



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



In the matter of:)
)
) ISCR Case No. 09-00153
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connel, Esquire, Department Counsel
For Applicant: *Pro se*

May 17, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On June 30, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 Adjudicative Guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an undated Answer to the SOR and requested a hearing. On January 13, 2010, Department Counsel contacted Applicant to schedule a hearing. Applicant stated that she no longer wished to have a hearing and requested that an

administrative determination be made on the submitted record. On January 15, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing 12 Items and mailed Applicant a complete copy on January 20, 2010. Applicant received the FORM on February 11, 2010, and had 30 days from its receipt to file objections and submit additional information. She did not submit any additional information. On April 21, 2010, DOHA assigned the case to me.

Findings of Fact

In her response to the SOR, Applicant admitted the allegations contained in ¶¶ 1.a, 1.b, 1.e, 1.h, 1.t, 1.y, 1.z, and 1.aa. Those admissions are incorporated into the following findings. She denied the remaining 19 allegations. She asserted that she successfully disputed the debts alleged in ¶¶ 1.c, 1.d, 1.o, and 1.s. She claimed that she paid or resolved those alleged in ¶¶ 1.f, 1.g, 1.i, 1.j, 1.k, 1.l, 1.m, 1.n, 1.p, 1.q, 1.r, 1.u, 1.v, 1.w, and 1.x.

Applicant is a 40-year-old employee of a defense contractor. She was divorced in 1993. She has a 13-year-old daughter. Since June 2008, she has worked as an instrumentation mechanic for her current employer. (Item 5.)

In July 1999, Applicant filed a Chapter 7 Bankruptcy that was discharged in November 1999. The record does not contain any information regarding the underlying reason that she filed the action or the amount of discharged debt. (Item 11.) On July 28, 2004, she filed a Chapter 13 Bankruptcy as a result of an illness that prevented her from working from “the latter part of 2003 thru the first part of 2004.” (Item 5 at 35.) It was dismissed on April 18, 2006, because Applicant could no longer make the \$382 monthly payments after she was seriously injured in a car accident in July 2005 and unable to work.¹ (Item 5 at 33-35; Item 11.)

On May 7, 2009, Applicant submitted a Response to Interrogatories requesting information about 23 delinquent debts listed on an August 2008 credit bureau report (CBR.) She noted that “These accounts are in dispute. Currently with a credit repair program: ‘Dream Consulting Credit Repair.’” They are in the process of removing these accounts from my credit. What documentation will be acceptable to verify?” (Item .7) At least nine of those delinquent accounts were previously included in the Chapter 13 Bankruptcy that was dismissed on April 2006. (Item 7; 11 at 39-40.)

Applicant attached a copy of her budget to that Response. Her net monthly income is \$3,460 and expenses are \$1,915. After making a \$579 car payment on a loan balance of \$21,680, she has approximately \$965 remaining at the end of the month. (Item 7.)

¹According to her e-QIP, Applicant was also involved in a car accident in January 2006 and in February 2008. She was at fault in the January 2006 accident and was hit by a drunk driver in February 2008. (Item 5 at 37.)

In September 2009, Applicant submitted a copy of a credit file investigation that seemingly referenced the disputes she filed in May 2009. She stated in her letter that "Most of the delinquent accounts have either been paid, incorrect, and/or disputed and have since been removed from my credit history/report. This can be verified with an updated credit report." (Item 6.) She did not cross reference the findings of that document to the individual debts listed on the SOR or provide any explanation of its findings. She did not detail which debts were paid, which were incorrect, and which were disputed. She provided no other documents to specifically address the status of each delinquent debt

Applicant admitted that she has approximately \$18,000 of delinquent debt. She did not provide evidence that she obtained financial counseling or established a repayment plan with any of the six creditors. Of the four debts that she claimed she successfully disputed, the record evidence documented that SOR ¶ 1.c remains unpaid as of the January 2010 CBR (Item 8.); SOR ¶ 1.o is paid (Item 9.); and, the status of the debts alleged in SOR ¶ 1.c and ¶ 1.s is unclear. The status of the majority of the 15 debts that she asserted were paid or resolved also remains unsubstantiated, except ¶ 1.n (\$164) which is paid (Item 9.). For example, she asserted that the debts alleged in SOR ¶¶ 1.j (\$1,311), 1.k (\$433), and 1.l (\$249) are owed to the same credit card company and are resolved. (Item 4.) However, the January 2010 CBR noted that one account was paid in the amount of \$253. (Item 8.) There is no evidence indicating that the other two accounts were settled along with that account. She did not provide any paid receipts or letters from creditors corroborating her assertions regarding the payment or resolution of most of the 19 individual debts.

Applicant did not provide evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Adjudicative Guidelines. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used 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 overarching adjudicative goal is a fair, impartial, and commonsense 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.

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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

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. 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 potential, rather than actual, risk of compromise of classified 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 evidence established security concerns under two Guideline F disqualifying conditions, specifically AG ¶ 19(a), an “inability or unwillingness to satisfy debts;” and

AG ¶ 19(c), “a history of not meeting financial obligations.” Based on CBRs, two bankruptcies, and her admissions, Applicant has a history of being unable or unwilling to satisfy debts dating back to 1999. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut or prove mitigation of those security concerns. The guideline includes five conditions that could mitigate security concerns arising from financial issues. Under AG ¶ 20(a), a 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 experienced financial delinquencies in 1999, resulting in the filing of a Chapter 7 bankruptcy. In 2004, she filed a Chapter 13 bankruptcy after she accrued additional delinquent debts. To-date she has between \$18,000 and \$28,000 of debt that remains unresolved. Because the ongoing problems are not isolated and there is no evidence to support a finding that delinquent indebtedness is unlikely to recur, the situation casts doubt on her reliability and this condition does not apply.

AG ¶ 20(b) states that it may be mitigating where “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.” Applicant attributed her recent financial problems to a 2003 illness and 2005 car accident, which were conditions beyond her control. She submitted evidence that she attempted to resolve her indebtedness by filing a Chapter 13 bankruptcy in 2004 and complied with the payments until 2006. The record does not contain information regarding the specific steps she took subsequently to manage her debts. Hence, this mitigating condition has only partial application.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Because she did not submit evidence that she received credit counseling (other than a reference to some debt resolution company) or documentation that her financial problems are under control, AG ¶ 20(c) cannot apply. Although she asserted that she paid or resolved 19 debts, the evidence in the record does not support those assertions, except for the debts alleged in SOR ¶¶ 1.i, 1.o, and 1.n. Hence, AG ¶ 20(d) has limited application.

Applicant provided evidence that she disputed debts in May 2009. However, the outcome of that dispute as it relates to the debts alleged in the SOR is not clear, especially as to those debts that were previously included in the Chapter 13 bankruptcy repayment plan. Thus, AG ¶ 20(e) that provides mitigation when “an 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 issues” has limited application.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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.

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. Applicant is a mature individual, who has worked for a defense contractor for the past two years. In May 2009, she learned of the Government’s concerns relating to her delinquent debts and indicated that she was disputing them. In August 2009, the Government filed a SOR. On January 13, 2010, she notified Department Counsel that she no longer wanted a hearing in the matter. On January 15, 2010, the Government filed a FORM and specifically notified her that she failed to provide documentation supporting her assertions regarding the resolution of 19 debts. Despite that notification, she did not submit additional information to substantiate her claims as to those debts. Nor did she present any evidence indicating that she was addressing the \$18,000 of delinquent debt that she acknowledged. Applicant failed to provide sufficient evidence to document the establishment of a track record of financial responsibility or resolution, which would prevent a recurrence or continuance of similar problems in the future. The record contains insufficient evidence about her character, trustworthiness, or reliability to further mitigate these concerns or make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant’s present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.n and 1.o:	For Applicant
Subparagraphs 1.p through 1.aa:	Against 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.

SHARI DAM
Administrative Judge