



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



In the matter of:)
)
) ISCR Case No. 09-01595
 SSN:)
)
 Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

August 28, 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 4), on October 3, 2008. On March 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). 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 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 answers to the SOR on April 2 and April 11, 2009 (Item 3).¹ She requested a decision 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 May 22, 2009. Her response was due by June 21, 2009. No response was received by DOHA. The case file was assigned to me on August 4, 2009.

Findings of Fact

The SOR lists five allegations under the financial considerations guideline, and one allegation under the personal conduct guideline. In her first answer (Item 3) to the SOR dated April 2, 2009, Applicant denied subparagraph 1.c. of the SOR. Regarding subparagraph 2.a., Applicant surmised she misread the question, and attributed the omission to negligence. On April 11, 2009, Applicant submitted a second answer (Item 3) to the SOR. In her second answer, she denied subparagraph 1.c. as she had done in her first answer. But, she admitted subparagraph 2.a. in her second answer. Applicant's admissions will be incorporated in the following factual findings.

Applicant is 45 years old and divorced. She has been employed by a defense contractor first as an executive assistant/analyst, then as an executive assistant/office manager since June 2005. While in the military between 1983 and 2005, Applicant received training and was certified as a career information counselor, a drug and alcohol facilitator, an employment requirements manager, and a scheduling and cost control analyst. Applicant has held a security clearance since 1984. She mentioned that fact in her first answer to the SOR, and also indicated, "Therefore, I am aware of the extent of an investigation to prove an individual's truthfulness and reliability." (answer to SOR)

Financial Considerations

Applicant owes a total of about \$12,800 for five delinquent accounts that are listed in SOR. Two of the past due debts (SOR 1.b. and 1.c.) are delinquent telephone accounts. SOR 1.e. is a credit card. The accounts became delinquent between 2002 and 2005. Even though given the opportunity to explain the origin of the accounts, why they became delinquent, and a plan to address them, Applicant provided no information.

Personal Conduct

As set forth in subparagraph 2.a. of the SOR, Applicant executed a security clearance questionnaire (SCA) on October 3, 2008. In response to question 28.a. (In the last 7 years, have you been over 180 days delinquent on any debt(s)?), Applicant checked "no," giving the impression she had no debts over six months delinquent. I find

¹ Item 3, as described by Department Counsel, includes Applicant's answer dated April 2, 2009. Item 3 is hereby amended to include Applicant's second answer dated and notarized on April 11, 2009. This amendment is made pursuant to E3.1.17. of the Directive.

Applicant intentionally omitted her delinquent financial accounts from her SCA in October 2008.

Character Evidence

Applicant provided no statements or independent evidence regarding her job performance and/or reputation in the community where she lives.

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.”

Applicant’s five accounts, more than 180 days delinquent, total approximately \$12,800. The debts have been delinquent for four to seven years. FC disqualifying condition (DC) ¶ 19.a. (*inability or unwillingness to satisfy debts*) and FC DC ¶ 19.c. (*a history not meeting financial obligations*) apply. The existence of the debts denotes an inability to pay them. Given Applicant’s understanding of the importance of the security investigation, Applicant’s decision not to provide any evidence as to how she plans to resolve the debts suggests an unwillingness to pay the debts she created.

Applicant’s financial problems may be 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*); 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.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*); and FC MC ¶ 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*). None of the mitigators are applicable.

FC MC ¶ 20.a. is inapplicable. Even though the debts are dated, the fact that they have not been paid continues to cast a pall over Applicant’s judgment and reliability. FC MC ¶ 20.b. cannot supply mitigation as there is no indication the debts were caused by unforeseen circumstances. Applicant has been steadily employed since her Honorable Discharge from the service in 2005. There is no evidence of medical problems. Finally, she furnished no evidence connecting her financial problems to her divorce in 1991.

FC MC ¶ 20.c. does not apply as there is no evidence that shows Applicant has received financial counseling. With no evidence of how Applicant intends to remedy her

financial indebtedness, there is no basis upon which to conclude her financial difficulties are being resolved. With no restitution payments, Applicant cannot satisfy FC MC ¶ 20.d.

In her original and amended answers to the SOR, Applicant disputed the debt listed in subparagraph 1.c. of the SOR. When disputing a debt, FC MC ¶ 20.e. requires an applicant to (1) furnish a reasonable explanation for the dispute and (2) provide documented proof that corroborates her explanation. Applicant has not complied with the two elements of the mitigator, rendering FC MC ¶ 20.e. inapplicable. The FC guideline is resolved against Applicant.

Personal Conduct (PC)

¶ 15. *The Concern.* “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.”

This guideline applies to intentional attempts to conceal or omit information from an SCA. I am unable to find in Applicant’s favor under this guideline because she deliberately omitted all her delinquent debt from her SCA. PC DC ¶ 16.a. (*deliberate omission or falsification of relevant facts from any personnel security questionnaire to determine security clearance eligibility or trustworthiness*) applies.

There are three mitigating conditions (MC) that are potentially applicable to the circumstances in this case. Those conditions are: PC MC ¶ 17.a. (*the individual made prompt, good-faith efforts to correct the omission, concealment or falsification, before being confronted with the facts*); PC MC ¶ 17.c. (*the offense was so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment*); and, PC MC ¶ 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*). PC MC ¶ 17.a. is not applicable as Applicant did not acknowledge her delinquent debt history until after she received the SOR in March or early April 2009. PC MC ¶ 17.c. is inapplicable because Applicant tried to conceal her entire debt history by misrepresenting to the government she had no overdue debts. Applicant’s intentional omission of material financial information in October 2008 continues to cast doubt on her reliability and judgment. Lastly, Applicant receives no mitigation under PC MC ¶ 17.d. because she still maintains her intentional omission was the result of negligence. The PC guideline is resolved against Applicant.

Whole Person Concept (WPC)

I have examined the evidence utilizing the disqualifying and mitigating conditions of the FC and PC guidelines. Even though I have resolved both guidelines 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.

Applicant was 20 years old when she joined the military. During her 21 years in the service, Applicant became certified as a career information counselor, a drug and alcohol facilitator, an employment requirements manager, and a scheduling and cost control analyst. Even without character evidence, it is clear she used her time wisely. By having a security clearance since 1984, it is fair to assume she had to fill out security forms more than once over a 20-year period. With her security clearance background, I am unable to accept her claim that she misread the financial question. The absence of evidence to demonstrate how she is going to pay back her creditors, coupled with her deliberate omission on an official government document, damages her credibility and indicates her current financial problems are likely to persist in the future. Even if she has determined that she does not have to pay the debts because they are legally unenforceable under the state statute of limitations, this action cannot be interpreted as the same type of good-faith effort to resolve debts as a documented track record showing regular payments of past due debts. See, FC MC ¶ 20.c. The FC and PC guidelines are 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

Paragraph 2 (Personal Conduct, Guideline E):	AGAINST APPLICANT
Subparagraph 2.a.	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