



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-06283
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

August 3, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on November 16, 2007. On March 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and G 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 March 27, 2009. She answered the SOR in writing on April 8, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on April 14, 2009, and I received the case assignment on May 4, 2009. DOHA issued a notice of hearing on May 6, 2009, and I convened the hearing as scheduled on May 29, 2009. The Government offered

Exhibits (GXs) 1 through 14, which were received without objection. Applicant testified on her own behalf and submitted Exhibits (AppXs) A through F, without objection. DOHA received the transcript of the hearing (TR) on June 3, 2009. I granted Applicant's request to keep the record open until June 13, 2009, to submit additional matters. On June 11, 2009, she submitted Exhibits G through J, without objection. The record closed on June 15, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding the following verbiage to ¶ 1.b, "You are indebted to the Internal Revenue Service for unpaid taxes for tax years 2006, 2007, and 2008" (TR at page 78 lines 1~13). There being no objection, the motion to amend was granted.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a., 1.c., 1.e., 1.g.~1.i. and 2.b.~2.d. of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.b., 1.d., 1.f., and 2.a. of the SOR..

Guideline F - Financial Considerations

The Applicant is a 48 year old Data Management Analyst (TR at page 35 line 18 to page 36 line 6). She has held a security clearance for "about 26 years" (TR at page 11~13). She "got into financial difficulties four years ago," for the most part, when she speculated in the real estate market, and the real estate "market crashed" (TR at page 34 lines 13~20, and at page 38 line 23 to page 39 line 13).

1.a. In November of 2007, the Applicant filed for the protection of a Chapter 7 Bankruptcy; and as a result, most of her indebtedness was discharged by way of bankruptcy, in March of 2008 (TR at page 36 line 24 to page 38 line 2, and GXs 6 and 7). However, her tax debts were not discharged; and as such, remained outstanding (*Id*).

1.b. The Applicant is indebted to the Internal Revenue Service (IRS) for unpaid taxes in the following amounts: for tax year 2006, \$11; for tax year 2007, \$7,481; and for tax year 2008, \$11,723 (AppX H). She has set up a payment plan with the IRS, by which she is making monthly payments of \$140 towards these back taxes (*Id*).

1.c. It is alleged that the Applicant was indebted to a municipality for unpaid property taxes in the amount of about \$6,564 (see GX 13). The Applicant thought that this debt was discharged by her bankruptcy (TR at page 50 line 13 to page 51 line 9,

and at page 52 lines 6~13). In any event, the Applicant owes no property taxes to this municipality, as evidenced by a printout from this creditor (AppX I).

1.d. It is alleged that the Applicant was indebted to a county for unpaid supplemental taxes in the amount of about \$412. In her answer and at the hearing, the Applicant has repeatedly denied this debt (TR at page 54 lines 21~25). Furthermore, this alleged tax debt does not appear on the Government's most recent credit report from May 2009 (GX 14). I find that this debt is not outstanding.

1.e.~1.i. In the past, the Applicant's father had expressed concern about her gambling (TR at page 40 lines 9~21). In part, as a result, she received counseling for compulsive gambling from May through November of 2007 (TR at page 59 lines 1~14, and GX 5). She also attended Gamblers Anonymous (GA) meetings from May of 2007 to May of 2008 (TR at page 70 lines 4~19, and at page 72 line 24 to page 74 line 11). Prior to filing for the protection of bankruptcy in November of 2007, the Applicant attempted to acquire money through her gambling, in order to help with her financial problems. She would also use credit cards to obtain cash advances to fund her gambling. She last gambled just "three weeks" prior to her hearing (TR at page 72 line 24 to page 74 line 11). After her hearing, the Applicant has now expressed an intention to again attend GA meetings (AppX J).

Guideline G - Alcohol Consumption

2.a.~2.d. Prior to May of 2007, the Applicant was consuming alcohol to the point of intoxication and blackouts (GX 5). She would consume as many as six to eight glasses of wine on a weekend, and suffered blackouts "once or twice" (TR at page 60 line 1 to page 61 line 4). As a result, she received counseling for alcohol abuse, from May through November of 2007 (TR at page 62 line 1 to page 66 line 22, and GX 5). The Applicant abstained from the use of alcohol while she attended Alcoholics Anonymous (AA) meetings, from May~July of 2007 (TR at page 62 line 1 to page 66 line 22). However, she started to consume alcohol again two days after she received a 60 day chip from AA, for 60 days of sobriety (TR at page 68 line 18 to page 70 line 3). She continues to consume alcohol, and last consumed the intoxicant the night prior to her hearing (TR at page 66 lines 5~20, and at page 72 lines 18~23, and at page 76 lines 15~25). After her hearing, the Applicant has now expressed an intention to again attend AA meetings (AppX J).

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 commonsense 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 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 Paragraph 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 Subparagraph 19(a), an *"inability or unwillingness to satisfy debts"* is potentially disqualifying. Similarly under AG Subparagraph 19(c), *"a history of not meeting financial obligations"* may raise security concerns. Subparagraphs 19(f) and 19(i) are also applicable: *"financial problems that are linked to . . . gambling . . . ;"* and *"compulsive . . . gambling as indicated by an unsuccessful attempt to stop gambling . . . borrowing money to fund gambling . . ."* Although the mitigating condition noted in Subparagraph 20(d) is applicable; i.e., *"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."* The Applicant has addressed those tax debts not discharged by her bankruptcy. However, the mitigating condition under subparagraph 20(b) is not applicable, as *"the individual [has not] acted responsibly under the circumstances."* She used her credit cards to fund her gambling, despite her being in financial distress. Compulsive gambling is not a way to insure financial stability.

Guideline G - Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG Paragraph 21: "Excessive alcohol consumption often leads to the exercise of questionable judgment or failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

The adjudicative guidelines set out certain conditions that could raise security concerns. Under Subparagraph 21(d), a *"diagnosis by a duly qualified medical professional . . . of alcohol abuse . . ."* raises that concern. The Appellant was diagnosed as suffering from alcohol abuse; yet up until the very night preceding her hearing, she consumed the intoxicant. As such, I can find no countervailing mitigating condition applicable here.

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 Subparagraph 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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

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 from her Financial Considerations and Alcohol Consumption.

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:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For 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
Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	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.

RICHARD A. CEFOLA
Administrative Judge