



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 08-07462
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

February 17, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant has more than \$50,000 in delinquent debt. She is close to bringing her student loan debt into a current status, but has insufficient income to address more than \$9,000 in other delinquencies she incurred since her 1999 Chapter 7 bankruptcy. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted her Questionnaire for Sensitive Positions (SF-86), on January 29, 2008. On October 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F.¹ 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.

¹Item 1.

Applicant answered the SOR in writing on October 27, 2008, and November 30, 2008, and requested that her case be decided by an administrative judge on the written record without a hearing.² Department Counsel submitted the Government's written case on December 19, 2008. A complete copy of the file of relevant material (FORM)³ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.

Applicant signed the document acknowledging receipt of her copy of the FORM on January 4, 2009, and returned it to DOHA. She provided her timely written response to the FORM with additional evidence on January 16, 2009, and made no objection to consideration of any evidence submitted by Department Counsel. On January 22, 2009, Department Counsel indicated that he had no objection to admission and consideration of any materials submitted by Applicant in response to the FORM. I received the case assignment on January 29, 2009.

Findings of Fact

Applicant is a 53-year-old prospective employee of a defense contractor. In her response to the SOR, she admitted all the factual allegations in SOR except ¶¶ 1.b and 1.i.⁴ These two allegations represented multiple listings of the same debt, and were withdrawn by Department Counsel in the FORM. Applicant's admissions, including those contained in her response to interrogatories,⁵ are incorporated in the following findings.

Applicant filed for and received Chapter 7 bankruptcy relief in 1999. It is not clear from the record what, if any, employment she has held since then. She has lived with her mother for the last three years to reduce living expenses, has been divorced for 25 years, and has two adult sons. She was awarded a Master of Science degree in Management from National Louis University in August 1995.

Applicant presently owes \$46,851 on the SOR ¶ 1.a student loan debt that is in collection. This total includes a \$9,171 penalty that will be removed if she brings the loan current under her present nine-month loan rehabilitation program. She started making payments under the program in July 2007, but did not complete it after paying for several months. She began the rehabilitation program again in June 2008. She made the first seven payments, through December 2008, and accepted the collection agency's offer to reduce the final two months' payments from \$350 to \$330 each. If she makes the final two rehabilitation payments, the debt will be about \$37,000 after removal of the penalty.

²Items 3 and 4.

³The Government submitted eight items in support of the allegations.

⁴Item 3.

⁵Item 8.

Applicant also has six other delinquent debts that have been placed for collection, as listed in SOR ¶¶ 1.c, 1.d, 1.f through 1.h, and 1.j. These debts range from \$54 to \$5,147, and total \$6,682. She also owes the \$2,500 judgment debt, listed in SOR ¶ 1.e, that resulted from the voluntary repossession of an automobile she returned to the dealer because of a mold problem. These debts became delinquent between 2002 and 2008. One debt is a medical account, but the rest are consumer debts and Applicant provided no evidence that any of them were unavoidable.

Applicant consulted a credit counseling service in October 2008. Together, they prepared a budget and a proposed 35-month debt management plan to address her non-student-loan debts, that she submitted with her response to the SOR. Her budget showed monthly income of \$977 and budgeted expenses (including student loan payments) of \$937. Adding the recommended \$327 in monthly debt management plan payments resulted in a net negative monthly cash flow of \$287. She noted that she was seeking additional employment to increase her income, but offered no evidence of success in this regard, or of having made any debt management plan payments.

Applicant offered no other evidence concerning her character, trustworthiness or responsibility. I was unable to evaluate her credibility, demeanor or character in person since she elected to have her case decided without a hearing.

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 to be used 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

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), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are potentially disqualifying. After paying very modest living expenses, Applicant’s budget reflects only \$40 per month available to apply toward about \$9,200 in delinquent non-student-loan debts. Repayment at that rate, excluding any additional interest, would take more than 19 years. Her recent history of not repaying debts dates back to 2002, shortly after her Chapter 7 bankruptcy extinguished earlier debt in 1999. The evidence is sufficient to raise both of these disqualifying conditions, requiring a closer examination and balancing of resulting security concerns with any potentially mitigating matters, and shifting the burden to Applicant to rebut, explain, extenuate or mitigate those concerns.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions 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’s financial irresponsibility is both long-standing and continues to date. Although she obtained a Master of Science in Management degree over 13 years ago, she demonstrated no ability to secure employment that would support ongoing living expenses and permit debt repayment. She did not demonstrate that delinquent indebtedness is unlikely to recur, since some delinquencies are recent and cast continuing doubt on her trustworthiness. The evidence does not support application of this potentially mitigating condition.

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.” Applicant did not demonstrate that her small monthly income is beyond her control. Her divorce was 25 years ago and, in any event, her Chapter 7 bankruptcy proceeding in 1999 would have resolved any lingering debt issues resulting from that. She provided no evidence of any medical emergencies or unavoidable job loss. She attributed the repossession leading to her \$2,500 judgment debt to a mold problem, but did not explain why that necessitated turning the car in instead of having it repaired. Applicant has not established mitigation of any of her debts under this provision.

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). This mitigating condition is partly raised by Applicant’s October 2008 credit counseling and resulting budget and debt management plan. However, she did not demonstrate having made any payments under the plan, and her budget reflected her inability to make anything close to the payments required under the plan. 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 made seven of nine required payments in her second attempt to complete a student loan rehabilitation agreement. Two more payments will remove over \$9,000 in penalties and bring the loans into a current status. However, she will still owe over \$37,000 and, should the monthly payments remain the same at that point, it will take about ten years to repay that. Both of these potentially mitigating conditions are being established by her recent efforts to resolve her delinquencies, but insufficient time and responsible performance has occurred to date to alleviate the substantial security concerns raised by the length and degree of financial irresponsibility that created her present situation.

“An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has ‘taken significant actions to implement that plan.’” ISCR Case No. 06-12930 at 2

(App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). It cannot yet be said that Applicant has taken significant actions to implement a reasonable plan concerning her more than \$9,000 in delinquent non-student-loan debts. Her income is insufficient, by about 30%, to make the recommended payments for the 35-month repayment plan, and she has not made any payments toward that plan.

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 is a mature individual who is responsible for her choices and conduct. She presently has more than \$50,000 in delinquent debt, interest charges and penalties. None of her debt arose for reasons beyond her control. Some of the delinquencies are recent, and all are ongoing. Rehabilitating her student loan debt will not end her obligation to repay it, but will just bring the debt into a current status and remove \$9,171 in penalties.

Applicant has not obtained additional or better employment to improve her present annual income of \$11,724. Her debts continue to create substantial potential for pressure, coercion, or duress. She provided no information to indicate her financial situation will improve to the point that continuation or recurrence of financial problems could be considered unlikely. The record contains insufficient other evidence about her character or responsibility to mitigate these concerns, or tending to make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her history of not meeting her financial obligations and inability to satisfy her current debts.

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:	Withdrawn by Dept. Counsel
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.i:	Withdrawn by Dept. Counsel
Subparagraph 1.j:	Against Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge