



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



In the matter of:)
)
) ISCR Case No. 08-04509
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

September 25, 2005

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On June 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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 July 11, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on August 8, 2008. DOHA issued a notice of hearing on August 19, 2008, and I convened the hearing as scheduled on September 11, 2008. The government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified and submitted Exhibit (AE)

A through D, which were admitted without objection. One witness testified on Applicant's behalf. DOHA received the transcript of the hearing (Tr.) on September 18, 2008.

Procedural Issue

Department Counsel moved to amend SOR ¶ 1.o by deleting the language after the first sentence of the allegation. There was no objection and the request was granted.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 27-year-old material configuration specialist working for a federal contractor. She earned her associate's degree in September 2008 through a program with the company she works for. She attended different colleges from 1999 through 2004, but did not earn a degree. She did earn a certified nursing certificate.¹

Applicant married in 2006 and moved from her home state to be with her husband. During the previous years she incurred many delinquent debts. She admitted she owes all of the debts in the SOR. She has not paid any of the debts.

The debt listed in SOR ¶1.a is for a car Applicant bought and then was repossessed. She purchased the car in 2006 for approximately \$17,000. She put a down payment of \$2,500 on the car. Her monthly payments were approximately \$400. She never made any payments. She bought the car before she moved and took it with her when she moved. She has not had contact with the creditor for about two years. Her explanation was that she was waiting for them to contact her to tell her how much she owed.²

The debts listed in SOR 1.b, 1.h, and 1.k are credit card debts that total approximately \$1,242. Applicant has not paid these creditors.³

The debts listed in SOR 1.e, 1.i, and 1.n are for cell phone services totaling approximately \$2,657. The debts remain unpaid.⁴

¹ Tr. 24-27.

² Tr. 28-32.

³ Tr. 39, 41.

⁴ Tr. 37-38.

The debts listed in SOR 1.d, 1.g, and 1.i are debts for medical services that Applicant incurred when she did not have insurance. They total approximately \$731. These debts remain unpaid.⁵

Applicant incurred the debt in SOR 1.c when she purchased her husband's wedding ring. She owes the jeweler \$571 and the debt remains unpaid.⁶

The debt listed in SOR 1.f was for damage to an apartment Applicant lived in before she moved. She did not pay this debt.⁷

The debt listed in SOR 1.j was a payday loan. She owes approximately \$370 and has not paid it.⁸

The debt listed in SOR 1.m is for furniture Applicant and her friend bought when she lived in her home state. She was supposed to pay for half of the furniture, but she left the state and did not follow up on resolving the debt.⁹

Applicant also has approximately \$15,000 in student loans. They have been deferred because she intends on continuing to go to school. She earns approximately \$27,000 annually and her husband earns approximately \$33,000 annually. She anticipates receiving a raise to \$32,000 because she has now completed her training. She and her husband are working with a loan officer to help them find a plan to pay off their debts so they can buy a house as soon as they can. They hope to start a family in the near future. They do not have a written budget. They have not had any financial counseling, except through the loan officer. Applicant and her husband believe they can pay off her debts within a year. She believes with their two incomes they can pay her delinquent debts. She also admitted they are basically "living paycheck to paycheck." Applicant believes she has matured in the past few years and understands her obligations. Applicant tithes \$500 a month and will not reduce that amount.¹⁰

Applicant's husband testified on her behalf and stated they both have stable jobs and they are trying to do different things to get credit "where it needs to be." He stated, "So we're just really trying to get in the process of starting a family now and in the process of actually trying to get a house and just trying to do what we need to do to get this situation resolved." He believes they can get the situation resolved in less than a year. They have been hindered from resolving their debts because there were two

⁵ Tr. 33-35.

⁶ Tr. 35-36.

⁷ Tr. 36-37.

⁸ Tr. 39-40.

⁹ Tr. 40-42.

¹⁰ Tr. 21-22, 44-65, 68.

deaths in the family in 2007 and they had to travel back home for the services. All of the plans on how to resolve their debts are in the planning stages, nothing has been acted upon.¹¹

Applicant offered statements from friends and her pastor who believe she is a trustworthy and honorable person. Her pastor considers her dependable and responsible to her obligations at church.¹²

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 over-arching 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

¹¹ Tr. 72-74.

¹² AE A, B, C, and D.

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. I have considered all of them and especially considered AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Appellant has many delinquent debts and has not paid any of them. She moved in 2006 and left her debts behind her. She has made no arrangements to contact creditors nor has she made even a nominal effort to pay even the smallest of her delinquent debts. I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions and especially considered AG ¶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 current reliability, trustworthiness, or good judgment”); (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”); (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 (d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

Applicant has many debts that are delinquent and she has made no effort to pay them. I find (a) does not apply. Applicant did not offer any evidence that the debts were

due to circumstances that were beyond her control. She did testify that she incurred some medical debts when she was uninsured, but did not offer any evidence that she acted responsibly. She also had two deaths in the family, but they happened in 2007 and many of her debts were before then. She has not presented any evidence that she acted responsibly under the circumstances. I find (b) does not apply. Applicant has been working with a loan officer to help manage her debts so she and her husband can buy a house. I do not find this is the type of financial counseling necessary to assist her in resolving her financial problems and there are not any substantive tangible indications the problem is being resolved. Applicant testified of things she was planning on doing or talking about doing in the future, but has not done anything at present. Applicant has not initiated a good faith effort to pay her creditors or to resolve her debts. I find (c) and (d) do not apply.

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 commonsense 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 has numerous debts that she left behind her when she moved and married. She stated she is now mature and responsible, but has not begun any payment plans or otherwise initiated repayment or resolution of any of the debts. She has not sought constructive financial counseling, but rather is working with a loan officer to help her with her credit so she can buy a house. She does not have a budget and although she and her husband have discussed plans to pay the debts, they do not have a substantive process to do so, nor has she taken any steps to pay any of the debts. Applicant has not acted responsibly and her inaction toward her debts raises questions about her reliability and good judgment. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from financial considerations.

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-1.o: Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge