



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



In the matter of:)
)
) ISCR Case No. 09-03707
)
)
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 February 16, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 20, 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.

On December 18, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On February 4, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing 10 Items,

and mailed Applicant a complete copy on February 8, 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 all allegations, except those alleged in ¶ 1.a, ¶ 1.d, and ¶ 1.g. Those admissions are incorporated into the following findings.

Applicant is a 46-year-old employee of a defense contractor. She received a bachelor's degree in December 1990. She is unmarried. Since June 2001, she has worked as a staff analyst for her current employer. (Item 5.)

On March 17, 2009, Applicant met with a government investigator to discuss her unpaid debts. During that interview, she acknowledged that she had a federal tax lien that she paid off in 2005 or 2006. She admitted that she had four accounts with one credit card company that she closed seven or eight years ago. She claimed that she paid other accounts. She indicated that she would contact some of the creditors. She accrued the delinquent debts when she was working as a hair stylist and part-time bank teller, and did not earn enough money. She acknowledged that she was "overspending" at the time. (Item 6 at 3.)

Based on credit bureau reports (CBR) dated February 2009, and June 2009, the SOR alleged a tax lien, eight delinquent debts, and two judgments, totaling \$21,400. The \$5,288 tax lien was filed in 1998 and the two judgments were entered in 1995.¹ (Item 10.) The remaining debts became delinquent between May 2002 and February 2009, and are owed to department stores and credit card companies. (Items 8, 9.)

Applicant asserted during the March 2009 interview that the tax lien and some of the delinquent debts were paid. However, she offered no corroborating documentary evidence to support her assertions, or proof of payment, or attempts to resolve these or any of her other debts. She provided no 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

¹Applicant paid three tax liens in 2002, unrelated to the tax lien alleged in the SOR. (Item 7 at 9.)

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 two CBRs and her admissions, Applicant has been unable or unwilling to satisfy debts that began accruing in 1995. 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 four conditions that could mitigate security concerns arising under financial considerations. 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's financial delinquencies arose in 1995 when two judgments were entered against her, and again in 1998 when a tax lien was filed. Those and other delinquent debts that accrued subsequently remain unresolved to date. Because the ongoing problems are not isolated, and there is no evidence to support a finding that the delinquent indebtedness is unlikely to recur, 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 financial problems to a previous low paying position and overspending. While her past underemployment may be a contributing factor, her acknowledged overspending was not a condition beyond her control. This mitigating condition does not apply.

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.” Applicant established no mitigation under these two conditions. She did not submit any evidence that she received credit counseling or that her financial problems are under control. She did not provide evidence that she paid, attempted to pay, or established a repayment plan for the tax lien, two judgments, or eight delinquent 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 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 nine years. In early March 2009, she learned of the Government’s concerns relating to her finances and indicated that she would contact creditors. In November 2009, the Government filed a SOR. In February 2010, the Government filed the FORM. For more than a year, she was on notice of the financial issues that were creating security concerns and potentially affecting her employment. Despite that, she did not address them or provide proof that she previously addressed them. Applicant failed to demonstrate financial rehabilitation so the possibility of recurrence or continuance of these unaddressed obligations is likely. The record contains insufficient other evidence about her character, trustworthiness, or reliability to mitigate these concerns.

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge