



**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. 08-04020

Appearances

For Government: Jennifer I. Goldstein, Department Counsel

For Applicant: *Pro Se*

December 17, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On July 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the 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 in writing on August 4, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on August 20, 2008. Applicant did not file a response to the FORM. The case was assigned to me on October 21, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 55 year old employee of a defense contractor.

As of July 2008, applicant was indebted to American Express (AE) in the approximate amount of \$18,724.00. In response to interrogatories sent to her by DOHA, she stated she had agreed to make monthly payments of \$1,000.00 to the law firm representing AE. She attached to her interrogatory responses a May 16, 2008 letter from the law firm. This letter states that the balance due is \$18,273.70. Applicant also attached a copy of her check register which shows a \$250.00 payment going to the law firm on April 16, 2008 and a \$1,000.00 payment going to the law firm on May 16, 2008.

In her response to the SOR, applicant reiterated that she is paying the law firm \$1,000.00 per month. She attached a letter from the law firm indicating that her debt had been reduced to \$17,143.24.

The AE debt is the only debt alleged in the SOR. However, the evidence establishes that applicant had fallen behind on many debts, and has since repaid them, or brought them current. In her response to the SOR, applicant provided some background concerning her debts. She explained:

My sister and I started a business in March 2006 . . . The business drained my financial resource and I put some of the expenses on my credit cards, otherwise we would have had to close the business. The business is now breaking even. I did get behind on several credit card debts, but all are now current or fully paid off. I am paying [the law firm collecting for American Express] \$1000 monthly payments on my outstanding balance.

Policies

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.

(Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph 19.c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant has a history of an inability to pay her debts. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply 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.” Applicant’s financial difficulties were for the most part caused by a failing business. The business has now stabilized to the point that it is breaking even. Applicant has either satisfied her delinquent debts or has made arrangements to satisfy them. Applicant’s financial difficulties are unlikely to recur, and they do not cast doubt on her current reliability, trustworthiness, or good judgment. Accordingly, this mitigation condition is applicable.

Under Paragraph 20.b., it may be mitigating where “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.”

Applicant's financial problems were caused by conditions largely beyond her control; namely a failing business venture. She acted responsibly by repaying or agreeing to repay all of her delinquent debts. Accordingly, this mitigating condition is applicable.

Evidence that "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" is potentially mitigating under Paragraph 20.c. It is clear the problem is under control. This mitigating condition is applicable.

Paragraph d. applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has satisfied all of her past-due debts or is in the process of satisfying them. This mitigating condition is applicable.

"Whole Person" Analysis

Under the whole person concept, the AJ must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant 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. Applicant is a mature woman who found herself owning a business that was failing. She decided to put some of her expenses on credit cards, and then fell behind on her credit card payments. She has since either repaid all of the delinquent credit card debt or has reached repayment agreements with her creditors. Most of these repayments occurred before the SOR was issued. Based on the evidence presented, I conclude applicant mitigated the security concerns arising from Guideline F.

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: FOR APPLICANT

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

JOSEPH TESTAN
Administrative Judge