



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-05846
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James E. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

April 24, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on January 9, 2008. On December 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 acknowledged receipt of the SOR on December 8, 2008, and elected to have her case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on January 9, 2009.¹ Applicant received a complete file of relevant material (FORM) on February 2, 2009, and was provided the

¹The Government submitted eight items in support of its contention.

opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant did not submit additional information. The case was assigned to me on April 16, 2009. Based upon a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, dated December 24, 2008, Applicant admitted the factual allegations in ¶¶ 1.b-1.n, 1.r-1.u, 1.w, 1.y-1.cc, 1.ff, and 1.jj, of the SOR (Item 4). She denied the remaining allegations. She did not provide additional information to support her request for eligibility for a security clearance.

Applicant is a 25-year-old employee of a defense contractor. She graduated from high school in June 2001. She has never held a security clearance (Item 4). She married in 2001 and divorced in 2003. She remarried in 2005 and has one child (Item 5). She has been employed with her current employer since December 2006.

Applicant worked in a variety of positions but reported a period of unemployment from June 2005 until December 2006. Applicant was unemployed during the time of her first marriage according to her security clearance application (Item 5).

The SOR alleges 36 delinquent debts, including a 2003 judgment, totaling approximately \$24,203 (Items 7 and 8). The accounts were charged-off or in collection from approximately 2003. The delinquent debts are confirmed by her credit reports (Items 7, 8).

Applicant admitted to 25 delinquent accounts alleged in the SOR totaling approximately \$14,439. She claimed the debts alleged in ¶¶ 1.t and 1.ff are the same debt and are the result of a divorce and job loss. She did not provide documentation to support this statement. However, the accounts are duplicates according to account numbers on the credit reports.

When Applicant answered the SOR, although she denied certain allegations, she also acknowledged that some credit card accounts were in her name during her marriage (1.q, 1.r, 1.s, 1.u, 1.v,) but she did not present any plan for payment or resolution of the debts.

Applicant denied allegations 1.p and 1.ii because the credit cards were opened, without her permission, by her ex-husband. She did not provide any information to support this claim.

Applicant claimed that she was unaware of the 2003 judgment (1.a) until a garnishment occurred. She did not provide any information on the garnishment.

In her statement dated November 12, 2008, (included with her interrogatories) she stated that most of the bills are due to "spouse abuse". She explained that she has

disputed most of the medical bills because her insurance should have covered the charges incurred (Item 6).

She also explained that she is making payments to Asset Acceptance for the HSBC debt and also to the USAA Bank (1.t). She claimed a Navy Exchange bill is paid. She did not provide any documentation for any payments.

Applicant's answer to the SOR does not include any documentation of payment for any of the accounts she admits are her responsibility. She listed an entry on her personal financial statement for payment of \$60 a month toward HSBC and USAA but she submitted no documentation to support the claims.

Applicant denied the other allegations in the SOR because "she did not recall the account". Applicant did not provide any information in response to the FORM. There is scant evidence in the record.

The current status of Applicant's delinquent debts is as follows: the collection debts, charged off accounts and judgment from late 2003 until the present are delinquent and not paid. Applicant did not report receiving financial counseling. She did not provide any documentation to support her position concerning the debts alleged or payments to the accounts.

Applicant's current net monthly income is \$4,756. This includes her spouse's income. She reported monthly expenses of \$3,522 on her personal financial statement. Her net monthly remainder is listed as \$1,114.14 (Item 6).

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, 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^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on numerous accounts totaling approximately \$24,203 over a period of approximately six years. She admitted

to 25 delinquent debts totaling \$14,439. Her credit reports confirm her debts. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions 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. Applicant still has significant delinquent debts from 2003. She has not acted responsibly. She has provided no record of any payments. Her conduct over the last six months with her creditors does not remove security concerns or doubts about her current reliability, trustworthiness, and good judgment. This mitigating condition does not apply.

Under AG & 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. As noted above, Applicant reported two periods of unemployment. She did not provide any explanation as to how this impacted her ability to pay her debts. She attributes the majority of the delinquent debt to "spouse abuse". She did not provide any information that she acted responsibly in identifying and resolving these debts, including the medical bills. I find this mitigating condition does not apply.

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 AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has not received counseling. She provided little or no information. Her assertions in her answer to the SOR that she is paying on two debts does not constitute evidence of financial reform or resolution of debts. No evidence was presented to show payments to any creditors or the establishment of valid repayment plans. Her efforts are not sufficient to carry her burden in this case. I conclude these mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows "the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." In this case, Applicant disputed the majority of the medical debts because her insurance should have covered the charges but did not provide documented proof to substantiate her claim. The debts alleged in 1.t and 1.ff are duplicates according to the credit report. This mitigating condition applies to those two debts but does not apply to the remaining debts.

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) the 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. Applicant reports that the majority of the debts are accounts in her name that occurred during her marriage. She has not provided any evidence to show attempts to resolve these debts. She disputed medical debts. However, she has not provided any documentation to support the claim that her insurance was liable for the amounts. The record contains scant information concerning Applicant. She chose to have her case decided on the written record. She did not submit additional information after receiving the FORM. Her answer to the SOR and information with her interrogatories are not sufficient for her to meet her burden in this case.

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 has not mitigated the security concerns arising under the financial considerations guideline.

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:	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.l:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa: 1;jj	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.

 NOREEN A. LYNCH
 Administrative Judge