay it. She acknowledged at the hearing that she was irresponsible (Tr. 74). She will not consider paying it now.

SOR ¶ 1.d is a judgment filed against Applicant in 2005 for unpaid rent in the amount of \$436. Applicant explained that she did pay the rent in cash but the owner claimed that she had not paid the rent (Tr. 76). Applicant had no receipts to prove that she had already paid for the rent. Applicant satisfied the judgment recently (March 2008) and presented documentation (AE D). She paid the judgment because she wants to buy a home and needs a mortgage. This will improve her credit status so that she can more easily obtain a loan (Tr. 76).

SOR ¶ 1.e is a collection account for another cell phone bill in the amount of \$40. She does not know why that account is listed as a debt. She maintains that she still has service with that company and that if she owed that amount they would not continue her service or would send another bill.

SOR ¶ 1.f is for an account that is charged off in the amount of \$1,100. Applicant claimed that she had no knowledge of the account (Tr. 81). However, later in the hearing she stated that it might be an account that she had while in the military. She continued that if that was the case, she paid it (Tr. 82).

SOR ¶ 1.g is repetitious with SOR ¶¶ 1.a to 1.d.

At the hearing, Applicant stressed that if she does not obtain a security clearance because she may be demoted or laid off from her current position. She enjoys her work and wants to advance in her job. She needs the security clearance in order to do that (Tr. 60). She believes she is entitled to the clearance based on her previous clearance status and the fact that she is trying to improve her work situation.

However, Applicant was firm in her resolve to only pay current debts. She will not "look back." She believes it is "old stuff" and she will not pay the delinquent or charged off collection accounts listed in the SOR.

Applicant's current monthly net income is approximately \$1,608. After monthly deductions and expenses, she has a net remainder of approximately \$348 a month (GE 5). She has not had any financial counseling and believes that she does not need any. She now pays her bills as soon as they are due.

Applicant's partner with whom she lives, stated that Applicant is very honest and has high morals. The partner testified that Applicant is a hard worker. They share expenses for the home (Tr. 99).

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 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^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant has delinquent debts that total about \$16,000. She also had a judgment from 2005 in the amount of \$436 until very recently. She admitted that she has not paid the debts. 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.^o Applicant's financial problems were a result of some irresponsible behavior. She is now earning a steady, full time income. She is firm in her decision not to pay the debts because they are old debts. 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.^o As noted above, Applicant admitted that she was young and not responsible. She stopped paying on one of the accounts in 2003. She has no intention of paying anything now. She was unemployed for a period of time but did not explain how that impacted her ability to pay at least a portion of the debts. When re-employed, Applicant did not pay the debts. This mitigating condition does not 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^o 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. She does not see the need and is clear in her resolve not to pay the delinquent debts. She has not shown good faith with her creditors. She was candid about why she just paid the 2005 judgment for \$436. She wanted to obtain a mortgage and needed to pay the judgment to get a loan. 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.” This condition does not apply because she did not provide any documented proof.

I conclude for Applicant with respect to SOR allegation 1.g because it is redundant with the allegations 1. a to 1.d.

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 is a hardworking person. She has taken many courses to improve her opportunity to succeed at her work. She is current with her bills. However, she does not take responsibility for the debts that she incurred in the past. She prefers to have the accounts closed and is waiting for them to drop off her credit report. She paid the 2005 judgment because she wants to obtain a mortgage. She is clear in her resolve that she will not pay the other debts. She has not shown good faith with her creditors. She had a clearance for a period of time and believes that she is entitled to one now. Applicant 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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.

NOREEN A. LYNCH
Administrative Judge