



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-11817
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

November 13, 2009

Decision

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings and exhibits, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her Security Clearance Application (SCA, Item 1) on September 12, 2008. She submitted interrogatory answers (Item 7) concerning delinquent accounts to Defense Office of Hearings and Appeals (DOHA) adjudicators on February 24, 2009. On March 24, 2009, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her answer to the SOR on May 14, 2009. She requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on July 16, 2009. Applicant received the FORM on July 28, 2009. Her response was due on August 27, 2009. No response was received. The case file was assigned to me on October 8, 2009.

Findings of Fact

Applicant is 30 years old and single with three children. She received her paralegal degree in July 2007, and has been employed as a paralegal with a defense contractor since November 2007.

According to Item 6 (SCA), Applicant's wages were garnished, she had a car repossessed in June 2005, and has two judgments identified in SOR ¶¶ 1.a. and 1.b. SOR ¶ 1.a. and SOR ¶ 1.f. describe the same judgment entered against Applicant in June 2002.¹ SOR ¶ 1.f. is resolved in Applicant's favor. The SOR contains five delinquent accounts totaling \$14,518.

Applicant admitted the judgment in SOR ¶ 1.a. (\$4,444) but stated it does not appear on her credit report. As noted above, the judgment was filed in June 2002. The statute of limitations for judgments in this state is 12 years from the date the judgment was filed.

Regarding SOR ¶ 1.b. (\$7,075), a judgment was entered against Applicant in October 2004. Applicant admitted the debt and provided documentation showing she had worked out a payment plan calling for \$50 payments every two weeks. No additional information was provided. As with SOR ¶ 1.a., the statute of limitations for judgments in this state is 12 years.

Applicant admitted the delinquent account identified in SOR ¶ 1.c. (\$9,630). She provided documentation indicating the creditor offered to settle the account on May 21, 2009 for \$2,661. No additional information was provided.

Applicant stated in her answer that she could not locate the creditor identified in SOR ¶ 1.d. (\$314). She claimed she paid the delinquent account in SOR ¶ 1.e. (\$152) on May 22, 2009. No additional documentation was provided to verify that her check was processed and/or that the amount was withdrawn from Applicant's checking account.

Applicant denied SOR ¶ 1.g. (\$1,253)² explaining that the account was removed from her credit report when the collection agency did not provide information within the

¹ Applicant incorrectly indicated that the duplicate entry was SOR ¶ 1.e. (answer to SOR).

² In her answer to the SOR, she mistakenly identified this account as SOR ¶ 1.f.

statutorily mandated 30-day period. She provided documentation of her requests to the collection agency for information. There is no documentation from the credit agency verifying the account was removed from her credit report.

In Applicant's interrogatory answers dated February 24, 2009, she provided documentary information verifying she had paid or settled four delinquent accounts between March 2008 and February 2009. In that period, she also made payments on three other delinquent accounts (unlisted). Her total payments amounted to \$1,166.

Character Evidence

Applicant submitted no evidence of her job performance. She supplied no character evidence of her lifestyle away from the job. Lastly, there is no evidence she has had financial counseling.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information. These guidelines are flexible rules of law that must take into consideration the complexities of human behavior.

The administrative judge's ultimate adjudicative goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole person concept" that brings together 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. Reasonable 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 sensible, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an around-the-clock responsibility between an applicant and the federal government. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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

Financial Considerations (FC)

AG ¶ 18. The Concern. "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

Both AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply to the circumstances of this case. Carrying delinquent debt of more than \$14,500 means Applicant is unable to satisfy her debt. Having a documented history of past due delinquent accounts and judgments that date to June 2002 constitutes a history of not meeting financial obligations that is likely to continue in the future. See *also*, ninth factor of the whole person concept.

Five mitigating conditions are potentially applicable. No mitigation is available under AG ¶ 20(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 reliability, trustworthiness, and good judgment*). Applicant still owes more than \$14,500 in debt. She has provided no evidence that convinces me the indebtedness will not continue. The absence of a comprehensive plan that addresses most or all the past due accounts raises ongoing doubts about Applicant's judgment and reliability.

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) does not apply. The mitigator refers to unemployment, economic issues, medical issues, and marital problems, as unanticipated events that may hamper or impede a person from paying their debts. Applicant has raised none of the foregoing issues, and I cannot assume that they caused or exacerbated her financial problems.

Applicant needs financial counseling to show her how to regain control of her finances. AG ¶ 20(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*) does not apply because she has furnished no evidence of counseling.

Applicant receives some consideration under AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) based on the pay-offs and settlements she made to four unlisted creditors. However, Applicant has furnished no evidence regarding payments to creditors listed in the SOR. Documentation that a payment plan has been established to repay an account means little without documented payments under the plan. Applicant demonstrated she comprehended the importance of documentation in her interrogatory answers in which she supplied documentation from the unlisted creditors showing she made payments or settlements.

AG ¶ 20(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*) has limited application because Applicant employed some of the procedures to dispute SOR ¶ 1.g. However, the dispute is not complete until the dispute is processed through one of the three credit agencies. They research the account and return current information within a reasonable period of time. Their reports will show either that the account has been removed and why, or they will reaffirm the account with reasons for their reaffirmation. The limited mitigation Applicant is credited with under AG ¶¶ 20(d) and 20(e) is not sufficient to successfully rebut, extenuate, and mitigate the adverse evidence under the financial considerations guideline.

Whole Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the FC guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 record shows that Applicant has had financial problems since June 2002. By 2006, Applicant had incurred a second judgment, a car repossession, and a wage garnishment. She exercised good judgment in paying off or settling four unlisted delinquent accounts, and providing payments to three unlisted creditors between March 2008 and February 2009.

As recently as August 27, 2009 (last day to respond to the FORM), Applicant had an opportunity to supply updated information regarding the payment arrangements she made with SOR ¶¶ 1.b. and 1.c. She also had a chance to supply the canceled check or checking account ledger to prove she had paid off SOR ¶ 1.e. It is reasonable to infer from the lack of verification of payment that no payments were made. With no plan in existence to comprehensively address the debts, it is likely the indebtedness will continue. The financial considerations guideline is resolved against Applicant.

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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	Against Applicant

Conclusion

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

Paul J. Mason
Administrative Judge