



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-00486
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Department Counsel
For Applicant: *Pro Se*

November 20, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On April 30, 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 June 2, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on June 13, 2008. Applicant filed a response to the FORM on July 10, 2008. The case was assigned to me on July 31, 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 26 year old employee of a defense contractor. She was married in 2000 and divorced in 2003.

Applicant is indebted to CANON DE ARROWHEAD in the approximate amount of \$2,666.00 as a result of a judgment entered against her. She has contacted the creditor, but to date has not taken any action to pay the judgment.

Applicant is indebted to PARAGONWAY/CHECKMATE in the approximate amount of \$368.00. In her response to the SOR, applicant stated this debt was transferred to Phoenix Debt Management (PDM) and that she paid it. Although she attached a copy of her check register showing three payments totaling \$293.00 were made to PDM, she provided no evidence that links PDM with the original creditor.

Applicant is alleged to be indebted in the approximate amount of \$146.00 "on a medical account" that has been turned over to a collection agency. In her response to the SOR, applicant stated this debt was owed to Radiology Associates (RA) and has been paid. In her response to the FORM, she attached a check register showing a \$28.82 payment was made to RA in March 2008. However, she has not provided any proof that this payment satisfied the debt.

Applicant is indebted to COLLECTRIT/OSCAR QUINTANA in the approximate amount of \$54.00. This debt was placed for collection. Applicant claims she satisfied this debt, but offered no proof.

Applicant was indebted to HUNTER WARFIELD/SEDONA RIDGE APARTMENTS for two debts that had been placed for collection. The first debt, in the amount of \$252.00, was satisfied by applicant in March 2008. The second debt stood at \$531.00. In her response to the SOR, applicant stated "payments are currently being made on this account and I have one payment left which will occur on 6/6/08." She attached to her SOR response proof that she has made three payments, totaling \$340.52, to the creditor. Although in her response to the FORM she stated "this account has been paid in full," she provided no proof she made the last payment.

Applicant is indebted to WFNNB/AHF in the approximate amount of \$439.00. This debt was charged off. Applicant was in contact with this creditor in March 2008, and it appears she made at least two payments since then. The total amount of the two payments is unclear as her checking account indicates \$235.00 was paid while correspondence from the creditor indicates applicant authorized \$300.00 in payments to be made from her checking account. Either way she still has a balance due. In her response to the FORM applicant stated the account "has been paid in full," but she offered no proof of this fact.

Applicant is indebted to PALISADES/ATT in the approximate amount of \$580.00. This debt has been placed for collection.

Applicant was indebted to PURPLN/FBD in the approximate amount of \$683.00. This debt was charged off. In her response to the SOR, applicant stated "this debt has

been paid in full to Nations Recovery.” A check register she attached to her SOR response indicates she made five payments totaling \$580.00 between February and April 2008 to Nations Recovery. However, she presented no evidence indicating that the creditor has accepted these payments as payment in full.

Applicant is indebted to CPS/MAIL in the approximate amount of \$10,076.00 as a result of the voluntary repossession of her vehicle in 2004. Applicant has been in contact with the creditor, but to date has not made any payments on the debt.

Applicant has three medical debts totaling approximately \$3,116.00 dating back to at least 2006. In her response to the FORM, she stated these debts should have been covered by Medicare, and she has “been working on the dispute process.”

In her response to the SOR, applicant stated: “I am currently trying to pay my past debts which I now understand how important it is to pay my financial obligations. This debt came about by my past divorce and unable to stay current with all my debts.”

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 numerous delinquent debts that are still outstanding. Accordingly, 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 her 2003 divorce. 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. Applicant went to see a counselor, but never received counseling. Her financial problems are not under control. 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

appears to have made a good-faith effort to begin to repay a number of her creditors. This mitigating condition applies.

“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 long history of being unable to meet her financial obligations. Although she has addressed some of the delinquent debts, the evidence does not support a finding that she is likely to be in a position to address the bulk of her past-due indebtedness anytime soon, or that she is unlikely to experience additional financial delinquencies. Based on the foregoing, I conclude 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