



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09755
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

July 22, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s history of financial delinquencies and criminal conduct make her an unacceptable candidate for a security clearance. Clearance is denied.

Statement of the Case

On September 30, 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, Guideline J, criminal conduct, and Guideline E, personal conduct. 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 20, 2009, admitting all of the SOR allegations except 1.a, 1.b, 1.f, 1.n, and 3.a. She requested a hearing, and the case was

assigned to me on January 26, 2010. On March 2, 2010, DOHA issued a Notice of Hearing scheduling the case for March 22, 2010. Before the hearing date, Department Counsel informed me that Applicant was on disability leave and that DOHA was unable to confirm whether she received the notice of hearing. I postponed the hearing and arranged a scheduling conference for March 30, 2010. That day, the parties agreed to reschedule the hearing for April 28, 2010. The notice of hearing was mailed on April 8, 2010.

At the hearing, Applicant moved to continue the hearing. (Tr. 17) I denied the motion, and the hearing was held as scheduled. I received five Government exhibits, five Applicant exhibits, and Applicant's testimony. At Applicant's request, I left the record open at the conclusion of the hearing to allow her to submit additional exhibits. Within the time allotted, she submitted 13 additional exhibits that I received as Applicant's Exhibits F through R. DOHA received the transcript on May 7, 2010.

Findings of Fact

Applicant is a 37-year-old single woman with two children, ages 10 and 11, and three stepchildren. Two of the stepchildren are adults and one is a teenager. (AE O) A prior marriage ended in divorce in 2005. The father of her children is her ex-husband. Their relationship began in 1995 and they married in 2003.

Applicant has earned some college credits. (GE 1 at 11) Since March 2008, she has worked as a project management analyst for a defense contractor. She has worked in this field for the past eight years. (GE 1 at 10-13) Her duties include, among other things, maintaining electronic schedules and creating communication plans for management. (AE L)

Applicant is highly respected on the job and in her community. According to her supervisor, she has a "wealth of knowledge," and brings "great energy to her position." (AE. L) She is active in her sons' little league football program in ways "that far exceed that expected of any coach/team parent." (AE N)

Between 2001 and 2008, Applicant wrote checks drawn from bank accounts with insufficient funds or from bank accounts that she knew were no longer open. She wrote most of the bad checks to purchase food for her children. She wrote others to procure supplies for her then-boyfriend, the man she later married, to help him with his construction business. (GE 4 at 13) These criminal activities led to five arrests, as alleged in the SOR.¹ (Answer, SOR subparagraphs 2.a - 2.j) The outcome of the criminal proceedings is unknown from the record.

¹The SOR alleges nine arrests for check-bouncing. SOR subparagraphs 2.c through 2.e are duplicates, as are SOR subparagraphs 2.f and 2.g.

Applicant also accrued approximately \$58,000 of delinquent debt during this period, as alleged in SOR subparagraphs 1.a through 1.x.² Approximately \$36,200 consists of delinquent home mortgage payments. (SOR subparagraph 1.t) The remainder consists primarily of credit card bills, utilities, and delinquent home rental payments.

The delinquency listed in SOR subparagraph 1.a was owed to a furniture rental company in the amount of \$392. (Tr. 39) By January 2010, Applicant had satisfied this debt through a wage garnishment. (Tr. 39)

Applicant owed the delinquency listed in SOR subparagraph 1.b to a furniture company in the amount of \$425. (Tr. 40) By August 2007, Applicant had satisfied this debt through a wage garnishment. (AE G)

Applicant owes the debt listed in SOR subparagraph 1.d to a utility company in the amount of \$781. She has been making regular monthly payments since December 2009, and has reduced the balance to \$313. (AE H)

Applicant owes the debt listed in SOR subparagraph 1.t to the mortgage company that financed her house. Approximately \$36,000 is delinquent, and the mortgage balance is \$302,000. (Tr. 54) In January 2008, Applicant wrote the mortgage company and requested relief through the short-sale process. (Tr. 85) Since then, the mortgage company has been attempting to execute a short-sale on Applicant's behalf. (Tr. 85) Applicant has not made any mortgage payments for more than a year and a half while the short-sale has been pending. (Tr. 85)

As of the hearing date, Applicant had made minimal efforts to either satisfy any of the remaining SOR delinquencies or develop a payment plan. Some of the debts have been delinquent for as long as seven years. (Tr. 41) On May 16, 2010, Applicant began working with an online credit counseling company. She has not yet been assigned a counselor (AE I)

Applicant's ex-husband is approximately \$23,000 behind on his child support payments. (AE E) She is currently seeking to recover it through court action. (Tr. 117)

Applicant has not filed her state or federal income taxes for either tax years 2008 or 2009. (Tr. 121-122) She is not concerned about filing her income taxes because she anticipates receiving refunds. (Tr. 122)

Applicant's financial troubles were aggravated after a car accident in 2004 rendered her unable to work for six months. (Tr. 92) Applicant also attributes her financial struggles to clinical depression together with her troubled former marriage. (Tr. 38) In 2008, when Applicant's depression was at its peak, she was lethargic and unable

²SOR subparagraphs 1.f and 1.j are duplicates. SOR subparagraphs 1.h and 1.l are duplicates, and SOR subparagraphs 1.b and 1.w are duplicates.

to focus. (Tr. 122) She has been on disability leave since November 2009. (Tr. 78; AE A) She was “basically bed-bound” through February 2010. (Tr. 10) While on disability leave, she receives two-thirds of her salary. (Tr. 79)

Currently, Applicant is receiving treatment for her depression. According to her physician, “the cyclical nature of her impairments” that triggered her symptoms will be less likely to recur “once the symptoms are successfully controlled with medication and psychotherapy.” (AE J) Applicant has been progressively improving. (*Id.*)

Applicant completed a security clearance application in July 2008. She was required to disclose any arrests, charges, or convictions that had occurred within seven years of completing the application. (GE 1 at 25) She disclosed an arrest that occurred earlier that year, but did not disclose any earlier arrests, charges, or convictions. She characterized the omissions as unintentional oversights. (Tr. 116) She disclosed other adverse information on her security clearance application including two civil domestic cases involving allegations against her of domestic violence. Also, she comprehensively discussed her history of delinquent debt. Under the “Additional Comments” section of the application, Applicant stated as follows:

I have made mistakes in the past, but have worked very hard to separate myself from the past mistakes over the past 7+1/2 years. I’ve always worked hard and have made great strides along the way to improve my life. . . . though I’ve stumbled, I try to walk the line.

In July 2009, Applicant verbally reprimanded her teenage stepdaughter for being disobedient. (Tr. 100) A heated argument ensued, which became physical after Applicant “popped” the stepdaughter, and “she hit back.” (Tr. 101) The police then arrived, arrested Applicant and charged her with child abuse and second degree assault. (Tr. 102) The court dropped the child abuse charge. As for the assault charge, Applicant received probation before judgment. (Tr. 103) Under the terms of the probation, the court placed the case on its inactive docket and the charge will be dropped so long as Applicant attends counseling and stays out of trouble for a year. (Tr. 103)

When Applicant reported this episode to her psychiatrist, she discovered that some of the medication she was taking when it occurred causes aggressive behavior. (Tr. 104) The psychiatrist then stopped prescribing these medications. (Tr. 105)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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 satisfied the debts listed in SOR subparagraphs 1.a and 1.b, and has been making steady payments to satisfy the debt listed in SOR subparagraph 1.d. I resolve these allegations in her favor.

Any probative value stemming from Applicant’s satisfaction of SOR subparagraphs 1.a and 1.b has minimal probative value because they occurred through wage garnishments. Moreover, the debts listed in SOR subparagraphs 1.a, 1.b, and 1.d total approximately \$2,000, which is less than four percent of the amount that remains outstanding. Further, Applicant has no plan to satisfy the remaining delinquencies, and just enrolled in credit counseling two weeks after the hearing.

Applicant’s financial struggles were exacerbated by a 2004 car accident that disabled her from working for six months, a troubled marriage, and a years-long battle with clinical depression. The depression also impeded her ability to confront her financial problems after the delinquencies accrued. Based on these personal problems, 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,” is potentially applicable. Applicant, however, did not act responsibly as her finances got out of control. Instead, she wrote multiple checks from accounts that she knew had insufficient funds, or had been closed. Moreover, she

has made marginal efforts to begin satisfying her delinquent debts, to date. Neither AG ¶ 20(b), nor any of the other mitigating conditions are applicable.

Guideline J, Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (AG ¶ 15)

Applicant was arrested multiple times between 2001 and 2009, and is currently on probation. AG ¶ 31(a), “a single serious crime or multiple lesser offenses,” and AG ¶ 31(d), “individual is currently on parole or probation,” applies.

Applicant’s most recent crime, the assault of her stepdaughter was partially caused by her stepdaughter’s truculence and the side-effects of the medication Applicant was taking to control her depression. Applicant is a good employee who is active in the community, volunteering in her sons’ little league football program. AG ¶ 31(d), “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement,” applies.

Regardless of the factors that may have contributed to the episode involving Applicant’s stepdaughter, she was arrested, and remains on probation. Moreover, so long as Applicant remains financially unstable, the possibility that she may break the law by bouncing checks may recur. Applicant has not mitigated the criminal conduct security concern.

Guideline E, Personal Conduct

The security concern under this guideline is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15)

Applicant’s failure to disclose all of her arrests on the security clearance application raises the issue of whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies.

Applicant comprehensively addressed all of her other adverse background information on the security clearance application including delinquent finances and unalleged, domestic civil complaints. She used the “Additional Comments” section of the security clearance application to discuss what she characterized as a history of mistakes. Under these circumstances, Applicant’s characterization of the omission of some of her arrests as unintentional was credible. I conclude Applicant did not falsify her security clearance application, and that there are no personal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must 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.

Applicant has not demonstrated a sufficient track record of financial reform to mitigate the financial considerations security concern. Moreover, not enough time has elapsed from her last episode of criminal conduct to mitigate the criminal conduct security concern. Applicant’s depression contributed greatly to the accrual of her delinquencies, her failure to take concrete steps to satisfy them, and her most recent episode of criminal conduct. She is undergoing treatment, and her physician is optimistic. Despite the cause of her financial problems and most recent criminal conduct, her delinquencies are simply too significant to conclude that they do not pose a security concern. Considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the security concerns.

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.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Subparagraphs 1.e - 1.v:	Against Applicant
Subparagraph 1.w:	For Applicant
Subparagraphs 1.x - 1.y:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a - 2.j:	Against Applicant
Subparagraphs 2.k:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	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