



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-01538
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

May 21, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government’s security concerns. Clearance is denied.

On November 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and E, personal conduct. 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 January 3, 2009, admitting all of the allegations except subparagraph 1.b, and requested a hearing. The case was assigned to me on February 10, 2009. On March 9, 2009, a Notice of Hearing was issued scheduling the

case for April 3, 2009. It was held as scheduled. At the hearing, I received eight government exhibits, five Applicant exhibits, and Applicant's testimony. At the hearing's conclusion, I left the record open at Applicant's request so that she could submit additional exhibits. Within the allotted time, she submitted eight additional exhibits that I incorporated into the record. The transcript was received on April 10, 2009.

Procedural Ruling

SOR subparagraph 1.a alleges that Applicant is "indebted to a medical provider in the approximate amount of \$50, for a delinquent account referred for collection in about 2004." This allegation is overbroad because it does not identify a specific creditor. Although an SOR does not have to satisfy the strict requirements of a criminal indictment, it must still place an applicant on adequate notice of the allegations so that she may have a reasonable opportunity to respond and prepare a defense.¹ Subparagraph 1.a. does not meet this minimum threshold, therefore, I conclude that it is not justiciable.

Findings of Fact

Applicant is a 32-year-old woman with two children, ages seven and five. She has been married for eight years. She has an undergraduate degree in criminal justice, and a master's degree in business administration. She has been supporting herself since her mother's death, which occurred when Applicant was 15 years old (Exhibit B). While in college, she helped her grandmother support her two younger siblings by working two part-time jobs (*Id.*).

Currently, Applicant works for a defense contractor as a program manager in the field of contract procurement (Tr. 29). She is highly respected on the job. In the two years since she began working for her employer, she has risen to the level of team leader (Exhibit A). Her contribution to the government agency that her team supports has been invaluable (*Id.*). She was recently promoted (Tr. 92).

Since 2004, Applicant has accrued approximately \$15,100 of delinquent debt, including six phone bills (SOR subparagraphs 1.c, 1.e, 1.g - 1.j), three utilities (SOR subparagraphs 1.k - 1.m), two automobile - related debts (1.d, 1.f), and an apartment rental delinquency (SOR subparagraph 1.n). She attributes her inability to make ends meet to her husband's unsteady employment (Tr. 118). He is currently unemployed, and has been unemployed four of the past six years (Tr. 119).

SOR subparagraph 1.b alleges a delinquency owed to the collection agent for a grocery store where Applicant allegedly wrote a bounced check. Applicant denies this allegation. This debt is listed in a 2007 credit report (Exhibit 5 at 14). Applicant alleged she contacted the creditor, but provided no supporting documentary evidence. I find Applicant owes this creditor as alleged in the SOR, and that it remains outstanding.

¹ISCR Case No. 03-07826 (App. Board June 17, 2005 at 3).

Applicant accrued the phone bill listed in SOR subparagraph 1.c in approximately 2004 (Tr. 53). She contends that when she contacted the creditor to make payment arrangements, the creditor informed her it was no longer pursuing payment because the delinquency had been charged off (Tr. 53). Applicant provided no evidence documenting her contact with this creditor.

The debt listed in SOR subparagraph 1.d accrued when the property management company of Applicant's then-residence towed her car from the apartment complex parking lot in approximately 2004 (Tr. 54). Because of the car's bad condition, Applicant never retrieved it from the towing company. The delinquency represents unpaid storage fees (Tr. 54). She does not know what the towing company has done with the car (Tr. 55). The delinquency remains outstanding.

SOR subparagraphs 1.e and 1.g through 1.j are phone bills Applicant owes to the same company. The collection agent contacted her with a settlement proposal in February 2009. Consistent with the proposal, Applicant satisfied the bills in April 2009 (Exhibits E, F).

SOR subparagraph 1.f is the deficiency from a car that was repossessed (Tr. 57). Applicant does not recall the exact date of the repossession, but contends it occurred before the property management company towed her other car in 2004. Applicant contacted the creditor in 2007, and negotiated a payment plan under which she was to pay \$100 per month toward the debt's satisfaction (Tr. 57). Shortly after executing the payment plan, Applicant's husband lost his job. Consequently, she stopped making payments after a few months without satisfying the delinquency. (Tr. 57-58).

SOR subparagraphs 1.k through 1.m remain unpaid (Tr. 23). Applicant testified that she has contacted the respective creditors, and is working to satisfy them (Tr. 24). She provided no documentary supporting evidence.

In 2004, Applicant's then-landlord sued her for allegedly breaching the lease by moving before it expired (Tr. 72; see Answer, SOR subparagraph 1.n). In May 2007, the court entered a judgment against Applicant for \$4,174, consisting of three months' rent, attorney fees, and court costs. (Tr. 68; Exhibit 4). Currently, the judgment is unpaid, and Applicant is working with the landlord's attorney to arrange a payment plan (Tr. 75).

In June 2008, Applicant met with a credit counselor who proposed a debt counseling program (Tr. 90). She was unsatisfied with the proposal, and did not continue working with the counselor (Tr. 91). In February 2009, Applicant met with a debt consolidation company (Tr. 91). She is not currently working with the company, but plans on returning (Tr. 93).

Currently, Applicant maintains a budget (Tr. 176; Exhibit I). She has approximately \$490 in monthly, after-expense income. She has student loans that are currently in deferment (Tr. 114). Their deferment status will end in approximately two years. The amount of the student loans is unclear from the record.

Applicant completed a security clearance application in December 2006. She answered “no” in response to Questions 28A - (*In the last 7 years, over 180 days delinquent on any debts?*), and 28B - (*Currently over 90 days delinquent on any debts?*). On the next page of the application (Exhibit 2 at 8), she states that she incurred a loan of an unknown amount in June 2001. At the hearing, Applicant explained that at the time she completed the application, she knew she had some delinquent debts, but was unsure of their identity (Tr. 79). Moreover, she testified that she could not access her credit report online because the credit reporting agencies had placed a fraud alert on her credit report after she had disputed several items on it. (Exhibit 7 at 1).

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 overarching 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.”

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). Here, Applicant satisfied SOR subparagraphs 1.e and 1.g through 1.j. I conclude they do not constitute a security concern. Applicant's remaining delinquencies trigger the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant's financial instability has been exacerbated by her husband's erratic employment. Absent two steady incomes, Applicant has neither been able to pay her debts timely, nor adhere to payment plans. She has paid some of her creditors and contacted others. She maintains a budget. She has not, however, followed through with any financial counseling. Consequently, 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, but has limited probative value given her failure to complete financial counseling.

Although Applicant's efforts at eliminating her delinquencies have been, at best, only moderately successful, they are sufficient to trigger the application of AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Because the largest delinquencies remain unpaid, however, I cannot conclude that AG ¶ 20(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," applies. Applicant has not mitigated the Guideline F security concerns.

Personal Conduct

Under this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information" (AG ¶ 15). Applicant's omissions from her security clearance application raise the issue of whether AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," applies.

Although Applicant did not specifically disclose the debts listed in the SOR, she did disclose a judgment in response to another question about her finances. Also, she noted that she incurred debt in 2001 that she characterized as "unknown." I conclude that Applicant's omissions indicate disorganization rather than duplicity, and that she did not intentionally omit any financial information. AG ¶ 16(a) does not apply. There are no personal conduct security concerns.

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.”

Applicant’s financial problems were not caused by extravagant spending. Instead, they were caused largely by her husband’s employment woes. She has contacted creditors, attended a financial counseling session, and paid some of her creditors. However, she currently has not begun satisfying the two largest delinquencies, SOR subparagraphs 1.f and 1.n.

Applicant deserves credit for her excellence on the job. Also, she demonstrated tremendous character by completing college while working two part-time jobs and helping her grandmother raise her siblings. These positive attributes are not enough at this time, however, to overcome the security concern generated by her continuing financial difficulties. Upon considering Applicant’s case in the context of the whole person concept, I conclude that her application for a security clearance 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b - 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g - 1.j:	For Applicant
Subparagraphs 1.k - 1.n:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - -2.b:	For 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