



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-17835
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 14, 2008

Decision

CURRY, Marc E., Administrative Judge:

On, June 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 July 18, 2008, denying all of the allegations and requesting a hearing. The case was assigned to me on August 25, 2008. On September 2, 2008, DOHA issued a notice of hearing scheduling the case for September 23, 2008. During the hearing, I received 10 government exhibits, one Applicant exhibit, and Applicant's testimony. DOHA received the transcript on October 2, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 43-year-old, single woman with three children, ages four, seventeen, and twenty-one. She has a high school education and has been working as a security guard since 1992.

In March 1998, Applicant was diagnosed with breast cancer (Tr. 34). The following year she underwent surgery. The hospital that performed the surgery then billed her approximately \$10,000 (Tr. 34). Applicant disputed the charge contending that she qualified for a state-sponsored program that was supposed to pay the entire bill (Tr. 35).

The hospital sued Applicant. She then contacted someone from the state office that had allegedly told her the state would pay the cost of surgery (Tr. 36).¹ The state rejected her claim (Tr. 30). In October 2001, the hospital obtained a judgment against Applicant for \$10,169 (Exhibit 6).

Applicant's financial situation then "began to go downhill" (Exhibit 2 at 4). In October 2002, she was laid off from her job, and was unemployed for the next four months (Exhibit 1 at 16). She was also unemployed between January 2004 and February 2004 (Exhibit 1 at 14). Shortly after returning to work, her cancer returned, requiring her to have another surgery (Tr. 22). She underwent the surgery in April 2004, and missed more work while recuperating (Exhibit 2 at 4). It is unclear from the record how long she missed work after the second surgery (*Compare* Ex. 2 at 4, and Exhibit 1 at 16).

By early 2008, Applicant had incurred approximately \$41,500 of delinquent debt. In addition to the hospital judgment, as discussed earlier, the debt includes three liens for delinquent state income taxes for tax years, 1993, 1997, 2001, and 2006 (SOR subparagraphs 1.d, 1.o through 1.q), a penalty her state imposed against her for failing to maintain car insurance (SOR subparagraph 1.a), two delinquent apartment rental accounts (subparagraphs 1.c and 1.h), three utility bills (SOR subparagraphs 1.i through 1.k), a credit card account (SOR subparagraph 1.l), two deficiencies remaining from a repossessed car and a repossessed motor scooter (SOR subparagraphs 1.m and 1.n), and two debts owed to a local municipality (SOR subparagraphs 1.e and 1.f). The judgments, the state-imposed penalty, the tax liens, and the delinquent rent constitute approximately 90% of her debt.

Applicant's state of residence requires drivers to have car insurance (Exhibit A). Between May 2002 and March 2006, Applicant did not maintain a car insurance policy. Consequently, in June 2008, the state imposed an uninsured motorist penalty fee against her for \$5,052 (*Id.*). Since then, she has satisfied approximately \$3,200 of the

¹According to Applicant, the program was not Medicaid. Instead, it was a program that compensated low-income patients who were seeking experimental treatment for cancer (Tr. 35).

penalty (Exhibit A at 5-9). Approximately \$1,200 of this amount constitute state and federal income tax intercepts (*Id.* at 8-9).

Applicant alleges that her landlord, as listed in SOR subparagraph 1.c, billed her for three months after she had moved from the apartment (Tr. 20).² The landlord sued, and the court entered a judgment in his favor for \$737.

Applicant owes another landlord \$1,751 in delinquent rental payments (Exhibit 10 at 13). She alleges it “was thrown out of court” (Tr. 22). She provided no documentary evidence supporting this contention.

The state income tax liens total approximately \$4,060. The state will apply tax returns to this delinquency after Applicant satisfies the uninsured motorist penalty. She has not yet made any payments.

Shortly after Applicant underwent her second surgery, she began falling behind on her car payments. Consequently, the creditor repossessed it (Tr. 25). She owes a deficiency of \$11,100 (Exhibit 10 at 11).

In June 2002, Applicant purchased a motor scooter for her boyfriend (Exhibit 9 at 3). He was supposed to make the payments. When the relationship ended, he stopped (Tr. 25). Currently, Applicant owes the creditor approximately \$5,325 (Exhibit 9 at 3).

In March 2008, Applicant consulted a credit counselor (Exhibit 2 at 8). After analyzing her “current expenses, living expenses, assets, and liabilities,” the counselor prepared a budget (*Id.* at 9). Her expenses exceeded her income by approximately \$1,500. Consequently, the counselor recommended she file for bankruptcy protection (Tr. 32).

After meeting with an attorney, Applicant decided not to file for bankruptcy (Tr. 32). She continues to work with the credit counselor. They are focusing on getting some of the delinquencies removed from her credit report.

Applicant has been working steadily since 2005. Before 2001, she had never received child support.³ She has been receiving it without interruption since then.

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

²SOR subparagraph 1.g is a duplicate of SOR subparagraph 1.c.

³She had never filed for child support.

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). Applicant's financial problems trigger the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Between 1998 and 2005, Applicant underwent two major surgeries and two periods of unemployment. The first surgery resulted in a \$10,000 bill that she unsuccessfully contested. With the help of a credit counselor, she has created a budget. After creating a budget, she met with a bankruptcy attorney. After rejecting the bankruptcy option, she is continuing to work with the credit counselor.

Two of Applicant's state tax liens preceded her cancer diagnosis. Nevertheless, given the severity of her misfortune that followed the diagnosis, I conclude 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," applies.

Applicant has continued to consult with a counselor. Also, she has nearly satisfied the uninsured motorist penalty. AG ¶¶ 20(c), "the person has received or is

receiving counseling for the problem . . . ,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” 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): “(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.”

Many of Applicant’s financial problems were caused by circumstances beyond her control. She has made sincere, good-faith efforts to reform her finances. Unfortunately, she lacks the income to execute a payment plan. Although she is continuing to work with a credit counselor to eliminate some of the delinquent debt, and she has nearly satisfied the delinquency listed in SOR subparagraph 1.a, the track record of financial reform is too minimal at this time for me to conclude her troubled finances no longer pose a security risk. In reaching this conclusion, I am in no way minimizing the financial impact of her illness and resulting periods of unemployment. Rather, I have concluded that these factors currently are outweighed by her continuing financial problems. Upon considering this case in light of the whole person concept, I conclude Applicant’s application for access to classified information must be 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.q:	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