



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-00398
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Department Counsel
For Applicant: *Pro Se*

August 29, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On February 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant 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 in writing on May 8, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on May 15, 2008. Applicant did not file a response to the FORM. The case was assigned to me on July 2, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 43 year old employee of a defense contractor.

Applicant admits that as of February 20, 2008, she was indebted to the following creditors in the following approximate amounts: an unidentified medical provider \$50.00; Final Asst (Nordstroms) \$285.00; Capt Recov (Pepco) \$805.00; Metro Adj (Capitol Beltway) \$481.00; NCC Busn (Park Forest Apt) \$431.00; Metro Adj (Enterprise) \$227.00; ACC (Providian) \$1,384.00; Verizon Maryland \$202.00; Zenith Acquis \$150.00; Dept of Educ \$4,469.00; JKIII Koon (Auto) \$6,735.00; IMAG/FBOFD \$1,608.00; Diners/Citi \$3,588.00; Certegy \$115.00; and AFFL Fin (Auto) \$15,321.00. All of these debts were either placed for collection or charged off.

Applicant admits that as of June 23, 2007, she was indebted to the following creditors in the following approximate amounts: AAC (Gateway) \$3,288.00; Allied Coll \$172.00; Americredit \$14,644.00; IC Systems \$332.00; Marauder Corp \$2,053.00; NCO Fin/99 \$234.00; Paragonway \$436.00; GECC \$774.00; Yourbank \$1,915.00; and Cypress Creek \$1,682.00. All of these debts were placed for collection.

Applicant denies she was indebted to four of the creditors listed in the SOR. With respect to SOR Allegation 1.b., Exhibit 6 establishes the existence of the \$577.00 Nationalse debt. With respect to SOR Allegation 1.k., applicant provided proof that the \$502.00 child/family support debt has been resolved. With respect to SOR Allegation 1.u., the \$275.00 Finn Assis debt appears to be the same debt as the Final Asst (Nordstrom) debt noted above. With respect to SOR Allegation 1.ac., the existence of the \$249.00 tax lien is established by Exhibit 5.

In her response to the SOR, applicant claims to have paid off one \$50.00 medical debt. Although she attached a copy of a \$50.00 money order, it is unclear which debt she addressed with this payment. She also claims that after she received the SOR, she contacted or tried to contact the other creditors listed in the SOR, and with respect to the ones she contacted, she made payment arrangements with them. The only documentation she provided to support her claim of payment arrangements were copies of 15 checks made payable to various creditors. There is no evidence that the creditors ever received or cashed these checks, but even if I concluded they received and cashed them, they do not corroborate applicant's statements that payment arrangements were reached with these creditors.

In her SOR response, applicant stated that this "whole ordeal has taught me a valuable lesson. I have taken the necessary steps to correct my mistakes and debts." She further stated that her financial delinquencies were caused by situations beyond her control, which appear to be a marital separation and her husband becoming disabled.

Letters from two of applicant's coworkers and a friend were attached to her SOR response. The authors of these letters state applicant is reliable and honest.

Policies

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph 19.c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant has a history of an inability or unwillingness to pay her debts. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply 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.” Applicant has a large number of outstanding delinquent debts that she failed to address until after she received the SOR. Her indifference toward these debts casts doubt on her current judgment and reliability. This mitigation condition is not applicable.

Under Paragraph 20.b., it may be mitigating where “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.” Applicant failed to provide specific details to support a finding that her present financial delinquencies were caused by factors largely beyond her control. And, the evidence does not support a finding that she acted responsibly under the circumstances. This mitigating condition is not applicable.

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 potentially mitigating under Paragraph 20. c. This mitigation condition does not apply.

Paragraph 20.d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant claims that after she received the SOR, she contacted or tried to contact her creditors to work out payment arrangements. She further claims that she successfully made payment arrangements with many of her creditors. Applicant’s failure to offer credible evidence corroborating her claim of payment arrangements makes her claim suspect. But even if her claim was accepted as true, her efforts, initiated after she received the SOR, hardly qualify as a good faith effort to repay overdue creditors. This mitigating condition does not apply.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant 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. Applicant is a mature woman who has a recent history of ignoring her financial obligations. She claims that after she received the SOR, she made payment arrangements with most if not all of the creditors she was able to contact. This uncorroborated claim is highly suspect. But even if accepted as true, her failure to act until after she received the SOR indicates she was motivated by self interest, and not by any sense of obligation to her creditors. Her conduct reflects adversely on her current judgment, reliability and trustworthiness. Applicant failed to mitigate the security concerns arising from Guideline F.

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

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.

JOSEPH TESTAN
Administrative Judge