



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-01074
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. Delaney, Esquire, Department Counsel
For Applicant: *Pro se*

August 31, 2009

Decision

MASON, Paul J., Administrative Judge:

Based upon 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 5) on September 11, 2008. On April 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). 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 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 furnished her answer to the SOR on April 28, 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 May 18, 2009. Applicant received the FORM on June 1, 2009. Her response was received on June 28, 2009, and is a part of the record. The case file was assigned to me on July 15, 2009.

Findings of Fact

The SOR alleges 19 delinquent debts and one judgment totaling approximately \$38,000. Applicant admitted she owed the accounts. She provided documentation of making an initial payment of \$100 in March 2009, followed by a payment of \$449.25 in April 2009 under her debt plan payment schedule. Her answer includes documentary proof, dated March 6, 2009, that she paid subparagraph 1.o. of the SOR (receipt for nautilus center bill).

Applicant is 38 years old and is employed as a tier 1 call center support technician with a defense contractor. She has been married for almost nine years, and has one 17-year-old child. She attended college from 2001 to December 2004. She indicated in Item 5 (SCA) that she resigned from previous jobs because of her daughter's medical problems. Then, Applicant developed medical problems. She also noted in the employment section of her SCA that she was unemployed from January 2001 to February 2003, and from September to December 2003. In a one-page statement attached to her answer, she explained that her migraine headaches and stroke symptoms over the years prevented her from remaining current on her debts. If needed, she stated she could provide medical records verifying her illnesses. No additional information was provided. Applicant seeks a security clearance.

In Applicant's interrogatory responses (Item 6) dated March 9, 2009, she provided her debt plan enrollment documentation calling for monthly payments of \$449.25 for a 60-month period. The plan identified creditors listed in subparagraphs 1.a., 1.c., 1.d., 1.l, 1.m., 1.n., 1.p., 1.q., and 1.t. The plan documentation also provided Applicant with advice on how to establish a budget and get control over her finances.

In her response to the FORM dated June 28, 2009, Applicant provided proof of paying the creditors in subparagraphs 1.b., 1.e., 1.f., 1.g., 1.h., 1.i., 1j., and 1.k. On June 12, 2009, she paid \$438.02, to satisfy the above-referenced creditors (response to FORM). She also inserted documentation in her response verifying she paid the parking infraction (subparagraph 1.s.) on March 4, 2009. Applicant still owes 10 creditors \$37,135. The debts fell delinquent between 2003 and September 2005.

Character Evidence

Applicant submitted no character endorsements from coworkers or supervisors. She furnished no documentation concerning her illnesses or follow-up documentation on her status in the debt plan.

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 applied in conjunction with the variables listed in 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. 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 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 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 potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations (FC)

¶ 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.”

The credit reports dated October 3, 2008 and March 26, 2009 indicate that Applicant’s delinquent financial history extends from 2003 to the current time because most of the debt remains unpaid. She accumulated 20 debts totaling about \$38,000. FC disqualifying condition (DC) ¶ 19.a. (*inability or unwillingness to satisfy debts*) and FC DC ¶ 19.c. (*a history not meeting financial obligations*) apply.

Evidence of financial problems may be potentially mitigated by FC mitigating condition (MC) ¶ 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*); FC MC ¶ 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*); and, FC MC ¶ 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*).

FC MC ¶ 20.a. does not apply. Even after her satisfaction of 10 delinquencies, she still owes approximately \$37,500 to 10 creditors. Her financial problems, which are likely to persist, continue to cast doubt on her judgment and reliability.

FC MC ¶ 20.b. applies in part based on Applicant’s medical problems and her daughter’s medical problems. However, without detailed medical records establishing specific reasons why Applicant could not work, I cannot speculate about the seriousness of Applicant’s headaches or cardiovascular condition. Therefore, the mitigating weight assigned to Applicant’s medical problems is decreased even though she paid 10 of the smaller debts in early 2009.

The documentation Applicant provided in her interrogatory responses shows she received some counseling from the debt plan representatives. Also, based on the two plan payments she made in March and April 2009, Applicant appeared to be committed to re-establishing control over her financial obligations. However, her response to the FORM makes no reference to the debt plan, a critical piece of evidence that would have provided updated insight about her commitment to her debt plan, and eventual restoration of her financial profile. Applicant receives only limited mitigation under FC MC ¶ 20.c. as there is still no clear indication her debts are being resolved.

Applicant exercised good judgment by joining the plan in March 2009 and paying off 10 of 20 creditors between March and June 2009. But, with no current evidence about the debt consolidation plan, I must conclude she abandoned the plan and has no strategy on how to repay the remaining creditors. On balance, the limited mitigation that Applicant is entitled to under FC MC ¶ 20.c. and FC MC ¶ 20.d. falls short of overcoming the adverse evidence under FC DC ¶ 20.a. and FC DC ¶ 20.c. Accordingly, the FC guideline is found against her.

Whole Person Concept (WPC)

I have examined the evidence utilizing the disqualifying and mitigating conditions of the FC guideline. Even though I have resolved the FC guideline against Applicant, the case still must be weighed 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 credit reports show that Applicant's financial problems occurred between 2003 and September 2005. Applicant referred to her daughter's medical problems and her medical problems as the chief reasons she could not keep her debts current. However, just as she had provided proof she paid certain debts listed in the SOR, she should have provided the medical records to provide detail as to why she could not work.

Applicant exercised good judgment in joining the debt consolidation plan in March 2009, and providing proof of two payments under the plan schedule. However, making two more payments in May and June 2009, in combination with character evidence, may have provided justifiable confidence to believe Applicant was truly committed to succeeding with the plan. Given (1) the lack of medical records, (2) additional information regarding the consolidation plan, and (3) character evidence, I cannot find in Applicant's favor under the financial guideline.

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

Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	Against Applicant
Subparagraph 1.m.	Against Applicant
Subparagraph 1.n.	Against Applicant
Subparagraph 1.o.	For Applicant
Subparagraph 1.p.	Against Applicant
Subparagraph 1.q.	Against Applicant
Subparagraph 1.r.	Against Applicant.
Subparagraph 1.s.	For Applicant
Subparagraph 1.t.	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.

Paul J. Mason
Administrative Judge