



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-12706
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

April 30, 2008

Decision

CURRY, Marc E., Administrative Judge:

On, December 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial conditions. 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 January 4, 2008, denied all of the allegations except 1.a, and 1.u, and requested an administrative determination. On February 27, 2008, department counsel prepared a File of Relevant Material (FORM). Applicant submitted a reply on March 8, 2008. On April 23, 2008, the case was assigned to me. I have reviewed the FORM and Applicant's reply, and have concluded that it is clearly consistent with the national interest to grant her access to classified information.

Findings of Fact

Applicant is a 49-year-old single woman with two adult children. She has a bachelor's degree in business administration. On her security clearance application, she used an acronym to describe her position title, but did not elaborate. There is no additional record evidence describing her job.

Applicant and her husband divorced in 2002. Before the divorce, she was dependent on both her and her husband's income to make ends meet. Afterwards, she began to struggle.

Approximately a year after Applicant's divorce, her mother suffered a series of major medical problems that rendered her an invalid (Reply at 1). She received part-time professional home nursing care through a combination of retirement savings and government benefits. Within a year of being disabled, Applicant's mother's savings were depleted. Applicant then had to bear some of the costs of supporting her.

Applicant's debts fell further behind. She consulted a credit counseling agency who consolidated four of her debts, and arranged a payment plan (Reply at 2). Within three months of arranging the payment plan, Applicant experienced a 50 per cent salary decrease after her employer cut her work hours. The work slowdown lasted six months. Subsequently, Applicant was unable to execute the payment plan.

By June 2007, Applicant had accrued approximately \$26,000 of delinquent debt (Items 6-7, 9-11). In September 2007, she filed for Chapter 7 bankruptcy protection. All of the debts alleged in SOR subparagraphs 1.b through 1.r were included in the bankruptcy petition (See Bankruptcy Petition, Schedule F as included in Item 6) The bankruptcy court discharged the debts in December 2007.

Applicant owns a car, and has recently satisfied the car note. Also, her mother is now in a nursing home, and Applicant no longer has to support her financially (Reply at 2). This "has freed up around 500 dollars of [Applicant's] money each month" (*Id.*).

The SOR alleges three delinquencies totalling approximately \$38,000 that were not included in the bankruptcy discharge (subparagraphs 1.s through 1.u). SOR subparagraph 1.s is a home loan rather than a car loan as alleged (Letter from Bank, dated December 29, 2007, as included in Item 4 at 8). Applicant jointly owned the property with her then-husband. As part of their divorce decree, the husband assumed responsibility for the mortgage, and the court "set [it] over to [him] as his sole and separate property" (Divorce Decree, dated July 22, 2002, as included in Item 4 at 10).

SOR subparagraph 1.t alleges a delinquent car loan. It was satisfied in May 2006 (Letter from creditor faxed to Applicant December 31, 2007, as listed in Item 4 at 5).

SOR subparagraph 1.u alleges delinquent student loan payments. According to the student loan creditor, Applicant is current, and her loans “have never been in delinquent or default status” (Letter dated December 31, 2007, as listed in Item 4 at 6).

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, they are applied together with the factors listed in the adjudicative process. 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. 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.

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.*).

SOR subparagraphs 1.s through 1.t were either resolved, or were not Applicant’s responsibility. They do not represent a security concern. Conversely, Applicant acknowledges that she accrued the remaining debts listed in the SOR. 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.

Within two years, Applicant experienced a divorce, a family medical crisis, and a major pay cut. As each successive misfortune occurred, she grew further in debt. She tried to get her finances under control by organizing a payment plan, but was unable to adhere to it because of these various hardships. AG ¶ 20(b), “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,” applies.

Applicant’s delinquencies were discharged in a bankruptcy proceeding in December 2007. Her mother is now in a nursing home, and is no longer a financial burden for Applicant. She has \$500 of additional income remaining each month. AG ¶ 20(c), “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,” applies.

Referencing DOHA caselaw, department counsel argues that the granting of a Chapter 7 discharge does not automatically trigger the application of AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Further, he characterizes her bankruptcy filing as an “eleventh hour effort” to resolve her financial problems (FORM at 7).

Department counsel’s recitation of DOHA caselaw is correct. However, I reject his characterization of Applicant’s effort to resolve her financial problems. Applicant’s financial problems were caused by an extraordinary series of misfortunes, and her failure to satisfy them stemmed from inability rather than procrastination. Also, before filing for bankruptcy protection, she sought credit counseling and arranged a payment plan, but it failed after she experienced another personal setback when her employer halved her wages. Under these circumstances, I conclude her efforts to resolve her delinquencies were in good faith, and that AG ¶ 20(d) applies.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant’s eligibility to occupy a sensitive position 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 are as follows:

- (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 must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant's delinquent financial debt was not caused by extravagant spending. Instead, it was caused by an extraordinary series of major personal misfortunes that occurred within a short period of time. She has resolved her delinquencies through the Chapter 7 bankruptcy process, and her monthly disposable income has increased by \$500. Upon considering the disqualifying and mitigating conditions in the context of the whole person concept, I conclude Applicant has mitigated the financial consideration security concern. Clearance is granted.

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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a - 1.u: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge