



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-01722
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

May 4, 2009

Decision

MASON, Paul J., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her Security Clearance Application (SCA, Item 4), on April 24, 2007. On April 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her answer to the SOR on May 13, 2008. She requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on February 19, 2009. Applicant received the FORM on March 3, 2009. Her response was due by April 2, 2009. No response was received by DOHA. The case file was assigned to me on April 23, 2009.

Findings of Fact

The SOR contains 13 allegations under the financial considerations guideline. SOR 1.a. and 1.b. are federal and state tax liens. SOR 1.c. is a judgment. The next seven allegations identify delinquent credit card or medical accounts. The eighth creditor (SOR 1.l.) was deleted from Applicant's credit report. SOR 1.m. alleges that Applicant did not show how she is using her net monthly remainder of \$216.00 to pay off her overdue debts. Applicant admitted all allegations and provided explanations. She is 44 years old and single. In June 1987, she received her college degree in business administration. She is currently employed as a technician for a defense contractor that she has worked for since April 2007. Applicant has changed residence twice since April 2004. She seeks a security clearance.

Financial Considerations

SOR 1.a., \$8,913, federal tax lien. The lien was filed in April 2007. Though Applicant technically denied the allegation, she furnished an undated copy of an Internal Revenue Service (IRS) amended tax return (1040X) for calendar year 2002. Her computations reflect she owes \$2418 in additional federal taxes. The amended tax return, the proof of payment documentation for SOR allegations 1.c. through 1.k., and documentation showing that the SOR 1.l. account was deleted from her credit report, are attached to Applicant's answer to the SOR. See, Item 3.

SOR 1.b., \$4,028, state tax lien. Applicant supplied the same explanation in response to this allegation as she did for SOR 1.a. This allegation refers to a state tax lien filed three years before the federal tax lien in SOR 1.a. Applicant is still responsible for this lien.

SOR 1.c., \$6,429, judgment. The collection agency received a judgment against Applicant in October 2007 for medical services. On April 7, 2008, Applicant provided documentation showing she paid the debt in full.

SOR 1.d., \$1,622, credit card. Applicant provided documentation showing she settled with this collection agency in May 2008 for \$1,400.

SOR 1.e., \$1,578, medical account. On May 8, 2008, Applicant paid \$1,597 to settle the account in full.

SOR 1.f., \$116, medical account. On May 8, 2008, Applicant paid this account.

SOR 1.g., \$583, medical account. Applicant settled the account for \$528 on May 9, 2008.

SOR 1.h., \$513, medical account. Applicant resolved this account on March 31, 2008 with a payment of \$528. On April 7, 2008, Applicant was notified this account paid. See, documentation attached to Item 3.

SOR 1.i., \$127, medical account. Applicant was notified in March 2008 the account had been paid in full.

SOR 1.j., \$315, medical account. Applicant also paid this account in full on March 25, 2008.

SOR 1.k., \$453, medical account. On March 25, 2008, Applicant satisfied this account in full.

SOR 1.l., \$8,345, credit card. On April 22, 2008, Applicant was notified by the credit agency that the account had been deleted from her credit record. The account number in the credit agency's investigative response is the same as the account number in Item 8 (credit report dated August 24, 2007).

SOR 1.m. In Applicant's personal financial statement (PFS), she did not show whether she was using any part of her net monthly remainder of \$216 to pay her delinquent debts. The documentation attached to her answer (Item 3) reflects considerable activity in March and April 2008 in resolving her delinquent accounts. I find all allegations under paragraph 1 for Applicant. The listed debts became delinquent between 2002 and 2007.

Personal Conduct

On August 24, 2007, Applicant completed a security clearance application (SCA). In response to question 27 requiring information about having liens placed against Applicant's property in the last 7 years, she answered "No," even though a lien was placed against her in December 2004 and one in April 2007. Applicant also answered "No" to question 28A, requiring information about having any debts over 180 days delinquent in the last 7 years. Though Applicant does not believe she intentionally omitted information about her financial problems, I am unable to agree with her. Considering the two liens (\$12,941), and nine debts (\$11,736) in the SOR total \$24,677,¹ I find Applicant intentionally omitted financial information on her SCA. My finding is also based on her inconsistent explanations in section 4 of Item 5 (Interrogatories and Responses), and her answer to the SOR. After intimating she may have not wanted to remember her past due debts, her statement indicating she did not remember some of the debt, indicates to me that she remembered some of the other debts. Then, in noting she had never looked at her credit report, she commented that

¹ SOR 1.l. was deleted from Applicant's credit report.

she probably did not want to see the information in the credit report. Yet, in her answer to the SOR, she mentioned the lack of a credit report in reinforcing her claim she had unequivocally forgotten about the delinquent debts.

Character Evidence

Applicant provided no independent evidence regarding her job performance or reputation in the community where she lives.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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.

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.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Analysis

Financial Considerations (FC)

¶18. *The Concern.* “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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

FC disqualifying condition (DC) ¶19.a. (*inability or unwillingness to satisfy debts*) and FC DC ¶19.c. (*a history not meeting financial obligations*) apply as the SOR shows Applicant owes the state and federal government \$12,941 in tax liens. She owes a total of \$11,736 to nine creditors/collection agencies. The total amount of Applicant’s delinquency is \$24, 677.

Evidence of financial problems may be mitigated by FC mitigating condition (MC) ¶20.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 reliability, trustworthiness, and good judgment*); FC MC ¶20.b. (*the conditions that resulted in the financial problem were largely beyond the person’s control and individual acted responsibly under the circumstances*); FC MC ¶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*); and, FC MC ¶20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant receives some mitigation under the third element of FC MC ¶20.a. (“or occurred under circumstances that is unlikely to recur”) as she has satisfied most of the debts except the federal and state liens. Her documented evidence of filing an amended federal tax return for 2002, showing how much she believes she owes in taxes, gives me complete confidence she will pay the additional amount in federal taxes. Though she provided no documentation regarding the state tax lien, her successful efforts in paying or settling the nine remaining debts in the SOR affirm my belief she will follow through on the state lien as she has with the federal lien.

FC MC ¶20.b., which mitigates when unforeseen events impede an applicant’s efforts to honor his current or delinquent financial obligations, is unavailable.

Applicant receives some mitigation under FC MC ¶20.c., even though there is no evidence of financial counseling. Paying off or settling with nine creditors in 2008, successfully removing SOR 1.I. from her financial record, and taking responsive action to eliminate her federal tax lien, show clear indications that Applicant's financial problems are being resolved.

The significant mitigation Applicant receives under FC MC ¶20.d. is based on her documentation provided in SOR 1.a., and her documented pay offs of 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., and 1.k. After being advised she owed the liens and debts, she paid nine debts, filed documentation to address the federal lien, and successfully removed SOR 1.I. from her credit report. The FC guideline is resolved in her favor.

Personal Conduct (PC)

¶15. *The Concern.* "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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process."

This guideline applies to intentional attempts to conceal or omit information from an SCA. I am unable to find in Applicant's favor under this guideline because there is not just one or two or three debts in the SOR. Rather, the SOR contains 11 debts totaling \$24,677. Not having a credit report when she filled out the SCA, or not wanting to think about her delinquent debts, or not wanting to see what her credit report said, does not excuse her intentional behavior. PC DC ¶16.a. (*deliberate omission or falsification of relevant facts from any personnel security questionnaire to determine security clearance eligibility or trustworthiness*) applies.

There are three mitigating conditions (MC) that are potentially applicable to the circumstances in this case. Those conditions are: PC MC ¶17.a. (*the individual made prompt, good-faith efforts to correct the omission, concealment or falsification, before being confronted with the facts*); PC MC ¶17.c. (*the offense was so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*); and, PC MC ¶17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*). PC MC 17.a. is not applicable as Applicant did not disclose her delinquent debt history until she was confronted with the debts in March 2008 in Item 5 (Interrogatories and Responses). PC MC ¶17.b. is inapplicable because Applicant tried to conceal \$24,677 in debt owed to 11 creditors. Only two years have passed since Applicant's intentional omission of her delinquent indebtedness. Applicant's intentional

omission of material financial information in April 2007 continues to cast doubt on her reliability and judgment.

Though Applicant continues to deny she intentionally omitted material financial information from her SCA in April 2007, the number of delinquent accounts and the amount of the debt convince me she knew she had some delinquent debt when she filled out the security form. Her lack of candor in not simply admitting she intentionally omitted the information removes PC MC ¶17.d. from consideration. The PC guideline is found against Applicant.

Whole Person Concept (WPC)

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding for Applicant under the FC guideline, but against her under the PC guideline. The case still must be weighed within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

- (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 the participation was 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. AG ¶ 2(a)

Applicant is 44 years old and single. She received a college degree in June 1987. She began working for her current employer in April 2007. She provided no character evidence regarding her job performance or lifestyle. She furnished very credible evidence showing she has resolved nine out of 11 creditors, and that she has taken appropriate steps to resolve her federal tax lien. The actions she took to resolve her debts demonstrate she is an intelligent woman. When Applicant filled out her SCA in April 2007, she was 42 years old, clearly responsible for her actions. Her inability to acknowledge her intentional omission continues to raise questions about her reliability. Accordingly, Applicant has established her case under the FC guideline, but she has failed to mitigate the security concerns arising under the PC guideline.

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 (Financial Considerations, Guideline F): FOR APPLICANT

Subparagraph 1.a. through 1.m.

For Applicant

Paragraph 2 (Personal Conduct, Guideline E): AGAINST APPLICANT

Subparagraphs 1.a and 1.b. 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.

Paul J. Mason
Administrative Judge