



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-00519
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

July 14, 2010

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on September 21, 2008. On July 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for 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 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.

The Applicant acknowledged receipt of the SOR on October 8, 2009. She answered the SOR in writing on November 13, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on January 25, 2010, and it was assigned to another Administrative Judge. It was reassigned to the undersigned on March 1, 2010, and DOHA issued a notice of hearing that same day. I convened the

hearing as scheduled on April 1, 2010. The Government offered Exhibits (GXs) 1 through 8, which were received without objection. The Applicant testified on her own behalf. DOHA received the transcript of the hearing (TR) on April 8, 2010. I granted the Applicant's request to keep the record open until May 3, 2010, to submit additional matters. On May 3, 2010, she submitted, through Department Counsel, Exhibit (AppX) A, which was received without objection. The record closed on May 4, 2010, the day her exhibit was forwarded to the undersigned by Department Counsel. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, the Applicant admitted the factual allegations in Subparagraphs 1.a.~1.k., and 1.m. of the SOR, with explanations. She denied the factual allegations in Subparagraphs 1.l. and 1.n. of the SOR.

Guideline F - Financial Considerations

In 2006, the Applicant's spouse was unemployed for about six months. (TR at page 46 lines 2~20.) This caused the Applicant's current financial difficulties. (*Id.*) As a result, the SOR alleges 14 past due debts.

1.a.~1.d., and 1.k. The Applicant is indebted to Creditor A in an amount totaling about \$1,017 for medical bills. (GX 5 at pages 6 and 9, GX 6 at page 1, and GX 8 at page 1.) The Applicant avers that she is making monthly payments of \$50 to Creditor A's collection agency, but has provided no further documentation as to any payments made. (TR at page 30 line 4 to page 34 line 7, at page 41 line 19 to page 42 line 11, and see AppX A at page 2.)

1.e. The Applicant is indebted to Creditor E in an amount of about \$437 for cell phone service. (GX 8 at page 2.) The Applicant has done nothing to address this admitted debt. (TR at page 35 line 9 to page 36 line 1.)

1.f. The Applicant is indebted to Creditor F in an amount of about \$952 for satellite television. (GX 8 at page 2.) The Applicant has done nothing to address this admitted debt. (TR at page 36 lines 2~14.)

1.g. The Applicant is indebted to Creditor G in an amount of about \$47 for cable television. (GX 8 at page 2.) The Applicant avers that she is current with this creditor, but offers no documentation in this regard. (TR at page 36 line 15 to page 37 line 21.)

1.h. The Applicant is indebted to Creditor H in an amount of about \$1,009 for jewelry. (GX 8 at page 2.) The Applicant has done nothing to address this admitted debt. (TR at page 37 line 22 to page 38 line 6.)

1.i. The Applicant is indebted to Creditor I in an amount of about \$9,538 for the repossession of a motor vehicle. (GX 8 at page 2.) The Applicant has done nothing to address this admitted debt. (TR at page 40 line 14 to page 41 line 18.)

1.j. The Applicant is indebted to Creditor J in an amount of about \$3,596 for another repossessed motor vehicle. (GX 8 at page 2.) The Applicant has done nothing to address this admitted debt. (TR at page 38 line 7 to page 40 line 13.)

1.i. The Applicant is indebted to Creditor L in an amount of about \$678 for a medical bill. (GX 5 at page 8.) The Applicant avers that she does not “remember that one,” but offers nothing further in this regard. (TR at page 42 lines 12~16.)

1.m. The Applicant is indebted to Creditor M in an amount of about \$65 for another medical bill. (GX 5 at page 8.) The Applicant again avers that she does not “remember” this debt, but offers nothing further in this regard. (TR at page 42 lines 17~22.)

1.n. The Applicant has consistently denied the debt to Creditor N in the amount of about \$200. (TR at page 42 line 23 to page 43 line 2, and GX 4 at page 5.) As this alleged debt does not appear on any of the Government’s four credit reports, GX 5~8, this allegation is found for the Applicant.

Policies

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 commonsense decision. According to Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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. 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.

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.” 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 Paragraph 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 Subparagraph 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly under Subparagraph 19(c), “*a history of not meeting financial obligations*” may raise security concerns. The Applicant has significant past due debts, which she has yet to address.

I can find no countervailing Mitigation Condition that is applicable. The Mitigating Condition found in Subparagraph 20(b) is applicable where “*the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of*

employment, . . .), and the individual acted responsibly under the circumstances.” Here, the Applicant’s spouse was unemployed in 2006, but she has yet to seriously address her admitted past due debts.

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. Under Paragraph 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 also consider the nine adjudicative process factors listed at AG Paragraph 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 all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Here, she has the unqualified support of those with whom she works and her friends. (AppX A the last 6 pages.) However, 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 Applicant has not mitigated 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.~1.m.	Against Applicant
Subparagraph 1.n.	For 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.

Richard A. Cefola
Administrative Judge