



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-13235
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. Delaney, Esquire, Department Counsel
For Applicant: *Pro se*

June 30, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA), on June 29, 2006. On January 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted her answer to the SOR on January 31, 2008, and requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on March 6, 2008. Applicant received the FORM on

March 11, 2008. Her response was due April 10, 2008. No response was received. The case file was assigned to me on May 27, 2008.

Findings of Fact

The SOR contains three allegations under the financial considerations guideline. Applicant admitted SOR 1.a. and 1.c. but denied SOR 1.b. In the explanatory portion of her answer, she pointed out the financial problems occurred more than five years ago, and, since then, she has been working at a full-time and part-time job to avoid the same problems from recurring. Also, in that period of time, she has purchased two automobiles, and opened two credit card accounts. In the last paragraph of her answer, she stated, "While I am not requesting to have a hearing, it is my hope that a favorable decision will be made based on my efforts to remedy past mistakes and my current status."

Item 1 reflects Applicant is 33 years old and single. She has been employed as a senior contract administrator by a defense contractor since December 2005. She also has been employed as a bartender since April 2005. She seeks a secret security clearance.

Financial Considerations

The SOR lists the same car credit judgment twice under SOR 1.a. and SOR 1.b. My finding that these entries refer to the same car judgment is based on the credit bureau reports that display very similar information about when the account was opened, and when the judgment was filed.¹ The car account was opened in March 1999, and fell delinquent in February 2001. A judgment was filed against Applicant in February 2002. (Item 8) The collection account \$445.00 referred to in SOR 1.c. is a tire account Applicant opened in March 2003, and became delinquent in October 2003. (Item 8)

During the security investigation, Applicant has provided different positions about the past due debts. In her SCA (Item 5), she admitted the debts listed in the SOR. Yet, in November 2007 (Item 6, answers to interrogatories), Applicant was presented with the same list of creditors (the SOR creditors are included in that list). She denied the car credit account belonged to her. She also disputed the SOR 1.c. debt, noting the account was charged off and closed. In her answer to the SOR, she concedes that the debts are hers, but refers to a five-year period in which she has supposedly rehabilitated her credit. She provided no evidence of having contacted either creditor or of explaining how she intends to make either creditor whole. I find Applicant does not intend to repay the overdue debt.

Applicant has not presented any evidence regarding her job performance or her life away from the job. There is also no evidence concerning her financial practices

¹ I am unable to provide a reliable or credible explanation for why there are different case numbers.

except what she indicated in her answer to the SOR. Having opened two credit card accounts and purchased two cars does not necessarily translate into sound financial practices, particularly when personal loan accounts are also opened.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Analysis

Financial Considerations (FC)

18. *The Concern.* "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

The record evidence indicates the Government has established its case under the financial considerations guideline. Applicant opened an installment account (SOR 1.b.) with a credit company to purchase a car. She could not sustain the payments, and the account became delinquent in February 2001. A judgment was taken against her in February 2002. The SOR 1.c. account was opened in March 2003, and converted to a delinquent status in October 2003. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history of not meeting financial obligations*) apply. Having carefully evaluated the language Applicant used denying the car account altogether in Item 6, I conclude that Applicant was unwilling in November 2007 to acknowledge the car judgment. Based on the words used by Applicant in Item 6 in describing the SOR 1.c. debt as charged off and closed, I conclude Applicant did not believe she owed the debt because of the debt was somehow done away with.

In her January 2008 answer to the SOR, Applicant acknowledges the two accounts, but claims the purchase of two cars and the opening of two personal loans means that she has her financial responsibilities under control.

Even though there are only two debts listed in the SOR totaling a little more than \$13,000.00, both debts are in a delinquent status and one has been converted to a judgment. Under the FC guideline, an applicant is required to present evidence that shows their delinquent debts have been resolved, or provide compelling evidence that demonstrates why the debts have not been resolved.

There are five mitigating conditions (MC) that are potentially applicable to the circumstances. They are: FC MC 20.a. (*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*); FC MC 20.b. (*the conditions that resulted in the financial problems were largely beyond the person's control, and the individual acted reasonably under the circumstances*); FC MC 20.c. (*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is resolved or under control*); FC MC 20.d. (*the individual initiated a good-faith effort to repay creditors or otherwise resolve debts*);

and, FC MC 20.e. (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause or of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*). FC MC 20.a. does not apply. Though the delinquent debt was incurred more than four years ago, Applicant has provided no evidence to indicate that the debt problem is unlikely to recur. Her failure to produce evidence to show why the financial problems are unlikely to recur continues to cast doubt on her trustworthiness and good judgment.

FC MC 20.b. is inapplicable as Applicant has not presented any evidence identifying the reason she incurred financial problems. Without specific evidence describing her situation for example, a loss of employment, a business downturn, or an unexpected medical condition, I cannot speculate as to what her financial hardships were. FC MC 20.b. does not apply. FC MC 20.c. does not apply as there is no evidence Applicant participated in financial counseling or reorganized her financial obligations so that her indebtedness is under control.

FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. The language Applicant employed in her answers to interrogatories in November 2007, and in her January 2008 answer to the SOR persuades me she has no intention of repaying either creditor. FC MC 20.e. does not apply because Applicant finally acknowledges (she does not dispute) she owes the debts, but does not intend to repay the judgment or the collection account.

Whole Person Concept (WPC)

The AG indicates the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and whole person concept. The WPC is made of nine general policy factors:

- (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 the participation is voluntary;
- (6) the presence or absence of rehabilitation and other 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.

Applicant used poor judgment in not paying the car debt before it became a judgment. She mentioned financial hardships, but did not explain what those hardships were. Even though she may have incurred no new debt in the last five years, she still has the two past due accounts; one is more than four years old, and the other is more than seven years old. Failure to pay those two accounts, or resolve past mistakes, demonstrates an

unwillingness to satisfy debts that has not been mitigated by any of the MC factors of the FC guideline. Accordingly, Applicant has failed to mitigate the FC guideline.

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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	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.

Paul J. Mason
Administrative Judge