



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-15592
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel
For Applicant: *Pro se*

November 25, 2008

Decision

CURRY, Marc E., Administrative Judge:

On May 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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.

Applicant answered the SOR on June 18, 2008, admitted all of the allegations, except SOR subparagraph 1.k, and requested an administrative determination. On September 10, 2008, Department Counsel prepared a File of Relevant Material (FORM). Applicant did not reply. On November 20, 2008, the case was assigned to me. I have reviewed the FORM and have concluded that it is not clearly consistent with the national interest to grant her access to classified information. Clearance is denied.

Findings of Fact

Applicant is a 38-year-old married woman with one child, age 17. She has been married for eight years. A previous marriage ended in divorce in 1998. Applicant earned a bachelor of science degree in 2003. It is unclear from the record what she majored in. She has worked for a defense contractor since 2000. The record contains no description of her job duties.

Applicant has approximately \$40,000 of delinquent debt. Approximately \$39,300 constitute delinquent student loan payments (SOR subparagraphs 1.b through 1.i). The remainder are medical bills (SOR subparagraphs 1.a through 1.c, 1.j, and 1.k). On February 1, 2008, she entered into an agreement with the holder of the student loan notes to satisfy them (Item 4 at 8). Under the plan, she is to pay \$200 each month toward the satisfaction of the delinquency (Item 4 at 9). She made her first payment, in the amount of \$100, one week later (Item 4 at 9). She asserts that she has been making monthly payments since then. The record contains no documentary evidence of any additional payments.

Applicant's delinquent medical accounts total approximately \$700. In response to interrogatories the government propounded in January 2008, she stated that she "fully intended to pay" them (Item 4 at 3). Currently, all remain unpaid. She disputes SOR subparagraph 1.k. Her dispute is not supported by any documentation or correspondence with the creditor informing it of the dispute.

Applicant has \$2,000 in savings, and \$2,500 in stocks and bonds (Item 4 at 5). She owns a home worth approximately \$150,000.

Between 2004 and 2007, Applicant took two pleasure trips to the Caribbean (Item 3 at 23 through 24). In 2001, she took a pleasure trip to Europe (*Id.*).

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.*).

Applicant’s financial delinquencies trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.” Applicant presented no evidence of any circumstances beyond her control that contributed to her financial difficulties. 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,” does not apply. She disputed one of her medical delinquencies, but provided no documentation either substantiating the basis of the dispute, or detailing actions to resolve the issue. Similarly, her contention that the bill may have resulted from an errant calculation by her health insurance provider was not supported by any documentary evidence, either. AG 20(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,” does not apply.

Applicant contacted her student loan creditor and entered into a payment plan. She provided evidence of a payment made during the month she entered the plan, but did not provide any evidence of subsequent payments. Consequently, neither AG ¶¶ 20 (c), “ . . . there are clear indications that the problem is being resolved or is under control,” nor 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

Applicant has not mitigated the financial considerations security concern.

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.

The record contains scant evidence detailing the cause of her financial problems or her efforts at financial rehabilitation. Consequently, the likelihood of continuation remains unacceptably high. Upon considering the disqualifying and mitigating conditions in the context of the whole person concept, I conclude Applicant has not mitigated the financial consideration security concern. 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
Subparagraphs 1.a - 1.k:	Against Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge

