



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-15125
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

May 29, 2008

Decision

CURRY, Marc E., Administrative Judge:

On January 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 28, 2008, and requested an administrative determination. On February 21, 2008, the government prepared a File of Relevant Materials (FORM). Applicant replied on March 24, 2008. Department counsel did not object to the admission of the reply, and the case was assigned to me on May 12, 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, Applicant admitted all of the SOR allegations. She is a 53-year-old married woman with three children, ages 30, 19, and 15. The oldest two children are from previous marriages. She served two stints in the U.S. Navy. The first was from 1974 through 1978 and the second was from 1982 through 1990. On both occasions she was honorably discharged. She served in the National Guard from 1993 to 1997.

Applicant works for a defense contractor as a flightline technician. She is highly respected on the job. A coworker describes her as “an extremely hard worker willing to go the extra mile to complete her tasking” (Reference letter of March 4, 2008, as included in the Reply).

Applicant has a history of financial problems. They began when her then husband left her in approximately 1988 when she was pregnant. Over the next two years, she unsuccessfully struggled to manage her bills and support her family. In 1990, she filed for Chapter 7 bankruptcy (Item 7). She scheduled approximately \$14,700 of debt which was discharged through this process.

At some time during the early 1990s, Applicant started a business. The record contains no description of it. It failed after a major hurricane devastated the local economy. At the time, Applicant and her family lived at her father-in-law’s home on a military base. When he passed away, they had to move. For the next several years, Applicant struggled to locate affordable housing, in part, because apartment rental costs skyrocketed after the hurricane (Answer). Her finances again grew delinquent.

In 1999, Applicant again filed for Chapter 7 bankruptcy (Item 6). Approximately \$51,000 of scheduled, unsecured debt was discharged.

Since the 1999 bankruptcy, Applicant has again experienced financial problems. Currently, her delinquent debt totals approximately \$21,700. It includes phone bills, utilities, medical expenses, credit card accounts, and income tax bills.

Through the help of a law firm, Applicant has consolidated nearly all of her delinquencies and organized a payment plan. Through the plan, approximately \$257 monthly is applied to the delinquencies. She is researching any of her delinquencies not included in the plan, and adding them to it after she verifies them. There is no record of when Applicant entered the plan, or when the delinquencies will be satisfied.

Applicant also contends she is satisfying some of her delinquencies through payment plans she arranged independently of the one she organized with the law firm’s help. She provided no documentation of these efforts.

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 overarching adjudicative goal is a fair, impartial and common sense decision. 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." 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 an 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

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.*). Here, Applicant’s 20-year history of financial problems triggers the application of 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.”

Applicant’s financial problems experienced through approximately 2000 were caused primarily by a failed marriage, a failed business, and an economic downturn that occurred in her community after a natural disaster. However, these financial problems recurred, and no such potentially mitigating factors appear to have contributed to the recurrence. Also, the resulting financial delinquencies are still largely outstanding. Neither AG ¶ 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,” nor 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,” apply.

Applicant has organized a payment plan, and has begun making payments. Although she retained a law firm to help organize her debts, she did not establish whether it is providing her with any counseling services. Moreover, she provided no documentation of her repayment history, nor did she establish when she began executing the plan, or when the plan would be complete. AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies, but AG ¶ 20(c), “the person has received or is receiving counseling for the problem and/or there are clear indications the problem is being resolved or is under control,” does not.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The negative security inference generated by Applicant's two bankruptcy discharges is offset somewhat by the circumstances that generated the underlying financial conditions. However, Applicant's financial problems recurred after the second discharge, and no such mitigating circumstances contributed to the recurrence. Applicant's steps at debt resolution constitute good-faith efforts to resolve her financial problems. She failed, however, to provide corroborating documentary evidence of these efforts. Consequently, these good-faith efforts are outweighed by the longstanding delinquent debt history and its recurrent nature. Evaluating this case using the whole person factors, I conclude that it is not clearly consistent with the national interest to grant Applicant access to classified information. Clearance is denied.

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 - 1.t:	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.

MARC E. CURRY
Administrative Judge