



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



In the matter of:)
)
) ISCR Case No. 08-08571
)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

September 18, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the security concerns arising from the financial problems alleged in the statement of reasons. Eligibility for access to classified information is denied.

Statement of the Case

On May 14, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP).¹ On April 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

¹ FORM Item 4.

dated January 2, 1992, as amended, modified, and revised.² The SOR alleges a security concern under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

On June 1, 2009, Applicant's response to the SOR was received by DOHA. She elected to have her case decided on the written record in lieu of a hearing (Item 3). A complete copy of the file of relevant material (FORM), dated June 19, 2009, was provided to her by letter dated June 22, 2009. Applicant received the FORM on June 29, 2009. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. She did not submit any materials, comments, or objections in response to the FORM. The case was assigned to me on September 4, 2009.

Findings of Fact

Applicant admitted all the factual allegations in the SOR, except for SOR ¶ 1.f, which she denied. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 47-year-old planner-buyer who has been employed by a defense contractor since June 2007.³ She attended college from September 1998 to May 2000. It is not clear from her security clearance application whether she received a degree or diploma. Applicant married her spouse in 1981, and they have three adult children, ages 31, 26, and 25.

Applicant has been employed from October 1989 to the present, except for two periods of unemployment from November 2001 to February 2002, and from June 2004 to November 2004. She worked for private companies, two government contractors, and was self-employed for some time. She worked for the first government contractor from June 2003 to June 2004. She was hired by the second government contractor in June 2007, and has worked for that company since.

In her 2008 security clearance application, Applicant disclosed she had four debts that were currently over 90 days delinquent. She also disclosed she was having financial problems resulting from the decline of her spouse's work schedule, and that she was trying to resolve her delinquent debts.

² On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

³ Item 4 (2008 e-QIP) is the source for the facts in this decision, unless stated otherwise.

Applicant's background investigation addressed her financial problems. The SOR alleges seven delinquent and/or charged-off accounts totaling approximately \$36,000. The delinquent debts were established by Applicant's admissions and her two credit reports (Items 5 and 6).⁴ Most of the debts have been delinquent since around 2006-2007. Applicant denied SOR ¶ 1.f stating that the debt was resolved many years ago. She presented no documentary evidence to support her claim.

Applicant attributed her financial problems to a number of related events (Item 7). She and her husband purchased a home in 2007. Additionally, they took an equity loan to make repairs to the home, they made loans to purchase furniture, and they incurred significant additional credit card debt, and obtained at least five small personal loans. During the 2007 winter, her spouse was unemployed for an unknown period because the ownership in his company changed, and because the harsh winter prevented him from working.

Many of Applicant's delinquent debts are from credit card accounts that became delinquent around 2006-2007. During her 2008 interview, she did not know the balance on her delinquent accounts. Applicant claimed she has been in contact with the creditors and that the accounts are on hold. She presented no documentary evidence to corroborate her claims. Applicant's financial problems appear to be the result of her extensive use of her credit and her husband's inability to work.

Applicant promised to pay all her delinquent debts. She stated she was caught up with her bills and was current in paying what she owes. She intends to pay her delinquent accounts one at a time, starting by paying the smallest debts first. She presented payment receipts for three debts paid around October 2008 (Item 8). Two of the debts concerned small personal loans she obtained. Other than these accounts, Applicant presented little evidence of other paid debts, settlement agreements, or efforts to resolve her delinquent debts since she acquired them.

Applicant believes she can negotiate settlements with all her creditors within two years. She considered using a debt consolidation company, but discounted the idea because of the additional fees she would have to pay. Applicant believes she is not susceptible to blackmail, coercion, or pressure because her family knows about her financial problems.

Applicant presented no evidence concerning her current financial situation (i.e., salary, deductions, expenses, debts, a working budget), or about how she is going to prevent similar financial problems in the future. She presented no evidence that she has participated in any financial counseling.

⁴ An applicant's credit report showing the delinquent debts alleged in an SOR is sufficient to establish the government's *prima facie* case. See ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2003).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 controlling 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.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"⁵ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁶

⁵ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁶ "The administrative judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that an applicant’s 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. AG ¶ 18.

Applicant has accumulated seven delinquent and/or charged-off accounts totaling approximately \$36,000, most of which have been outstanding since around 2006-2007. Applicant’s evidence of efforts to resolve her financial obligations is limited to her payment of three debts around October 2008. Two of the debts concerned small personal loans she obtained. Other than these payments, Applicant presented no other evidence of efforts to pay or resolve any of the financial obligations alleged in the SOR.

AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) 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; and

(f) the affluence resulted from a legal source of income.

Applicant's sparse favorable evidence fails to fully raise the applicability of any mitigating condition. Her financial problems are ongoing and her evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence to establish circumstances beyond her control contributing to her inability to pay her debts, i.e., her and her husband's periods of unemployment. Notwithstanding, her financial problems appear to be the result of her extensive use of her credit and her husband's inability to work for a period. Applicant's evidence of efforts to resolve her financial obligations is limited to her paying three debts in 2008, not alleged in the SOR. She presented no other evidence of efforts to pay or resolve any of the financial obligations alleged in the SOR. Applicant has been consistently employed since November 2004. Her favorable information fails to fully establish a track record of financial responsibility. AG ¶ 20(b) does not apply.

AG ¶ 20(c) does not apply because there are not clear indications that her financial problems are being resolved or are under control. She presented no evidence that she received financial counseling. Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the lack of evidence of efforts to resolve her financial obligations, Applicant's information is insufficient to establish that her financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

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.

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. AG ¶ 2(c). I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for her four years working for government contractors. There is no evidence of any security violation, or that she ever compromised classified information. Applicant appears to be a valuable employee and a good mother and wife. These factors show some responsibility and mitigation.

Notwithstanding, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant's financial problems appear to be caused by her extensive use of her credit and her husband's inability to work. She has failed to show good-faith efforts to resolve her financial problems in a timely manner. The record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her 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

Subparagraphs 1.a - 1.g: Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge