



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-03053

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: Pro se

January 8, 2009

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Security Clearance Application (SF 86), on November 7, 2006. On July 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) for Applicant. 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 (undated), and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on September 17, 2008, and it was assigned to another judge the following day. It was transferred to me on October 2, 2008. DOHA issued a notice of hearing on October 8, 2008, scheduling a hearing on October 24, 2008, and it was convened on that date.

At the hearing, the government offered seven exhibits (Exhs. 1-7) which were admitted in evidence without objection. Applicant submitted eight exhibits which were admitted without objection (Exhs. A-H). She testified on her own behalf as did her certified financial counselor (Exh. E). DOHA received the transcript (Tr.) of the hearing on October 28, 2008. I granted Applicant's request to keep the record open until November 24, 2008, to submit additional evidence. No additional information was received. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Rulings

Notice

The hearing notice was dated within 15 days before the hearing date. I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to the 15 days notice and indicated she was ready to proceed (Tr. 7).

Findings of Fact

In her Answer to the SOR, Applicant admitted three and denied three of the six allegations in the SOR relating to approximately \$17,000 in delinquent debts.

Applicant is a 48-year-old employee of a government contractor working since February 2005 as a long-haul truck driver carrying cargo that includes defense equipment. She was working as a team with her husband but discovered that she had cancer in 2008. She and her husband separated at that time. She is undergoing chemotherapy for the cancer and cannot work because of the adverse effect of the therapy. She hopes to return to work either with her husband if they are reconciled, or find another driver/partner. Meanwhile she lives with her mother and shares living expenses. She does not own an automobile but drives her son's car when she is physically able to do so. She held a security clearance for approximately six years but does not have one now.

Applicant's only income is a temporary Social Security SSI payment of \$637 per month because of her illness. It is supplemented by food stamps worth \$136. She has a budget program developed with her financial counselor that indicates expenses of \$422 per month and payment on her debts of \$130. The balance is for contingencies. She has two grown children for whom she has no financial responsibility.

Applicant paid a retainer of \$400 for the services of a debt counseling organization. The owner of that company appeared with her at the hearing to explain the status of her debts and action taken to resolve them. In summary they are as follows:

1. SOR ¶ 1.a. Utility debt of \$381 (Tr. 28) being paid by \$30 per month payments (Exh. D).

2. SOR ¶ 1.b. Medical debt of \$566 (Exh. C). Arrangements have been made for payment of \$50 per month and payments have been made since April 2008. Payments include amount stated in SOR ¶ 1.e. to same creditor. Total amount now owed to the creditor is approximately \$500.

3. SOR ¶ 1.c. Medical bill of \$2,266 being paid with \$50 per month payments. (Exhs. A and F). Four payments had been made at time of hearing (Tr. 20).

4. SOR ¶ 1.d. Auto repossession charges of \$13,000. Some payments were made and the debt is not now on credit report for original owner of the debt. However, it was likely sold to another creditor. Payments originally set for \$326 per month and a few payments made (Exhs. B 2). The plan now schedules payments of \$50 per month (Exh. F) but no payments have been made in that amount. Applicant now questions the validity of the amount of the debt.

5. SOR ¶ 1.e. Additional debt of \$188 to same creditor as alleged in SOR ¶ 1.b. (See par. 2 above).

6. SOR ¶ 1.f. Bank debt of \$750 which Applicant disputed. Investigation by credit reporting agency resulted in deletion from report (Exh. H).

While Applicant is making progress in paying the debts her income is not only low but is contingent on the agreement of the Social Security Administration to continue her SSI payments depending on the surgery and medical treatments she will receive. At the time of the hearing she knew that the payments would be made for another three months but did not know what they would be after that time. No information was provided on the subject after the hearing.

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.” 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 transcends normal duty hours and endures throughout off-duty hours. 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) listing multiple prerequisites for access to classified or sensitive information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying.

Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated the delinquent debts cited in the SOR and was unable or unwilling to pay the obligations for several years. The evidence shows that she has been able pay some of the debts and has worked out a payment plan for others consistent with her limited income. Thus the evidence clearly raises these potentially disqualifying conditions.

The guideline also includes several mitigating conditions (MC) that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated 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.”

Most of Applicant’s financial problems arose as a result of her loss of employment, her separation, her illness, and the adverse reaction to her treatment for cancer. Hopefully, these conditions will not recur but at this point her medical indications do not provide sufficient assurance that her income will likely be sufficient to continue to resolve the financial issues.

AG ¶ 20 (c) applies when 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. Applicant has received and continues to receive good advice from her counselor and has a plan that is being implemented with the income she has available.

AG ¶ 20 (d) applies where the evidence shows the person initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. While it not necessary that all of the delinquent debts be resolved for mitigation to apply, it is necessary that a significant portion of the debts be settled or paid. Four of the remaining delinquent debts are being resolved by payment through a credit counselor, one was disputed and removed from the credit report. The repossession, by far the largest, is still unresolved, although the amount is in dispute and a few payments were made on the debt a number of months ago.

AG ¶ 20 (e) applies when the person has a reasonable basis to dispute the legitimacy of of the debt and provides evidence of actions to resolve the issue. Applicant has shown that the one disputed debt has been resolved in her favor (Exh. H).

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.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for 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. Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance at this time. I recognize her expressed interest to resolve these financial issues to restore her credit rating and continue to hold a security clearance. While she entered debt counseling and has been able to reduce her delinquent debts and enter a plan to pay them with the limited amount available from her SSI payments, the financial prospects are not sufficiently solid as to give confidence that the debts be substantially resolved. Applicant has not mitigated the security concerns arising from these financial considerations. It is premature at this time to grant a security clearance.

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
- Subparagraph 1.b.: For Applicant
- Subparagraph 1.c.: Against Applicant
- Subparagraph 1.d.: Against Applicant
- Subparagraph 1.e.: For Applicant
- Subparagraph 1.f.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in the case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Access to classified information is denied.

Charles D. Ablard
Administrative Judge