



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-09369
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

June 17, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on December 20, 2007 (Government Exhibit 1). On November 10, 2008, 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 December 1, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 5, 2009. I received the case assignment on January 7, 2009. DOHA issued a notice of hearing on February 17, 2009, and I convened the hearing as scheduled on March 24, 2009. The Government offered Government Exhibits 1 through

6, which were received without objection. Applicant testified on her own behalf, and submitted Applicant's Exhibits A through L, which were received without objection. DOHA received the transcript of the hearing on April 16, 2009. The record closed on that date. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 38 and single. She has been offered employment by a defense contractor, and seeks to obtain a security clearance in connection with this proposed 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 all of the allegations in this paragraph of the SOR.

The Applicant submits that the majority of her financial problems began when she left a well-paying job in 2005 to take a job with a start-up company that collapsed soon after she was employed there. She has not been fully employed since that time. (Transcript at 38-40.)

The Applicant repeatedly stated that her desire is to pay off all of her debts. She presented a spread-sheet with projections on how she would pay off the debt based on her possible income. (Applicant's Exhibit C.) In all situations it would take at least three years to pay all the debts back, and presumes that she has the job that was offered to her by the defense contractor. (Applicant's Exhibits A and C; Transcript at 27-34.) It is also worthwhile to note that, until the 2007-2008 school year, the Applicant's child attended private schools. After she lost her job at the start-up, the Applicant used credit cards to continue to pay for the tuition. (Transcript at 35-37.)

1.a. The Applicant admits that she is indebted to American Express in the amount of \$14,000.00. The Applicant has made no recent payments on this debt, and has no current plans to make payments on this debt. (Transcript at 24-26.)

1.b. The Applicant admits that she is indebted to AMS-SG in the amount of \$1,596.00. This is a student loan that went delinquent. The Applicant has made no recent payments on this debt, and has no current plans to make payments on this debt. (Transcript at 24.)

1.c. The Applicant admits that she is indebted to Chase in the amount of \$23,000.00. The Applicant has made no recent payments on this debt, and has no current plans to make payments on this debt. (Applicant's Exhibit C.)

1.d. The Applicant admits that she is indebted to Citi in the amount of \$19,000.00. The Applicant has made no recent payments on this debt, and has no current plans to make payments on this debt. (Applicant's Exhibit C.)

1.e. The Applicant admits that she was indebted to Time/Warner Cable in the amount of \$251.00. That debt has been paid in full. (Applicant's Exhibit B; Transcript at 23.)

Mitigation

Applicant's Exhibit E is a letter from the Applicant's boyfriend. He states that he is helping the Applicant financially, and that they are in a committed relationship. From that I assume that he will be willing and able to continue to assist her.

Applicant's Exhibits F through L are personal and professional references. These people, who include past employers as well as respected business people in her community, all state that the Applicant is a truthful and trustworthy person. They recommend her for a position of trust.

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, has over \$57,000.00 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. 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’s financial difficulties arose primarily between about 2005 and 2007. However, she does not have a reasonable plan to pay the past due indebtedness. Her plans depend on certain actions happening over which the Applicant has no control. An earnest desire to pay debts is not a reasonable substitute for action. The Applicant has paid a \$251.00 bill out of a total indebtedness of over \$57,000.00. It is the Applicant’s burden to submit evidence showing that her financial situation has improved. She has not done so. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment . . .), and the individual acted responsibly under the circumstances.” The Applicant took a chance and left a good paying job for one with a start-up company. She then compounded the debt by using credit cards to pay for her daughter’s school tuition at a time when the Applicant did not have full-time employment. With the available record, I cannot find, under these particular facts, that the Applicant has acted responsibly under the circumstances.

The Applicant has barely initiated a good-faith effort to pay off her creditors. Because she paid the debt, subparagraph 1.e. is found for the Applicant. There is no track record of her making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that she is \$57,000.00 in debt, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

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 is a respected person

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

Overall, the record evidence leaves me with questions and/or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from her financial considerations at this time. If she can resolve her debt situation in a reasonable fashion, she may be eligible for a clearance in the future. She is not eligible now.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding against 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:	AGAINST THE APPLICANT
Subparagraphs 1.a:	Against the Applicant
Subparagraphs 1.b:	Against the Applicant
Subparagraphs 1.c:	Against the Applicant
Subparagraphs 1.d:	Against the Applicant
Subparagraphs 1.e:	For the Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge