



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 07-13567
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

October 10, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant owes the Social Security Administration about \$50,000 of the \$62,594 in benefit payments she was not entitled to receive. She also owes more than \$11,000 in delinquent state and federal taxes on those funds. She is repaying these debts at about \$600 per month. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted her electronic Questionnaire for Investigations Processing (e-QIP), on June 16, 2006. On April 4, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines F.¹ 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,

¹Item 1.

2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 7, 2008, and requested that her case be decided by an Administrative Judge on the written record without a hearing.² Department Counsel submitted the Government's written case on July 22, 2008. A complete copy of the file of relevant material (FORM)³ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of her copy of the FORM on August 5, 2008, and returned it to DOHA. She provided no further response to the FORM within the 30-day period she was given to do so, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on September 26, 2008.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. She served a three-year enlistment in the Navy from 1991 to 1994, and has held a security clearance since May 2001. She is single with no children, and has worked for her current employer since 1996. She attended college classes from 1999 through 2005 part-time, and intends to complete her bachelor's degree.⁴

In her answer to the SOR, Applicant admitted the truth of the factual allegations in SOR ¶¶ 1.a through 1.c.⁵ Sometime around 2000 she underwent surgery and treatment for cancer, causing her to miss work for about a year. She received worker's compensation payments during this time, and had medical insurance coverage. While she was not working, she applied for and was granted social security benefit payments of about \$1,000 per month. She notified her local Social Security Administration (SSA) office when she returned to work, and was told that benefit payments would continue "for a period." She failed to follow up thereafter, and continued receiving benefit payments to which she was not entitled for about four years. She spent all of this money "foolishly on clothing and eating out."⁶ Her total debt to the SSA was \$62,594 in 2006, when the SSA discovered the improper payments and sought repayment through a \$400 per month wage garnishment action. The Government has also retained her income tax refunds and applied them toward this debt. She makes no other payments toward this debt, and estimates it will take about 10 years to repay it in full.

²Item 2.

³The government submitted eight items in support of the allegations.

⁴Item 4.

⁵Item 2.

⁶Item 7 at 8.

In July 2006, the outstanding balance on this debt was \$62,384.⁷ By August 2007, it was down to \$56,222.⁸ In July 2008, the balance due was reported as “50K” on her credit report.⁹ At \$400 per month from the previously reported balance, this rounded amount would actually be \$51,422, but the government has also been applying income tax refunds to this debt. In the absence of more accurate record evidence, the actual balance will be considered slightly less than \$50,000 at present.

Applicant filed state and federal tax returns for the years 2002 through 2006, reflecting receipt of the unauthorized SSA benefits, and owes approximately \$11,000 to \$12,000 in unpaid taxes on that income. She has reached an agreement to pay the IRS \$200 monthly, but offered no evidence of a plan to pay her state taxes.¹⁰ At this payment rate it will be four to five years before the delinquent taxes are paid. Applicant offered no other evidence concerning her character, trustworthiness or responsibility.

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 to be used 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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.

⁷Item 5 at 6.

⁸Item 6 at 2.

⁹Item 8 at 1.

¹⁰Item 7 at 8.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

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. AG ¶ 19(d) makes, “deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust,” a disqualifying condition. Finally, AG ¶ 19(e) addresses security concerns raised by, “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.” Applicant accumulated more than \$73,000 in debt to the federal and state governments through knowingly continuing to receive SSA benefits, to which she was not entitled, for about four years. She spent all of that money “foolishly,” and is unable repay these debts for many years. The evidence is sufficient to raise all four of

these potentially disqualifying conditions, requiring a closer examination and balancing of resulting security concerns with any potentially mitigating matters.

Department Counsel also asserted that the disqualifying condition set forth in AG ¶¶ 19(b) is supported by this record. Except to the extent that this disqualifying condition's "frivolous or irresponsible spending" element overlaps with AG ¶¶ 19(e) concerning "spending beyond one's means," there is no record evidence supporting its independent application. She is repaying her debts through wage garnishment and an IRS agreement, so the required "absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to repay the debt," is not established.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions 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 issues have been a continuing problem since at least 2002. Her inability to meet these financial obligations is ongoing, and continues to raise concerns about her current reliability, trustworthiness, and good judgment. The evidence does not support this potentially mitigating condition.

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 has been regularly employed, except for the period she underwent cancer treatment, for twelve years. She received worker's compensation and proper SSA benefit payments during that period, and her medical insurance covered most of her treatment costs. The debts of concern did not arise from her medical treatment, but rather from her continuing to receive and spend SSA benefit payments to which she was no longer entitled after her return to work. She provided no evidence indicating that these debts arose due to matters beyond her control, or that she acted responsibly to end the unauthorized payments or pay the taxes on them.

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). This mitigating condition is partly raised by Applicant's repayment arrangements, but is not supported as a factor for significant consideration in this case because of the involuntary nature of the wage garnishment. 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 initiated a payment agreement with the IRS to resolve her delinquent federal income tax debts. However, she neither initiated the SSA wage garnishment collection action nor offered any evidence that she did anything to end the improper benefit payments that she accepted and spent for four years. I conclude this potentially mitigating condition has not been established.

On balance, the security concerns raised by Applicant's financial conduct outweigh any mitigation in the record evidence. She knowingly obtained and spent more than \$62,000 in SSA benefits to which she was not entitled. Her resulting significant indebtedness is unlikely to be resolved for ten more years. Her inability or unwillingness to make any payments toward this debt except through mandatory wage garnishment supports the inference that she remains financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Her history and pattern of financial irresponsibility further indicate a lack of judgment and unwillingness to abide by rules and regulations, thereby raising substantial questions about her reliability, trustworthiness, and ability to safeguard classified information.

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) 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.

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 mature individual who is responsible for her choices and conduct. She did not show that her debts arose from unusual medical circumstances, or other circumstances largely beyond her control. Applicant incurred these debts by collecting and spending SSA benefits to which she was not entitled. Applicant submitted no evidence of rehabilitation or permanent behavioral change, or demonstrating that risk of coercion or duress is not ongoing. Her disregard of lawful obligations creates continuing doubt about her trustworthiness and reliability. She offered no other evidence about her character or responsibility to mitigate these concerns, or tending to make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her 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

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.

DAVID M. WHITE
Administrative Judge