



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-14970
)
)
Applicant for Security Clearance)

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

July 31, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

On June 28, 2006, Applicant submitted an Electronic Questionnaires for Investigations Processing (SF 86). On April 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). 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.

On May 22, 2008, Applicant answered the SOR in writing and requested a hearing before an administrative judge. DOHA assigned the case to me on June 2,

2008, and issued a Notice of Hearing on June 5, 2008. The case was heard on June 25, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 6 into evidence without objection. Applicant testified and offered Exhibits (AE) A through C into evidence without objection. At the conclusion of the hearing, I left the record open until July 11, 2008, to give Applicant an opportunity to submit additional information. On that day, Applicant submitted two exhibits that I marked as AE D and E and admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on July 3, 2008.

Findings of Fact

In her Answer to the SOR, Applicant admitted all factual allegations contained in ¶¶ 1.b, 1.f, 1.h, 1.i, and 1.m of the SOR. She denied all of the other allegations. Those admissions are incorporated into the following findings.

Applicant is 51 years old. She has two and a half years of college in the area of administration and accounting. She has two adult children, ages 34 and 32. She has been married several times. She married her last husband in 2000. He died in November 2003, leaving her with \$16,000 of financial obligations and insufficient funds to pay the debt. (Tr. 36; 71).

Applicant began her current position with a federal contractor in January 2007. She is an administrative assistant to a vice-president of the company. About three weeks ago, she started a part-time job to supplement her income. (Tr. 61). Prior to her position with the federal contractor, she worked for various companies. She did not work from September 2001 to August 2004, while she was married to her last husband and subsequent to his death. Other than that time period, she worked most of her life. (Tr. 21-23).

Applicant began experiencing financial difficulties in 1986 that continued until she married her last husband in 2000. During those fourteen years, she accrued significant financial obligations because she exercised poor judgment while in various relationships. (Tr. 71-72). In March 2002, she filed a Petition for a Chapter 7 Bankruptcy. In June 2002, the court entered an order, discharging approximately \$24,824 in debt. After the discharge, she was in "a good financial place." (Tr. 37). However, subsequent to that discharge, she again began accumulating delinquent debts. (Tr. 37).

In June 2007, Applicant completed a SF-86. In response to questions about her finances, she acknowledged that she had filed a petition for bankruptcy within the past seven years and had an automobile repossessed. She noted that she was not sure of the status of her financial delinquencies. Under the heading, "Additional Comments," she wrote, "My credit is not good. I'm in the process of cleaning up my credit." (GE 1 at 35).

In January 2008, the Government sent Applicant a set of Interrogatories inquiring about thirteen delinquent debts and one judgment in follow-up to the SF-86. When she returned the document, she included a copy of her budget, which is current, with some modifications because of her new part-time position. Her net monthly income is about \$1,600. Her expenses are about \$857, leaving a net remainder of about \$750 a month for other expenditures. (GE 2 at 5; Tr. 61). Last year, she started becoming more financially solvent. (Tr. 73).

Based on credit bureau reports (CRB) from March 27, 2008, November 2007 and July 2007, the SOR alleged eleven delinquent debts, totaling \$16,607. (GE 3, 4 & 5). All of those debts were the subject of the Government's January 2008 Interrogatories. The status of those debts is as follows:

1. Applicant asserted that she has no knowledge of five delinquent debts because she never had accounts with those creditors: SOR ¶¶ 1.c, 1.d, 1.g, 1.i, and 1.j. She has not done anything to investigate the debts in order to have them removed from her credit history.

2. One debt was resolved in the 2002 bankruptcy: ¶ 1.h.

3. Applicant admitted having knowledge of five debts in the SOR: ¶¶ 1.a, 1.b, 1.e, 1.f, and 1.k. She had accounts for her husband's estate with the creditors listed in ¶¶ 1.a and 1.b. She called the creditors a few times after her husband's death in November 2003 to inquire about the debts. Other than those phone calls, she said, "I've not taken time, which I know that's really a problem. I haven't taken time to do a letter, and like you said, maybe called – go set up an appointment to go in and talk to talk to them." (Tr. 58). She thinks that the debt alleged in ¶ 1.e may be the balance owed on an automobile loan that she "could have" co-signed for her roommate. (Tr. 45-48). It remains unpaid or unresolved. She disputes the \$9,287 debt alleged in SOR ¶ 1.f, relating to an automobile repossession, and believes the amount is \$4,000. She has not taken any steps to resolve it. "Truthfully, I've not done anything." (Tr. 58). SOR ¶ 1.k alleges an unpaid 2002 judgment for \$1,650, which arose after she was evicted from an apartment. She disagrees with the amount, but has not taken steps to resolve the matter.

Applicant submitted her 2007/2008 Annual Performance Evaluation. According to her supervisor, Applicant's over-all performance summary is "Meets Expectations Plus." (AE A). Applicant reviewed the evaluation and noted that she felt "very fortunate to have the opportunity to work in the [division]." (*Id.*).

On July 9, 2008, Applicant hired a law firm to "help me clear my credit report and negotiate settlements with the verified creditors." (AE D and E).

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(c), 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 to obtain a favorable security decision. 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."

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.

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, two of which may be applicable in this case. 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. Applicant began accumulating delinquent debt in 1986, some of which was not resolved until 2002 when she filed bankruptcy. Subsequent to the discharge of about \$24,000, she accrued additional delinquent debts that she did not pay or resolve. The evidence is sufficient to raise those two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) 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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial problems started in 1986, and have essentially continued into the present, except for a brief period in 2002 when she discharged many debts through a bankruptcy. Because the problems have been ongoing for many years, they reflect on her reliability and judgment. Hence, AG ¶ 20(a) does not apply.

Applicant attributed her financial issues to previous relationship problems and exercising poor judgment while in the relationships. Those were situations under her control, and consequently, AG ¶ 20(b) does not apply.

On April 3, 2008, DOHA issued a SOR to Applicant, notifying her of the delinquent debts that were a concern to the Government. As of the hearing on June 25, 2008, she had not taken any steps to resolve ten of the eleven delinquent debts alleged in the SOR. (One debt was previously resolved in a 2002 bankruptcy.) She submitted a copy of her budget that indicates she has some money at the end of the month that she could use to pay or resolve those outstanding financial obligations. On July 9, 2008, she entered into an agreement with a law firm to begin investigation of those issues. While the execution of that agreement is an affirmative step in managing her finances, it is not sufficient evidence that her problems are under control, as required under AG ¶ 20(c).

Throughout the security clearance process, Applicant admitted that she had credit problems that she wanted to resolve. Despite her consistent acknowledgement of those issues, she just recently executed an agreement to begin the process of resolving her credit problems. Because Applicant waited over a year to initiate action to resolve her debts, and as of today not one of the ten outstanding debts has been resolved or paid, her recent action cannot be construed as a "good faith" effort to pay or resolve her over-due debts. AG ¶ 20(d) does not apply.

Although Applicant disputes several debts, she did not present any evidence to support the application of AG ¶ 20(e). AG ¶ 20(f) does not apply.

"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). They include the following:

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include an overall commonsense 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 51-year-old woman, who candidly acknowledged that her financial difficulties for many years were the result of poor relationship choices and money management issues. In 2002, she filed bankruptcy to discharge about \$24,000 of debt. Since that discharge, she again began accumulating debts that she chose not to manage or resolve.

In June 2007, Applicant completed a SF-86. In it she acknowledged that she had financial issues and that she "was in the process of cleaning up" her credit. In January 2008, the Government inquired about thirteen debts that were delinquent. In April 2008, the Government alleged eleven of those debts in a SOR and placed her on notice that her finances could effect her employment. In May 2008, Applicant answered the SOR and requested a hearing. On June 25, 2008, the hearing was held. At the time of the hearing, only one of the eleven debts was resolved or paid, despite her previous statement that she was working on the credit problems. On July 9, 2008, she decided to seek professional help.

Applicant's decision to employ the assistance of a law firm to resolve her issues is a positive step in achieving financial stability. However, failing to initiate that step until very recently indicates an on-going lack of commitment to manage her financial obligations and demonstrates unreliability. Until she resolves her delinquent debts and establishes a solid budget and track record of fiscal responsibility, similar problems may recur in the future.

Overall, the record evidence leaves substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under 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
Subparagraphs 1.a through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i through 1.m:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge