



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-16140

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: Pro se

August 26, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Security Clearance Application (SF 86), on October 5, 2005. On March 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) for Applicant. 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 in writing on April 29, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 20, 2008, and I received the case assignment on June 5, 2008. DOHA issued a notice of hearing on June 6, 2008, scheduling a hearing on June 18, 2008. It was amended on June 10, 2008 to set the hearing on June 17, 2008. I convened the hearing on that date.

At the hearing, the government offered six exhibits (Exh.) which were admitted in evidence without objection. Applicant submitted 13 exhibits which were admitted without objection. She testified on her own behalf. DOHA received the transcript (Tr.) of the hearing on July 1, 2008. I granted Applicant's request to keep the record open until July 17, 2008, to submit additional evidence. No additional documents were received. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Rulings

Notice

The hearing notice was dated within 15 days before the hearing date. I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to the 15 days notice and indicated she was ready to proceed (Tr. 7).

Findings of Fact

In her Answer to the SOR, Applicant admitted four of the eleven allegations in the SOR relating to approximately \$136,000 in delinquent debts. She denied the other allegations.

Applicant is a 35-year-old employee of a major government contractor working since September 2005 as a record management coordinator. She holds a BA degree in English and a Master's degree in library science.

The largest of the delinquent debts arose from education loans for \$121,000 (SOR ¶ 1.f.) accumulated during her period of higher education ending in 2002. The loans became delinquent and she began making payments on the loans of \$300 per month. The creditor increased the payments to \$1,500 per month. She could not pay this amount so she stopped payment in April, 2007. They became delinquent again. In February 2008 she negotiated a payment plan to pay \$620 per month for six months (Exhs B-H). At the end of that period, November 2008, the amount will be re-set by the creditor and may be lower, higher, or the same.

The second largest of the alleged debts totaling over \$9,000 are for purchases of laptop computers from two companies during her student years (SOR ¶¶ 1.a.,b.,c.,and j.). There is evidence in the record (Exhs. I and J, Tr. 27 and 37) that there was a dispute

with one company about one computer, and another was returned for a substitute. Payments were not made for the substitute. It was also returned to the company. In answers to her interrogatory in July 2007 (Exh. 3, p. 6), Applicant indicated that negotiations were underway with the companies. Nothing was offered in evidence at the hearing on resolution of the accounts. These alleged delinquent debts on her credit reports have not been satisfactorily resolved.

The third largest debt is on a secure credit card for \$2,093 for a cruise she took in 2004 (SOR ¶ 1.k.). Applicant disputes the charge, but it has not been resolved and few steps have been taken to do so (Tr. 47-48).

Other debts for medical payments (SOR ¶ 1.g.), and telephone services (SOR ¶ 1.h.) have been paid (Exhs. G and L). Other debts listed on the SOR are disputed by Applicant, and are not on her credit reports of April 2008.

Applicant is single and her income from employment is \$46,000 per annum. She pays \$615 per month for rent which will soon be raised. She owns a 2006 compact car she bought new with monthly payments of \$485. With her payments on student loans and other living expenses she has a negative income of \$367 every month which she is seeking to adjust (Attachment to answer). She is trying to find a second job but has not found one (Tr.50).

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 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. The 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.

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

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. Applicant accumulated the delinquent debts cited in the SOR and was unable or unwilling to pay the obligations for several years. The evidence shows that she has been able pay some of the debts and has worked out a payment plan for her student loans. Yet very little has been done to resolve the outstanding issues regarding the laptop computers and the credit card charges for the cruise three years ago. Thus, the evidence clearly raises these potentially disqualifying conditions.

The guideline also includes several mitigating conditions (MC) that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition 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.”

Most of Applicant’s financial problems arose in the past ten years. She has a good job which pays a reasonable salary. She has paid some of the debts and is now making

payments on the student loan but in an amount she could not continue at her present level of expenditures. It seems likely that she should be able to resolve the outstanding debts over time but a number remain unsatisfied. She has a number of unknown factors with which to deal in reaching a sound financial footing.

Those outstanding delinquent debts combined with the fact that she has, at this time a negative income, continues to raise security concerns under the Guideline F.

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 a potentially mitigating condition under AG ¶ 20(c). Applicant has not sought counseling so the MC is inapplicable.

AG ¶ 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. While it not necessary that all of the delinquent debts be resolved for mitigation to apply, it is necessary that a significant portion of the debts be settled or paid. The school loan debts, the largest in the SOR, now is being paid under an agreement with the loan consolidation company, but significant others remain unresolved.

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 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. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance at this time. I recognize her expressed interest to resolve these financial issues to restore her credit rating. However, she took little action to resolve these delinquent debts even though she has been employed over the past three years since her graduation. Applicant has not mitigated the security concerns arising from these financial considerations. It is premature at this time to grant a security clearance.

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
Subparagraph 1.d.: Against Applicant
Subparagraph 1.e.: Against Applicant
Subparagraph 1.f.: For Applicant
Subparagraph 1.g.: For Applicant
Subparagraph 1.h.: For Applicant
Subparagraph 1.i.: For Applicant
Subparagraph 1.j.: For Applicant
Subparagraph 1.k.: Against Applicant

Conclusion

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

Charles D. Ablard
Administrative Judge