



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



In the matter of:)
)
) ISCR Case No. 07-16891
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

September 12, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a history of failing to meet her financial obligations due to periods of unemployment and underemployment. Her evidence is insufficient to show that she is in control of her finances, is not overextended, and has a track record of financial responsibility. She failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

On January 24, 2007, Applicant submitted a Questionnaire for Sensitive Positions or Standard Form (SF) 85P.¹ On February 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her,² pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive

¹ GE 1.

² GE 1 is the source for the facts in the remainder of this paragraph unless stated otherwise.

5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.³ The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR on March 17, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on June 10, 2008. DOHA issued a notice of hearing on June 17, 2008. The hearing was convened as scheduled on July 7, 2008. The government offered Government Exhibits (GE) 1 through 5, which were admitted without objection (Tr. 19). Applicant testified on her own behalf, and presented no exhibits. DOHA received the transcript of the hearing (Tr.) on July 15, 2008.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.c – 1.e, and 1.g – 1.i, with explanations. She denied SOR ¶¶ 1.b and 1.f. In her answer to the SOR, she failed to admit or deny SOR ¶¶ 1.m – 1.p. At her hearing, she admitted SOR ¶¶ 1.m – 1.p were her or her children's medical debts (Tr. 42). Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 33-year-old security associate working for a Government contractor. She has never been married. She has three children, ages 15, 11, and 2. After completing high school in 1992, she had her first son. From 1993 to 1997, she worked full time for numerous employers in positions such as receptionist, cashier, and waitress (Tr. 45). She also worked for a temporary work agency. In 1997, she had her daughter and had to stop working for approximately one year. From 1998 to 2001, she resumed working full time in similar job positions (Tr. 48). From 2001 to 2006, Applicant ran her own child care provider business from her home (Tr. 48-49). In 2006, she was pregnant with her baby, and had difficulty running the child care business.

In October 2006, Applicant was hired as a part-time security associate by a Government contractor and received interim access to classified information (Tr. 15). She worked 20 hours a week and was paid approximately \$12.50 an hour. Because of her good performance, she was offered a full-time security associate position. She

³ On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

worked full-time for approximately six months before her interim access was withdrawn because of the concerns alleged in the SOR (Tr. 21-22). She needs access to classified information to do her job. Applicant was forced to go back to a part-time work schedule for some time. As of her hearing date, she was unemployed (Tr. 60). She explained she is having trouble finding a job that would pay enough for her to pay a babysitter and with a convenient schedule for her to take care of her children.

There is no evidence to show that she has compromised or caused others to compromise classified information. Nor is there evidence showing that she has ever failed to follow the rules and procedures required to handle classified information. She has no police record, and there is no evidence she has used or trafficked in illegal drugs.

Applicant has custody of her three children. Her 15-year-old son receives \$325 in support from his father (Tr. 25, 50). Her 11-year-old daughter receives no support from her father. The father of her two-year-old son works as a bus driver and provides some financial support to the household. Applicant's mother is disabled; however, she does not live with and is not financially dependent on Applicant (Tr. 63). Applicant has received state assistance in the form of subsidized housing since 2002. Her rent is limited to 30% of her income (Tr. 51). She is currently receiving unemployment benefits.

Financial Considerations

Applicant's background investigation addressed her financial situation and included the review of her SF 86, her responses to DOHA interrogatories (GE 2), and three credit bureau reports (CBRs) one from 2007 (GE 5), and two from 2008 (GE 3 & 4). The SOR alleges 16 delinquent/charged off accounts totaling approximately \$8,740.

Applicant admitted that most of the debts alleged in SOR are her debts and have been delinquent for a long period of time. She denied the debt alleged in SOR ¶ 1.b (\$95) claiming she paid and/or entered into a new service agreement with the creditor (Tr. 34, 52). She denied SOR ¶ 1.f (\$55) and claimed in her answer to the SOR that she recently paid the debt. At her hearing, she contradicted her SOR answer and claimed she talked to the creditor after receipt of her SOR and the creditor had agreed to "take off" the debt from her CBR (Tr. 41, 56). She presented no documentary evidence to support her claims.

Applicant explained her financial problems were caused by a combination of factors; i.e., she is a single mother of three, and for the most part, the sole provider for her children; being underemployed or unemployed; and not having medical insurance coverage for her and her children. She noted most of the delinquent debts resulted from medical services she could not afford (Tr. 21-22).

Applicant explained that although her delinquent debts are relatively small, she never made any effort to contact her creditors and did not pay any of her debts because

she could not afford to pay for her day-to-day living expenses and her past financial obligations (Tr. 68).

Applicant claimed she started trying to correct her financial situation when she was hired full-time. She testified she made payment arrangement and/or settlement agreements with some of her creditors (Tr. 29). She was waiting to receive her 2007 income tax refund to pay some of her debts, but since she was laid off in March 2008, she decided to use the money to support her children. She presented no documentary evidence to support her claims.

From November 2007 to March 2008, Applicant was earning approximately \$1,900 a month (Tr. 31). She receives \$325 for child support for her oldest son. Her monthly rent was \$550. Her monthly expenses were as follows: utilities \$400; food \$300, and day care \$560. In 2002, she bought a new Mazda Protégé which was repossessed in 2006. In March 2008, she bought a 2003 GMC Envoy because she needed it to get to work, and to take her children to day care. As of the day of the hearing, she was two months late on the payments (Tr. 59). She indicated no car insurance or car payment in her financial statements.

Applicant has not sought or participated in any financial counseling. She knows her debts are small and she believes she can take care of her financial problems on her own. She knows she has been financially irresponsible and promised to do better if she can get her full time job back (Tr. 43). Applicant expressed remorse for her past financial problems. She asserted she is doing the best she can under her circumstances. She noted her good job performance and that she is responsible and reliable.

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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”⁴ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁵

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.

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 Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

⁴ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁵ “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is well documented in her credit reports, her SOR response, and her testimony. Through the years, she acquired numerous debts which became delinquent and have remained outstanding. As of the hearing date, she had 16 outstanding debts totaling approximately \$8,740. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(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; and

(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.

Considering the record evidence as a whole,⁶ I conclude that none of the mitigating conditions apply. Applicant presented little evidence of efforts taken to contact creditors, or to resolve any of the debts since she acquired them. Nor is there any evidence that she has participated in any financial counseling.

I specifically considered Financial Considerations Mitigating Condition AG ¶ 20(b) and conclude it applies, but only to a limited extent. Applicant's testimony established factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts, i.e., being a single mother and sole provider for her three children, the lack of financial assistance from one of her children's fathers; and her periods of unemployment or underemployment.

Notwithstanding, Applicant's evidence is not sufficient to show she has dealt responsibly with her financial obligations before, or after receipt of the SOR. Applicant has been consistently employed and earned money for extended periods of time. She presented little or no evidence to show paid debts, settlements, documented negotiations, payment plans, budgets, or financial assistance/counseling. Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility, or that she has taken control of her financial situation. Based on the available evidence, she is overextended financially and her financial problems are likely to be a concern in the future. Her financial problems are recent, not isolated, and ongoing.

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.

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. AG ¶ 2(c).

⁶ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

Applicant's work for the Government contractor weighs in her favor. She started in a part-time position and because of her good performance was selected to a full-time position. She had interim access to classified information for almost two years and there is no evidence that she compromised classified information. Aside from her delinquent debts (which are a civil, non-criminal issue), she is a law-abiding citizen and a concerned mother. She expressed regrets for her financial mistakes and claimed she is trying to correct them.

Considering the totality of the circumstances in her case, including Applicant's age, education, and maturity, she demonstrated a lack of judgment and trustworthiness in the handling of her financial affairs. She failed to deal responsibly with her financial obligations. Her failure or inability to live within her means and to meet her financial obligations indicates poor self-control or an unwillingness to abide by rules and regulations. Based on the available evidence, she is overextended financially and her financial problems are likely to be a concern in the future.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns pertaining to 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 - 1.p: **Against Applicant**

Conclusion

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

Juan J. Rivera
Administrative Judge