



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-03617
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

May 11, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government's security concerns raised under Guidelines F, Financial Considerations. Clearance is denied.

On October 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 on November 13, 2008, and requested a hearing. The case was assigned to me on February 12, 2009. On February 17, 2009, a Notice of Hearing was issued originally scheduling the case for March 2, 2009. The hearing was continued because of inclement weather, and rescheduled for April 6, 2009. It was then

held as scheduled. At the hearing, I received six government exhibits, six Applicant exhibits, and the testimony of Applicant and her husband. The transcript was received on April 15, 2009.

Findings of Fact

Applicant is a 34-year-old married woman with one child, age nine, and one stepchild, age 16. She has an associate's degree in mechanical engineering technology. Currently, she works for a defense contractor as a marine designer.

Applicant owes creditors approximately 14,000 in delinquent debt. Her financial problems coincided with her 1997 wedding. She and her husband borrowed money from two creditors to finance the wedding reception, and purchase furniture for their new home (Exhibit 5 at 3). Shortly after the wedding, Applicant lost her job (Tr. 13). Both the wedding loan and the furniture loan, as listed in SOR ¶¶ 1f and 1.j, grew delinquent.

Applicant was underemployed for several months, working a number of part-time jobs. By 1999, she had obtained a full-time job (Tr. 14). Later that year, she became pregnant. The pregnancy was difficult, requiring bed rest for the last month before her child's birth, and periodic hospitalizations. The child was born with serious health problems that required extensive medical treatment and hospitalization for both the child and Applicant (Exhibit 5 at 3).

Approximately eight months elapsed before the medical problems of Applicant's child stabilized. Applicant was unable to work during this time, and lost her job. Between 2000 and 2002, she lacked health insurance (Exhibit 5 at 3). Her struggle to pay her medical bills exacerbated her financial problems. By 2002, more debts grew delinquent including bills for her 1999 hospitalizations (SOR ¶¶ 1.d, 1.e), and another credit card bill (SOR 1.c).¹

During this time, Applicant also fell behind on her car note. In 2003, her automobile was repossessed, (Exhibit 4 at 15). In March 2003, a judgment for the deficiency was entered against her in the amount of \$4,572 (SOR ¶ 1.b).

In 2004, after approximately three years of working for a temporary employment agency, Applicant began working for her current employer. After successfully completing an apprenticeship, she became a salaried employer in 2006 (Tr. 15).

Although Applicant's income increased, she was unable to make any progress in satisfying the SOR delinquencies. Shortly after her current employer hired her, Applicant's daughter had two surgeries to repair a cleft palate, and remove a nasal deformity (Exhibit 5 at 2). Although Applicant had health insurance by this time, it did not cover all of the bills (*Id.*). Consequently, several more medical bills grew delinquent (SOR ¶¶ 1.g -1.i).

¹SOR ¶¶ 1.c and 1.l are duplicates.

Also, in 2005, Applicant's brother-in-law and his family moved into her home (Exhibit 5 at 3). For approximately seven months while her husband was unemployed, she was supporting both her family and her brother-in-law's family solely on her income (*Id.*).

In May 2008, Applicant created a debt payment plan to satisfy a debt not listed on the SOR (Exhibit E). Between May and November of 2008, she made monthly payments ranging between \$29 and \$80 (*Id.*). She did not complete the payment schedule, and continues to owe approximately \$650.

In June 2008, Applicant wrote letters proposing payment plans to each of the creditors listed in the SOR (Exhibit 4 at 11-15). In November 2008, she met with a financial counselor (Tr. 42). After the meeting, Applicant developed a payment plan which consolidated the individual plans set forth in her earlier correspondence to the SOR creditors (Exhibit D). Under the plan, she was to have satisfied all of the delinquencies by June 2009.

Applicant made one payment, consistent with the plan, satisfying a judgment owed to a local municipality (Exhibit F). She made no additional payments. She attributes her inability to execute the payment plan to an unexpectedly large increase in her utility bill (Tr. 42).

Applicant maintains a budget (Tr. 40). She has approximately \$585 of monthly after-expense income. Currently, her mortgage payments are approximately two months behind (*Id.*).

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). Applicant satisfied SOR ¶ 1(a) in June 2006. I conclude it no longer represents a security concern. The remaining delinquencies, however, 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 delinquencies were caused by a series of family medical problems, and several episodes of underemployment. Once these problems stabilized, Applicant experienced more setbacks including the relocation of her brother-in-law’s family to her home, and a rapid, unexpected increase in her utility bills. She responded by writing creditors, consulting with a financial counselor, and developing payment plans. 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,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

Although Applicant deserves credit for confronting her delinquencies, her efforts, thus far, have been unsuccessful. Also, her mortgage payments have recently fallen behind. Consequently, 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.

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 delinquencies were caused by an extraordinary series of misfortunes. She has attempted to get them under control by crafting a budget and developing payment plans. Moreover, she deserves credit for obtaining her current job, and successfully completing its internship program.

Applicant was unable, however, to adhere to her payment plans. Absent a demonstrated track record of financial reform, future promises to pay debts have limited probative value. Consequently, her financial problems remain a security concern regardless of the emotionally compelling circumstances surrounding their accrual.

Upon considering the disqualifying and mitigating conditions together with the whole person concept, I conclude Applicant has not mitigated the Financial Considerations security concern. Clearance is 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
Subparagraph 1.b - 1.l:	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.

MARC E. CURRY
Administrative Judge