



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-00242
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

For Applicant: *Pro se*

October 28, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on September 19, 2008 (Item 4). On June 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 submitted an Answer to the SOR on July 15, 2009, and requested that a decision be made without a hearing. Department Counsel submitted a File or Relevant Material (FORM) to the Applicant on August 3, 2009. The Applicant received the FORM on August 10, 2009, and was given 30 days to submit any additional information. The Applicant did not submit any additional information. The case was

assigned to me on October 15, 2009. Based upon a review of the written record eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 32, and married to her second husband. 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 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 the SOR. The Applicant provided additional information concerning allegations 1.b., 1.c., 1.f., 1.g. and 1.h. Those admissions are hereby deemed findings of fact.

The Applicant submits that the majority of her financial problems began because of her divorce from her first husband in 2005. (Item 5 at 5.) It is noted that the Applicant states she was divorced on September 21, 2005, in her official Government questionnaire. (Item 4, Section 15, at 19-20.) The e-QIP also states that the Applicant was employed until March 2006. (Item 4, Section 11, at 16.)¹ The Applicant's responses to the ten allegations in the SOR follow.

1.a. The Applicant admits that she is indebted to a creditor in the amount of \$1,021. The Applicant has made no recent payments on this debt, and there is no evidence that she is going to make payments on this debt.

1.b. The Applicant admits that she is indebted to a creditor for a delinquent student loan in the amount of \$14,000. She states in her Answer to the SOR, "This should not be under collection any long, as the debt is being paid at a rate of \$409.00 per month." The most recent credit report in the record, dated June 5, 2009, indicates that the debt is, "Paid or being paid by garnishment." (Item 8 at 2.) However, the Applicant submitted no information as to how many payments have been made, and what is the amount of her current balance.

1.c. The Applicant admits that she is indebted to a creditor for a delinquent student loan in the amount of \$10,000. The Applicant states that this debt is also being paid at the rate of \$409 a month. The most recent credit report in the record, dated June 5, 2009, indicates that the debt is, "paid or being paid by garnishment." (Item 8 at 2.) However, the Applicant submitted no information as to how many payments have been made, and what is the amount of her current balance.

¹See Item 4, Section 22, at 30-31.

1.d. The Applicant admits that she is indebted to a credit card company in the amount of \$381. The Applicant has made no recent payments on this debt, and there is no evidence that she is going to make payments on this debt.

1.e. The Applicant admits that she is indebted to a second credit card company in the amount of approximately \$2,000. The Applicant stated in October 2008 that she was making \$100 payments on this debt. (Item 5 at 4.) She submitted no documentary evidence supporting her statement, or showing her current balance.

1.f. The Applicant admits that she is indebted to a creditor for a delinquent student loan in the amount of \$362. She states in her Answer to the SOR, "All . . . obligations are currently being paid at a total rate of \$130.00 per month." The Applicant submitted copies of pages from a payment book of this creditor. The payment book indicates that the Applicant's monthly payment for two student loans was \$127.71 as of April 2009. (Item 6.) However, the Applicant submitted no information as to how many payments have been made, or showing her current balance.

1.g. The Applicant admits that she is indebted to a creditor for a delinquent student loan in the amount of \$253. She states in her Answer to the SOR, "All . . . obligations are currently being paid at a total rate of \$130.00 per month." The Applicant submitted copies of pages from a payment book of this creditor. The payment book indicates that the Applicant's monthly payment for two student loans was \$127.71 as of April 2009. (Item 6.) However, the Applicant submitted no information as to how many payments have been made, or showing her current balance.

1.h. The Applicant admits that she is indebted to a creditor for a delinquent student loan in the amount of \$350. She states in her Answer to the SOR, "All . . . obligations are currently being paid at a total rate of \$130.00 per month." The Applicant submitted copies of pages from a payment book of this creditor. The payment book indicates that the Applicant's monthly payment for two student loans was \$127.71 as of April 2009. (Item 6.) However, the Applicant submitted no information as to how many payments have been made, or showing her current balance.

1.i. The Applicant admits that she is indebted to a collection agency in the amount of \$114. The Applicant has made no recent payments on this debt, and there is no evidence that she is going to make payments on this debt.

1.j. The Applicant admits that she is indebted to a telephone company in the amount of \$264. The Applicant has made no recent payments on this debt, and there is no evidence that she is going to make payments on this debt.

The Applicant submitted evidence that she had applied for a loan with her credit union. However, there is no evidence that she received it. (Items 6 and 7.)

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 to be used as appropriate 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 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. 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 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 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.

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 recently, primarily between about 2003 and 2008. In addition, she failed to establish how much she has paid to any of her creditors. 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., . . . divorce or separation), and the individual acted responsibly under the circumstances.” The Applicant and her husband were divorced in 2005. She indicates that his actions exacerbated her financial situation. However, there is a scant record to conclude that she has acted responsibly since then. With the available record, 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. There is no track record of her making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that she is \$28,000 in

debt, 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 relevant circumstances. 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. 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.

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 so for several years. Her debt situation is not yet 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 find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)8)); and that there is a high likelihood of recurrence (AG ¶ 2(a)9)).

Overall, the record evidence leaves me with questions 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 situation 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, I conclude that the Applicant has not successfully overcome the Government’s case opposing her request for a DoD security clearance. Accordingly, the evidence supports a denial of her request for a security clearance.

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.j.:	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