



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-03273
)	
Applicant for Security Clearance)	

Appearances

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

December 18, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Security Clearance Application (SCA) on August 27, 2007. On May 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). 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 the revised 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 June 4, 2008. DOHA issued a notice of hearing on August 19, 2008, and the hearing was held on September 10, 2008. At the hearing, six exhibits (GE 1 through 4, GE 6 and 7) were admitted in evidence without objection to support the government's case. GE 5 was marked for identification (Tr. 22); the exhibit was not admitted in evidence because (1) it is irrelevant to the allegations of the SOR, and (2) Applicant testified she has never been

to the state cited in GE 5 (Tr. 150). Applicant testified and submitted four exhibits (AE A-AE D). In the time allowed for Applicant to furnish additional documentation, she submitted AE E through AE H. These exhibits contain partial payment receipts to medical providers, and letters to creditors telling them she cannot pay the debt and/or to discontinue contacting her about the debt. DOHA received a copy of the transcript of the proceedings on September 19, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The SOR alleges 10 debts (nine delinquent debts and one judgment) totaling \$16,984.00. The debts converted to delinquent status between 2001 and December 2007. Applicant admitted subparagraphs 1.f., 1.i., and 1.k. She denied the other seven debts. Her denials of the remaining debts resulted from not recognizing the accounts after they were sold to collection agencies with different names. During the hearing, she acknowledged the other listed accounts are her responsibility.

Applicant is 62 years old. Her second marriage ended in divorce in June 1984. She has three sons, 46, 44, and 38 years of age. She seeks a security clearance.

Applicant's financial troubles began in December 1997 when she lost her job after a serious car accident left her with broken arms and legs. Surgery, including the insertion of metal plates and screws, was required to facilitate proper healing. Applicant's orthopedic surgeon advised her to file for disability because arthritis would eventually demobilize her. Over the next two or three years, she struggled to find a job that would allow her to work in a seated position. She found employment in early 2000 allowing her to work in a seated position, but was terminated when the business was sold in February 2002. Applicant began receiving Social Security Disability payments in March 2003 (Tr. 95). She was unable to find employment until she was hired at her present job in September 2007.

Between February 2002 and September 2007, she lived with different relatives until she moved into her own apartment some time in 2003. Currently, after subtracting all her expenses from her monthly disability check of \$1,109.00, she has a negative monthly remainder of approximately \$619.00 (Tr. 143). Applicant has received assistance from her sons and her sister to help her pay her expenses.

When Applicant discovered she needed additional surgery in early 2008 to remove the metal plate and screws from her leg, she stated, "I started looking for a job so I could get some additional insurance to help pay for the surgery I needed. I found this job that hires disable[d] senior citizens at [current employer]. This job was terminated in April 2008 (AE A)." Applicant asserts that a reasonable accommodation be made under the Americans with Disabilities Act (ADA) to permit her to continue her employment with her current employer (AE B).

The head of human resources, who also serves as facility security officer (FSO) for the employer, explained that 75% of the company's employees have disability issues (Tr. 37). She initiated the background security check on Applicant, and also participated in Applicant's job interview before she was hired in September 2007 to work part-time (Tr. 30). The FSO has had no complaints about Applicant's work (Tr. 31). While the FSO testified Applicant has been employed since September 2007, there is no evidence in the record indicating where Applicant was employed or what her job duties were between September 2007 and March 2008.

Applicant's second witness supervised Applicant from March to May 2008. Applicant had to stop work in May 2008 when her interim security clearance was rescinded. She also underwent additional surgery to remove the metal plate and screws from her leg, recommends her for a position of trust based on the excellent rapport she has developed at her job as a receptionist at the crime lab (Tr. 47). Applicant's exemplary job performance is the primary reason her supervisor provided testimonial support for her (Tr. 55).

Regarding the debts listed in the SOR, Applicant presented no evidence of repayment. She provided four receipts of partial payments on medical accounts, but it is impossible to determine whether the payments apply to either of the two listed medical accounts (subparagraphs 1.f. and 1.g.) or other unlisted medical debts. She believes the past due account (\$10,522.00) in subparagraph 1.h. is a credit card she had at the time of her auto accident in December 1997. The state lien of \$726.00 (subparagraph 1.h.) was imposed in October 2007 (GE 4) because Applicant did not pay taxes on the unemployment compensation she received over the years. She did not know she had to pay taxes on unemployment benefits she received (Tr. 74).

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.”

The credit bureau reports reflect that since 2001 Applicant has accumulated 10 delinquent accounts (nine delinquent debts and one judgment) totaling almost \$17,000.00. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history not meeting financial obligations*) apply based on the age of the debts, and the fact they have not been paid.

The record reflects Applicant was involved in a very serious automobile accident in December 1997. As a result of her injuries, she could no longer work standing for any lengthy period of time. She encountered periods of unemployment until she found a job in early 2000. She lost that job in February 2002, and was unemployed until she found employment with her current employer in September 2007. Since February 2002,

Applicant has been receiving unemployment benefits, financial and shelter help from her relatives and Social Security Disability.

There are four mitigating conditions (MC) that have potential application to this case. 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*) cannot be applied as Applicant still owes the debts even though the account in subparagraph 1.h. should probably be removed by the limitations statutes defining the period of time a creditor has to recover on a delinquent credit card debt. Applicant's debts are likely to persist, however, even if the subparagraph 1.h. account were removed for time limitation purposes.

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*) applies based on the serious car accident in December 1997, and employment problems Applicant encountered since then because of her disability.

Conversely, neither 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*) nor FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply. There is no indication Applicant has her financial problems under control. Though she has made partial payments on some medical accounts, she has not addressed any of the SOR accounts, not even the medical account for \$10.00. Applicant has not met her burden of persuasion under the FC guideline.

Whole Person Concept (WPC)

The adjudicative process is an examination of a sufficient period of a person's life, and a careful consideration of nine variables that comprise whole person model:

(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 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 and recurrence. ¶ 2, p.18 of the Directive.

I have considered the disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case, as well as the general factors of the whole person model. It is clear Applicant suffered serious injuries in her car accident in December 1997 that she has not fully recovered from. Since then, she has encountered

problems finding a job. While there is testimony she began working at her current employer in September 2007, her supervisor provided the only direct knowledge of her employment. I am not minimizing the financial impact of the car accident and subsequent periods of unemployment. I have concluded however, that the character accolades from her supervisor addressing Applicant's two months of employment from March to May 2008 do not outweigh her continuing financial problems. Having considered this case under the general factors of the whole person concept, Applicant's access for classified information is denied.

Applicant raises an issue that warrants discussion. First, her contention that a reasonable accommodation be made under ADA for her disability so she can continue her employment has been addressed by the DOHA Appeal Board in ISCR Case No. 99-0068 (November 30, 1999). The federal government is excluded from ADA coverage by 42 USC 1211(5)(B) (*Id.* at 5). Second, my adverse decision is not based on Applicant's disability, but on her continuing financial problems and insufficient track record of job performance and financial responsibility.

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): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant.
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant
Subparagraph 1.k.	Against Applicant

Conclusion

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

Paul J. Mason
Administrative Judge