



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09661
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

August 24, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government’s financial considerations security concern. Clearance is denied.

On February 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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 answered the SOR on March 30, 2009, and admitted all of the allegations except SOR subparagraphs 1.c, 1.g, 1.h, 1.j, and 1.o. She requested a hearing, and the case was assigned to me on May 13, 2009. On June 4, 2009, a notice

of hearing was issued scheduling the case for June 23, 2009. The hearing was conducted as scheduled. I received five government exhibits, nine Applicant exhibits, and Applicant's testimony. At Applicant's request, I left the record open at the end of the hearing for her to submit additional exhibits. She timely submitted six additional exhibits that I incorporated into the record. The transcript was received on June 29, 2009.

Preliminary Ruling

At the beginning of the hearing, Department Counsel stipulated that Applicant satisfied the debts listed in SOR subparagraphs 1.g, 1.h, 1.j, and 1.o, totalling \$4,563. I resolve these allegations in Applicant's favor.

Findings of Fact

Applicant is a 37-year-old single woman with no children. In 2004, she earned an associate's degree in microcomputer technologies (Tr. 28). Before then, she had earned approximately a year and a half of credit toward a bachelor's degree in early childhood development.

Applicant works for an information technology defense contractor specializing in network security management. She travels to various military bases across the country installing computers and integrating systems information (Tr. 28). She has been working for this employer since 2006 (Exhibit 1 at 10). She also does some independent consulting for personal clients in her spare time (Tr. 33).

Before Applicant began working with her current employer, the majority of her previous jobs were low-paying. She did not earn more than a minimum wage salary until 2005 (Tr. 84). She had frequent periods of unemployment including three to four months in 2005, eight months in 2004, and four months in 2001 (Tr. 82, 90; Exhibit 1 at 18).

Her employment outlook gradually stabilized after she earned the associate's degree in 2004. Nevertheless, by 2008, she had accrued approximately \$17,000 of delinquent debt.

SOR subparagraphs 1.a and 1.b are utility bills, collectively totalling approximately \$580. Applicant accrued the debts after a roommate moved from their shared apartment without paying her portion of the bills (Tr. 70).

SOR subparagraph 1.c, another utility, is a duplicate of 1.e (Exhibit B). Approximately \$250 is outstanding.

SOR subparagraphs 1.d¹ and 1.k are medical bills for different medical services that Applicant received from the same medical provider (Tr. 50). The amount due is approximately \$500 (Tr. 67). Applicant consolidated the accounts, and is paying the

¹SOR subparagraphs 1.d and 1.m are duplicates.

creditor approximately \$100 monthly (Tr. 67). The debts should be satisfied in five months.

The debt listed in SOR subparagraph 1.f is a credit card account that is delinquent in the approximate amount of \$9,875. By February 2009, Applicant had negotiated a settlement agreement and begun making sporadic monthly payments (Exhibit C at 5; Tr. 105). The current balance is \$9,575 (*Id.*).

The record is unclear as to the identity of the creditors listed in SOR subparagraphs 1.i and 1.l. These bills total approximately \$300. They remain unpaid.

The creditor listed in SOR subparagraph 1.n is a collection agent whom Applicant owes \$951. The amount due constitutes the amount that Applicant had overdrawn on an old checking account, in addition to penalties (Tr. 93). On June 25, 2009, Applicant negotiated a settlement agreement for \$475 (Exhibit N). Under the payment plan, Applicant is to pay the creditor \$40 monthly (*Id.*).

In January 2009, Applicant began consulting with a credit counselor (Tr. 70). With the counselor's help, Applicant developed a budget and a payment plan (Exhibit E). Applicant has been satisfying the SOR debts under the plan. Specifically, Applicant has started with the larger debts such as SOR subparagraph 1.f. When the larger debts are satisfied, she will then address the smaller ones such as SOR subparagraphs 1.i and 1.l (Tr. 70-72). Applicant has met with the credit counselor four times since their first meeting (Tr. 70). At each session, they review Applicant's budget and discuss her day-to-day spending habits (Tr. 72). Applicant contends that naivete about debt contributed to the accrual of her delinquencies. With the help of the credit counselor, she now manages money more responsibly (Tr. 105).

Currently, Applicant has satisfied approximately one-third of the debts listed in the SOR. However, a car that Applicant leased was recently involuntarily repossessed (Tr. 93). She owes the creditor \$10,000, the deficiency remaining from the resale (Tr. 94; Exhibit 2 at 3). She has notified her credit counselor of this debt, and is negotiating a settlement arrangement (*Id.*)

Applicant earns approximately \$2,115 of net monthly income. After expenses are paid, she has approximately \$256 remaining (Tr. 104). She has been applying this amount to the debts listed in the SOR (*Id.*).

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. 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.”

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, the “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” (AG ¶ 18). Applicant’s history of financial problems triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s financial difficulties were caused, in part, by her inability to find a secure job. Also, a former roommate moved from a shared apartment, and did not pay her share of the bills. Applicant’s job options improved after returning to school and earning an associate’s degree. Also, she has consulted a credit counselor, organized her finances, and began satisfying her delinquencies. She has paid nearly a third of the debt listed in the SOR.

Applicant admits that lack of education about credit contributed to the accrual of her financial delinquencies. Also, the debts that she incurred when her roommate reneged on her joint responsibility to pay joint bills constituted only a small portion of Applicant’s delinquent debt. Consequently, AG ¶ 20(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,” does not apply.

Nevertheless, Applicant's efforts at rehabilitating her finances, including retaining a credit counselor and developing a payment plan, are sufficient to trigger the application of AG ¶¶ 20(c), "the person has received or is receiving counseling for the problem . . . , and 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

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.

Throughout the early part of this decade, Applicant struggled with low-paying, unstable jobs. Realizing that she was neither growing professionally, nor thriving financially, she returned to school and earned an associate's degree. As her employment marketability improved, the quality of her jobs improved, enabling her to begin satisfying her debts. The initiative she demonstrated weighs in her favor.

Applicant also deserves credit for organizing her finances, seeking professional credit advice, and implementing a payment plan. I am not convinced, however, that her finances are under control. Although she organized a payment plan for one of her most significant debts (SOR subparagraph 1.f), she has made sporadic payments. Also, since the issuance of the SOR, Applicant's automobile was repossessed. Consequently, Applicant's effort at rehabilitation constitutes a step in the right direction, but it is too soon to conclude that her financial condition no longer poses a security concern.

The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, as set forth in the Directive, to the evidence presented. Should Applicant be afforded the opportunity to reapply for a security clearance in the future, she may well demonstrate persuasive evidence of her security worthiness. Presently, however, I conclude Applicant has not mitigated the financial considerations security concern.

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.f:

Against Applicant

Subparagraphs 1.g - 1.h:

For Applicant

Subparagraph 1.i - 1.o:

Against Applicant

Subparagraph 1.o:

For 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.

MARC E. CURRY
Administrative Judge