



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-11226
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro se*

June 12, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Standard Form 86 (Questionnaire for Sensitive Positions) (SF 86), on April 28, 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 10, 2009, and requested a decision without a hearing (Answer). Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on February 20, 2009. The Applicant received the FORM on March 11, 2009, and was given 30 days to submit any additional information. She elected not to submit any additional documentation. The case was

assigned to me on May 20, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 44, and married (separated). 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 all of the allegations in this paragraph of the SOR, with the exceptions of subparagraphs 1.h. and 1.k.

The Applicant submits that the majority of her financial problems began when she attempted to start a real estate business. (Item 4 at 3.) This occurred during the years 2005 and 2006. (Item 5 at 2.) She states that she was underemployed from October 2006 through March 2008. Since that time she has worked for her current employer. The Applicant has downsized and economized in many ways. Her intent is to pay off her delinquent debts. (Item 4 at 3.)

1.a. The Applicant admits that a judgment was filed against her, her husband and her real estate firm in March 2007. The amount of the judgment was \$96,000.00.

The Applicant states that the judgment was satisfied pursuant to an arrangement between the Applicant's husband and the plaintiffs. She submitted a copy of the Settlement Agreement (Agreement). (Item 7 at 17-19.) The Agreement states that, if certain payments are made by the husband, "the Default Judgment entered as against [the Applicant and her real estate firm] in favor of the [plaintiffs] shall be marked 'Satisfied in Full' with the . . . County Clerk of Superior Court." (Item 7 at 17.) The payments were to begin in November 2007 and were due to end in June 2009.

The attorney for the Applicant's husband submitted a letter dated September 29, 2008. In that letter he states, "I can reveal that [the husband] has made the payment required under the agreement and is not otherwise in breach of said agreement." (Item 7 at 16.) In her Answer, the Applicant states, "Admitted – judgment has settled with all conditions of settlement satisfied and pending cancellation at courthouse." (Item 4 at 1.)

1.b. The Applicant admits that she is indebted to First Premier in the amount of \$356.00. The Applicant sent a letter to this creditor on September 29, 2008, requesting a monthly payment arrangement. (Item 7 at 8.) She states in her Answer, "Settlement negotiated and pending." There is no further information.

1.c. The Applicant admits that she is indebted to First Premier for another account in the amount of \$243.00. The Applicant sent a letter to this creditor on

September 29, 2008, requesting a monthly payment arrangement. (Item 7 at 9.) She states in her Answer, "Settlement negotiated and pending." There is no further information.

1.d. The Applicant admits that she is indebted to HSBC Bank in the amount of \$231.00. The Applicant sent a letter to this creditor on September 29, 2008, requesting settlement of this account by use of a security deposit. (Item 7 at 10.) She states in her Answer, "Payment arrangements requested and waiting on a response." There is no further information.

1.e. The Applicant admits that she is indebted to LVNV Funding/Citibank (ZALES) in the amount of \$4,959.00. She states in her Answer, "Offer of settlement proposed by company and payment arrangements being negotiated." There is no further information.

1.f. The Applicant admits that she is indebted to AAC/Citibank in the amount of \$14,586.00. The Applicant sent a letter to this creditor on September 29, 2008, requesting a monthly payment arrangement. (Item 7 at 13.) She states in her Answer, "Requested payment arrangement; company has not responded." There is no further information.

1.g. The Applicant admits that she is indebted to Portfolio, but disputes that the amount is \$1,297.00. The Applicant sent a letter to this creditor on September 29, 2008, stating that she only owes \$350.00 and requesting a monthly payment arrangement. (Item 7 at 12.) She states in her Answer, "Amount disputed and pending negotiation." There is no further information.

1.h. The Applicant denies that she is currently indebted to Allied Int in the amount of \$112.00. She states in her Answer, "Paid in full." There is no further information.

1.i. The Applicant admits that she is indebted to Applied Bank in the amount of \$6,243.00. The creditor sent a letter to the Applicant on September 8, 2008, indicating that they were willing to accept a settlement of \$2,497.47. (Item 7 at 15.) She states in her Answer, "Requested payment arrangements; company has not responded." There is no further information.

1.j. The Applicant admits that she is indebted to Merrick Bank in the amount of \$730.00. The Applicant sent a letter to this creditor on September 29, 2008, requesting a monthly payment arrangement. (Item 7 at 11.) She states in her Answer, "Requested payment arrangement; company has not responded." There is no further information.

1.k. The Applicant denies that she is currently indebted to Sunrise Credit/HSBC Bank in the amount of \$242.00. She states in her Answer, "Payment arrangements made and paid in full." There is no further information.

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 \$28,000.00 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 2004 and 2006. However, it took her until 2008 to begin the negotiations to pay off any of the past due indebtedness. In addition, the evidence is meager as to how much she has paid. 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, a business downturn . . .), and the individual acted responsibly under the circumstances.” The Applicant’s financial difficulties seem to be connected with her failed business. However, once again, she did not make any attempts to resolve this situation until after being contacted by DOHA. 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. Even taking her word that she has paid the debts in 1.h. and 1.k., that amounts to only \$354.00. In addition, while it appears her husband was making the required payments through September 2008 on the debt in subparagraph 1.a., there is no evidence to show that he has continued the payments for another six months. In conclusion, there is no track record of her making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable.

Finally, the Applicant is at least \$28,000.00 in debt. Under these facts 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 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 continues to pay down her debts, and is able to document these payments, 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. through 1.k.:	Against 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