



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08201
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel

For Applicant: *Pro se*

May 27, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Questionnaire for Sensitive Positions (SF 86), on April 20, 2008 (Item 5). On January 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on February 11, 2009, and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on March 16, 2009. The Applicant received the FORM on April 8, 2009, and was given 30 days to submit any additional information. She submitted additional information on April 9, 2009, to which the Department Counsel had no

objection. The case was assigned to me on April 17, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 51 and married. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

Guideline F, Financial Considerations

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admits allegations 1.a. through 1.f., i.h., 1.j. through 1.p., and 1.r. through 1.w. of the SOR. These admissions are hereby deemed findings of fact. She denied the other allegations in the SOR.

The Applicant signed up with a non-profit Consumer Credit Counseling Service (CCCS) in October 2008. The Applicant's Financial Counselor indicated that it took until January 2009 for the Applicant and the CCCS to verify credit balances and enroll creditors and collection agencies in the Applicant's debt management program. (Item 4 at 3.) The Applicant has made two payments since the program began, with \$830.00 available for disbursement.

The Applicant's CCCS account shows 22 creditor accounts, with some creditors having multiple accounts. The original debt total is stated to be \$6,231.39. Her SOR shows 23 allegations, again with some creditors having multiple accounts. The Applicant continues to dispute the debts set forth in subparagraphs i.g., i.i. and 1.r., as further described below. Including those debts, the SOR alleges her indebtedness at \$15,163.00.

The creditors named in the CCCS Monthly Statement for March 1, 2009, do not exactly match the creditors named in the SOR. It is possible that the accounts set forth in the SOR have been acquired by other creditors.

1.a. The Applicant admits that she is indebted to Central Financial for a medical debt. This debt is included in her CCCS plan and has been paid down from \$174.31 to \$155.49. (Response to FORM at 8.)

1.b. The Applicant admits that she is indebted to Central Financial for a medical debt. This debt is included in her CCCS plan and has been paid down from \$131.80 to \$112.51. (Response to FORM at 8.)

1.c. The Applicant admits that she is indebted to Central Financial for a medical debt. This debt is included in her CCCS plan and has been paid down from \$562.80 to \$525.75. (Response to FORM at 8.)

1.d. The Applicant admits that she was indebted to a collection agency in the amount of \$212.00 for an account turned over by AT&T. The Applicant states that the account has been paid in full. She provided a confirmation number and a telephone number. (Response to FORM at 1.)

1.e. The Applicant admits that she is indebted to Central Financial for a medical debt. This debt is included in her CCCS plan and has been paid down from \$39.96 to \$20.22. (Response to FORM at 8.)

1.f. The Applicant admits that she is indebted to Central Financial for a medical debt. This debt is included in her CCCS plan and has been paid down from \$106.03 to \$86.58. (Response to FORM at 8.)

1.g. The Applicant has consistently denied the existence of this debt to a hospital in the amount of \$3,737.00. (Item 4 at 1, Response to FORM at 1.)

1.h. The Applicant admits that she owes Rowan Collection Agency \$199.00 for a medical bill. The SOR states the amount is \$174.00. The account number connected to this account in Item 7 at 2 and Item 8 at 11 does not match the three account numbers for Rowan Collection Agency in her CCCS statement. One account is stated to be for \$199.20, and I find it to be the account in question. This account has been paid down to \$179.20. (Response to FORM at 8.)

1.i. The Applicant denies that she owes Absolute Collection Service \$191.00 for a medical bill. The account number connected to this account in Item 7 at 2 does not match the three accounts included for Absolute Collection Service in her CCCS statement. (Response to FORM at 8.)

1.j. The Applicant admits that she is indebted to NCO Financial for a medical debt. This debt is included in her CCCS plan and has been paid down from \$150.00 to \$100.00. (Response to FORM at 8.)

1.k. The Applicant admits that she was indebted to Central Financial for a medical debt. This debt is included in her CCCS plan and the debt for \$20.00 has been paid in full. (Response to FORM at 8.)

1.l. The Applicant admits that she is indebted to Absolute Collection Service for a medical debt. This debt is included in her CCCS plan and has been paid down from \$78.70 to \$38.70. (Response to FORM at 8.)

1.m. The Applicant admits that she is indebted to Absolute Collection Service for a medical debt. This debt is included in her CCCS plan and the debt has been paid down from \$126.50 to \$86.50. (Response to FORM at 8.)

1.n. The Applicant admits that she is indebted to Absolute Collection Service for a medical debt. This debt is included in her CCCS plan and the debt has been paid down from \$237.40 to \$197.40. (Response to FORM at 8.)

1.o. The Applicant admits that she is indebted to Time Warner for a debt of \$892.00. She states in her Response to FORM at 1 that this is in a payment plan and that she has paid \$100.00 towards this debt.

1.p. The Applicant admits that she owed a debt to Arrow Financial in the amount of \$982.00. However, in her Answer to the SOR (Item 4 at 1) she stated that it was settled on January 31, 2009. Under the particular circumstances of this case, particularly the extent to which the Applicant has worked to collate and pay her bills, I find this statement to be credible and believable without additional corroboration.

1.q. The Applicant has consistently denied that she owes this debt to AAC/Windstream for \$495.00, stating that it is not her account.

1r. The Applicant admits that she owed a debt to NCO Financial in the amount of \$83.00. However, in her Answer to the SOR (Item 4 at 1) she stated that it was settled on January 5, 2009. Under the particular circumstances of this case, particularly the extent to which the Applicant has worked to collate and pay her bills, I find this statement to be credible and believable without additional corroboration.

1.s. The Applicant admits that she owed a debt to Kelly Investments in the amount of \$6,131.00.00. However, the Applicant submitted evidence showing that she had settled and paid this debt for a lesser amount. (Item 4 at 6-7; Response to FORM at 3-4.)

1.t. The Applicant admits that she was indebted to a collection agency in the amount of \$43.00 for an account turned over by Oreck Financial Services. The Applicant states that the account has been paid in full. She provided a confirmation number and a telephone number. (Response to FORM at 1.)

1.u. The Applicant admits that she was indebted to a collection agency in the amount of \$217.00 for an account turned over by Oreck Financial Services. The Applicant states that the account has been paid in full. She provided a confirmation number and a telephone number. (Response to FORM at 1.)

1.v. The Applicant admits that she was indebted to a collection agency in the amount of \$181.00 for an account turned over by Stanley Steamer. The Applicant states that the account has been paid in full. She provided a confirmation number and a telephone number. (Response to FORM at 1.)

1.w. The Applicant admits that she was indebted to a collection agency in the amount of \$210.00 for an account turned over by City Cycle Sales. The Applicant states in her Answer to the SOR that the account would be paid in full. (Item 4 at 1.) Under the particular circumstances of this case, particularly the extent to which the Applicant has worked to collate and pay her bills, I find this statement to be credible and believable without additional corroboration.

As stated earlier, several accounts discussed in her CCCS account do not show up in the SOR. These include two accounts to Central Financial Control, one account to Firstpoint Coll Resources, one account to Medical Data Systems, one account to Professional Recovery, two accounts to Rowan Collection Agency, three accounts to Stern & Associates and one account to West Asset Management. The total amount the Applicant owes to these creditors is currently \$3,736.00. She currently owes \$2,504.35 for the accounts in the SOR. The Applicant's current total indebtedness is \$6,240.35. Her total payments to all accounts amounts to \$4,764.40.

Policies

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . 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." 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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. The Applicant, by her own admission, had over \$14,000.00 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. As set forth above, "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c). Specifically, she consulted with a CCCS, obtained credit counseling, and worked diligently to fulfill their requirements to get into the program. Other actions which support this finding are set forth below.

The Applicant has initiated a good-faith effort to pay off her creditors by enrolling in a credit repayment program, paying substantial funds into the program, and settling other accounts outside the program. As shown above, she has halved her debt in a brief period of time. Accordingly, AG ¶ 20(d) is also applicable.

The Applicant has successfully shown that she is fulfilling her financial obligations and is now security worthy. Paragraph 1 is found for the Applicant.

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. The Applicant has made a sufficient showing that her debt situation is under control. Under AG ¶ 2(a)(3), the Applicant's conduct is not recent. Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)8)), and that the likelihood of recurrence is close to nil (AG ¶ 2(a)9)).

Overall, the record evidence leaves me without questions and/or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has mitigated the security concerns arising from her financial considerations.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT

Subparagraphs 1.a through 1.w.:

For the Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge